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DISMANTLING THE FINANCIAL INFRASTRUCTURE OF GLOBAL TERRORISM

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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CONTENTS

	Page
Hearing held on:	
October 3, 2001	1
Appendix:	
October 3, 2001	65

WITNESSES

WEDNESDAY, OCTOBER 3, 2001

Eizenstat, Hon. Stuart E., former Deputy Secretary of the Treasury	47
Gurulé, Hon. Jimmy, Under Secretary for Enforcement, U.S. Department of the Treasury	15
Lackritz, Marc E., President, The Securities Industry Association	45
Lormel, Dennis, Chief, Financial Crimes Section, Criminal Investigations Division, Federal Bureau of Investigation	20
Moynihan, John F., Partner, BERG Associates, LLC	49
O'Neill, Hon. Paul H., Secretary, U.S. Department of the Treasury	7
Warren, Mary Lee, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice	19
Yingling, Edward L., Deputy Executive Vice President and Executive Director of Government Relations, American Bankers Association	44

APPENDIX

Prepared statements:	
Oxley, Hon. Michael G.	66
Bachus, Hon. Spencer	69
Bereuter, Hon. Doug	70
Carson, Hon. Julia	105
Ford, Hon. Harold Jr.	107
Israel, Hon. Steve	108
Kelly, Hon. Sue W.	109
LaFalce, Hon. John J.	114
Chertoff, Hon. Michael, delivered by Mary Lee Warren	131
Eizenstat, Hon. Stuart E.	179
Gurulé, Hon. Jimmy	121
Lackritz, Marc E.	164
Lormel, Dennis	140
Moynihan, John F.	198
O'Neill, Hon. Paul H.	117
Yingling, Edward L.	150

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Bereuter, Hon. Doug:	
Department of the Treasury letter dated August 29, 2001	72
Financial Action Task Force on Money Laundering Report, June 22, 2001	75
Kelly, Hon. Sue W.:	
"Terror on a Budget," *Wall Street Journal*, Sept. 20, 2001	111
America's Community Bankers and Independent Community Bankers of America, joint prepared statement	204

DISMANTLING THE FINANCIAL INFRASTRUCTURE OF GLOBAL TERRORISM

WEDNESDAY, OCTOBER 3, 2001

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

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

Present: Chairman Oxley; Representatives Leach, Roukema, Bereuter, Bachus, Castle, Kelly, Weldon, Riley, Manzullo, Shadegg, Fossella, Miller, Cantor, Grucci, Capito, Tiberi, Lucas of Oklahoma, Ney, Paul, Gillmor, Biggert, Green, Shays, Ferguson, Rogers, LaFalce, Frank, Kanjorski, Waters, C. Maloney of New York, Gutierrez, Watt, Bentsen, Sandlin, Lee, Schakowsky, Moore, Gonzalez, Lucas of Kentucky, Clay, Israel and Ross, J. Maloney of Connecticut, Hooley, Sherman, Mascara, Inslee, Capuano, Ford, Shows, Crowley.

Chairman OXLEY. The hearing will come to order.

Today, the Committee on Financial Services meets to hear testimony on the issue of terrorist financing and money laundering. We remember today the thousands of people who died in the four attacks in September. The terrorists used American freedoms and American dollars against us. They executed their plans with access to our financial systems, including credit cards, ATMs, local checking accounts and wiring money overseas. The best way for our committee to commemorate the victims' lives is to take every step possible to ensure that the gates to the financial services system in this country are locked to terrorists.

Today, along with Ranking Member LaFalce and other Members of this committee, I will introduce bipartisan legislation that will demonstrate to our friends and enemies here and abroad that the United States Congress stands shoulder to shoulder with the President in his campaign to dismantle the financial infrastructure of terrorism and to "starve terrorists of funding."

I applaud the President and our distinguished witness today, Treasury Secretary Paul O'Neill, for taking swift action to block terrorist assets that may be located here in the United States and to warn foreign banks that the U.S. is poised to block their assets in this country and deny them access to U.S. markets if they refuse to freeze terrorist assets overseas.

The Secretary is also to be commended for setting up a new Foreign Terrorist Asset Tracking Center, which I hope will become a

model for interagency cooperation in law enforcement and in the sharing of financial intelligence.

Finally, I applaud the Administration for sending us its legislative proposals, many of which are included in our bill.

This crime was not about money, but about mass murder, so we have a major challenge before us. Many in Congress and in the financial services sector are asking questions like: "What is terrorist financing?" For example, are terrorist organizations moving funds into the U.S. banking system through third-party correspondent accounts at major U.S. banks, or are they relying more on cash transfers through underground money services businesses?

How did they get credit cards, checking accounts, and the like, without raising suspicion? If the attacks could be executed without leaving an obvious financial trail, what might be missing now? And finally, the chilling question, is it possible that terrorist financing is continuing undetected in the United States?

These are urgent questions, and our goal today is to learn the answers and to craft effective legislation to stop it whenever, wherever and however it happens.

I am not convinced our money laundering laws are adequate to address the particular features of terrorist financing we have witnessed. The current money laundering regime seems better designed to detect the kind of money laundering associated with the crimes that generate significant proceeds. It does not appear to be particularly well-suited to cash an unconventional terrorist operation.

We know, too, that there are limitations to what we can expect from Federal laws that allow for the freezing of terrorist assets. Osama bin Laden and his organization, al Qaeda, have been on Treasury's blocking list for a couple of years. Any financial role bin Laden and his organization played in those horrific acts appears to have escaped detection and to have fallen below our financial radar.

The committee's work on money laundering will produce effective, targeted solutions to the immediate problems we encounter following the events of September 11. We will not throw in the legislative kitchen sink for no clear purpose. This is our first important step on money laundering, but it will be, by no means, our last.

With that in mind, Members of this committee will introduce today comprehensive anti-terrorism and money laundering legislation that focuses on three major goals: One, bolster law enforcement's ability to find and destroy the financing of terrorist organizations, whether in banks or in underground "hawala" systems; two, establish a Government-industry partnership to stop terrorist funding in real time; and three, track any terrorist money kept in secret offshore havens and increase foreign cooperation with U.S. efforts.

Today marks the beginning of the legislative process on this comprehensive package, which should be enacted before Congress adjourns this year. It is time for the civilized international community to exclude financial outlaws, whether they are bin Laden's terrorist operatives or shadowy offshore banks, from access to the

international financial system. This is the time and this is the place to draw that line.

The time has expired, and I yield to the gentleman from New York, the Ranking Member, Mr. LaFalce.

[The prepared statement of Hon. Michael G. Oxley can be found on page 66 in the appendix.]

Mr. LAFALCE. Thank you Mr. Chairman. I ask unanimous consent to put my entire statement in the record.

Chairman OXLEY. Without objection, all the Members' statements will be made part of the record.

Mr. LAFALCE. Money laundering represents a serious threat to global, political and economic security. The International Monetary Fund has estimated the amount of money laundered annually to be between $600 billion to $1.5 trillion, or 2 to 5 percent of the world's annual gross domestic product. Since the 1970s, I have been very concerned about this, but the events of 3 weeks ago demonstrate that the very safety of our citizens depends on effective national and international anti-money-laundering policies. There is a need for a new, concerted anti-money-laundering offensive, internationally and domestically.

The President's action to freeze assets of persons and organizations associated with bin Laden, al Qaeda and other terrorist organizations was a very important first step in cutting off bin Laden and other terrorists from the funds that sustain them. However, if we are to lead the world in this fight against terrorism, we must ensure that our own anti-money-laundering laws are up to the difficult task at hand. And yesterday, Chairman Oxley and I agreed that we will work together on a bipartisan basis to enact legislation as soon as possible that will give the United States the tools it needs to combat international money laundering and to disrupt the funding of international terrorist organizations. I look forward to working with the Chairman and all the other Members of this committee and the Administration to develop most expeditiously sound legislation.

I am pleased to see that the initial draft of this bipartisan bill includes the International Counter-Money Laundering and Foreign Anticorruption Act that I worked on last year with Chairman Leach, members of the Clinton Administration, including Ambassador Eizenstat, who will be testifying in a later panel, which was adopted by our Banking Committee last year on a bipartisan vote of 33-to-1.

The International Counter-Money Laundering and Foreign Anticorruption Act would greatly enhance the tools available to combat money laundering in the United States and raise anti-money-laundering standards globally. While most of the debate at that time was focused on the importance of the bill in the context of combatting drug trafficking and organized crime, the Clinton Administration also designed the bill to be useful in disrupting terrorist funding. That bill fills a gap in the authorities of the Secretary of the Treasury to respond to money laundering threats from institutions in foreign jurisdictions with an inadequate or nonexistent anti-money-laundering enforcement regime.

Right now, as I understand it, we have but two limited options. At the one end of the scale, the Treasury Secretary can issue infor-

mational advisories to U.S. financial institutions about specific offshore jurisdictions, but these orders do not impose specific requirements, so they are often inadequate to address the complexity of money laundering. At the other end of the scale, the President can issue blocking orders under the International Emergency Economic Powers Act following a Presidential finding of a national security emergency, which operate to suspend financial and trade relations with the offending targets.

The President appropriately invoked this authority on September 24 when he blocked transactions with foreign banks that did not cooperate with his order to freeze the assets of bin Laden, his associates and related entities. But invocation of the International Emergency Economic Powers Act is not always appropriate, because the United States might not want to block all transactions with an offending target, such as a country, or because our concern centers around the inadequacy of anti-money-laundering regimes in a foreign country. So the Act which I reintroduced earlier this Congress with Representative Velázquez, Representative Roukema, and so forth, would provide the Treasury Secretary with the ability to fashion measured, precise and cost-effective ways to address this problem.

It is unfortunate that neither the full House nor the Senate took up the bill that we reported out last year, almost unanimously. I hope we will enact that as part of the bill. But there are many other proposals that others have made that are worthy of inclusion in a comprehensive legislative package. Congresswoman Roukema has an excellent bill which I have co-sponsored that addresses the inadequacies of our bulk cash smuggling laws. National due diligence standards to help prevent the use of fraudulent identification in the opening of bank accounts should also be considered.

I think that we should provide for better coordination of anti-money-laundering efforts within the Federal Government and for enhancing the ability of law enforcement agencies to obtain important investigative information from financial institutions. I look forward to working with the Administration in developing this package. I thank you.

Chairman OXLEY. I thank the gentleman.

The Chair now recognizes the gentleman from Alabama, Mr. Bachus, the Chairman of the Financial Institutions Subcommittee.

Mr. BACHUS. Thank you.

I thank the Chairman for having this hearing, and, Secretary O'Neill, I want to thank you and the President for the decisive action that you took last week to block and freeze terrorist assets, both in this country and around the world. I am gratified, and I think all America is, to hear the Treasury is receiving a high degree of cooperation from our allies and that you are following the money trail and that they are assisting you in helping to choke off the sources of this terrorist funding. So a job well done.

From what investigators have pieced together of the evidentiary trail thus far, there are still more questions than answers on how the operation that culminated in the horror of September the 11th was bankrolled. But what we do know suggests that we should place a much higher priority on non-traditional or "underground" banking systems. These systems fall largely outside the scope of

the formal reporting and recordkeeping requirements that have been the backbone of the Government's anti-money-laundering efforts for the last three decades.

While we need to give our law enforcement officials the additional tools they need to uncover and root out the financial infrastructure of terrorism, we also must make sure that the existing tools are being used effectively and wisely.

As Chairman of the Banking Committee's Oversight Subcommittee in the 104th and the 105th Congresses, I chaired a number of hearings which examined the operations of the Financial Crimes Enforcement Network, FinCEN, which is the Government's lead agency in collecting and analyzing financial intelligence. Those hearings yielded troubling findings, substantiated by several GAO studies that I commissioned, and I would direct the Secretary's attention to those at some time. They suggest that more can and must be done to enhance and to coordinate the Government's efforts to track dirty money that fuels narco-traffickers, international terrorists and other large criminal organizations.

The President's Executive Order freezing and blocking terrorist assets was a powerful first step. It sends a strong message, a message that we will track down and cut off terrorist blood money wherever we can find it. Congress needs to examine other measures, including an approach similar to the one I put forward in the context of the genocide taking place in Sudan. That is, conditioning access to U.S. financial markets on other countries' willingness to assist us in the financial war on terrorism declared by our President.

I want to conclude, Mr. Chairman, by thanking the members of the staff who have basically worked for 16 and 18 hours putting together this effort; the cooperation we received from Treasury and law enforcement agencies. And I want to, in particular, commend Jim Clinger for his work. Thank you.

[The prepared statement of Hon. Spencer Bachus can be found on page 69 in the appendix.]

Chairman OXLEY. Thank the gentleman.

The Chair now recognizes the Ranking Member of the committee, the gentlelady from California, Ms. Waters.

Ms. WATERS. Thank you very much. Mr. Chairman, thank you for calling this hearing on money laundering. It is crucial that we take steps to ensure the terrorist funding is cut off at its source.

I have been working on money laundering issues for years, and I believe that the time has come. The time for action is long overdue. I have long maintained that the way to capture criminals is to follow the money. If we deny these criminals, terrorists, drug traffickers and bloody dictators access to the world markets, they will not be able to function.

Money laundering has become an indispensable element of drug trafficking, for example, and other criminal activities as organized crime has expanded its economic influence both domestically and internationally. Without the ability to manipulate our financial institutions, the illegal drug trade, for example, would be brought to its knees. If there were no drug profits, there would be no drugs on the street.

Similarly, the terrorists took advantage of the weaknesses in our financial system. They had credit cards and somehow paid significant sums of money for flying lessons. Some of them even may have profited from the advance knowledge of September 11 by selling airline and insurance stocks short.

I don't understand how these individuals, some of whom were suspected associates of bin Laden, were able to reside in the United States virtually undetected. Their financial transactions left a trail, a trail that must be followed, and we must ensure that every financial institution that is a part of that trail fully cooperates with law enforcement to root out the sources. We must close the loopholes in our financial system that permit illegal activities to flourish undetected. We must punish America's financial institutions that launder money, whether it is tied to financing terrorism or other illegal activities.

The day is over when our own financial institutions are too big to touch. According to a 1990 report by the Financial Crimes Enforcement Network, FinCEN, drug profits have injected an estimated $100 billion into the financial systems of the United States. Nonetheless, information I received from the U.S. Department of Justice states that no U.S. or foreign depository institution, none, not one, has ever lost its license as a result of money laundering activities in the United States of America, although many institutions have received substantial penalties for money laundering activities. For some of these institutions, penalties were merely the cost of doing business.

We need to focus national and international attention on the money laundering vulnerabilities of private banking relationships and the concentration accounts used by some private bankers. In an October 28, 1999, letter, Citibank private bank division defined private banks as "banks which provide specialized and sophisticated investments and other services to wealthy families and individuals." The letter went on to say that "private banks are inevitably exposed to the risk that an unscrupulous client will attempt to launder proceeds of illegal activities through the bank."

This is stating the situation mildly. A 1998 GAO report on private banking detailed how known drug trafficker and international criminal Raoul Salinas was able to transfer between $90 to $100 million of proceeds through Citibank's private banking system. In November of 1999, the Senate's Committee on Governmental Affairs Permanent Subcommittee on Investigations presented revealing accounts of how Raoul Salinas and other private banking customers were able to launder funds through Citibank's private banking system.

According to the subcommittee Minority staff report, a key problem area within the private banking system is the use of concentration accounts. Concentration accounts are bank accounts maintained by financial institutions in which funds from various bank branches and bank customers are commingled into one single account. Banks have used concentration accounts as a convenient internal banking transfer mechanism. However, by combining funds from various sources into one account and then wire-transferring those funds into separate accounts, the true ownership and identity

of the funds are temporarily lost, and, more importantly, the paper trail is effectively ended.

Law enforcement officials have stated that one of the biggest problems they encounter in money laundering investigations, particularly where there is an international flow of funds, is the inability of investigators to reconstruct an audit trail for prosecution purposes. This was a major obstacle in the case of Citibank and Raoul Salinas and has also presented problems for law enforcement in the Bank of New York money laundering scandal. In a sound practices guideline paper issued in 1997, the Federal Reserve Bank of New York reported the use of concentration accounts——

Chairman OXLEY. Could the gentlelady sum up, please? We want to get to the Secretary.

Ms. WATERS. Well, let me just say that until we deal with our own banks here in the United States, we can't begin to talk about forcing other banks in other countries to clean up their acts. I am still waiting on reports that I have requested on the investigation of the money laundering schemes of Raoul Salinas and Citibank, and since that time Citibank has continued to purchase banks that they know launder money, and they launder drug money.

This is tell the truth time, and I want to see what we are going to do right here before we talk about what we are going to do offshore.

Chairman OXLEY. The gentlelady's time has expired.

We now turn to the distinguished Secretary of the Treasury, Mr. O'Neill. Thank you for appearing before the committee. The Chair would inform the Members, the Secretary has another obligation on the other side of the Capitol, but we will keep you as long as we possibly can, but we understand the time constraints as well.

Thank you again. Obviously your appearance today shows a strong interest in the money laundering issue from the highest levels of this Administration, and we appreciate your testimony today.

STATEMENT OF HON. PAUL H. O'NEILL, SECRETARY, U.S. DEPARTMENT OF THE TREASURY

Secretary O'NEILL. Thank you, Mr. Chairman, Congressman LaFalce and Members of the committee. Thank you very much for inviting me to be with you today. Under Secretary Gurulé is with me and will appear on the next panel and will provide more details on our view of actions that could usefully be taken.

And I do want to make a special point of saying to the committee, to the Chairman and to the committee Members, how much we appreciate the interaction we have had with you and the leadership that you have shown over the years in working on these issues. Now is the time when we have to bring all of these things to bear, because this issue of financial affairs and movement of money of terrorists and suspected terrorists is a very important and essential part of the broad-front war the President has indicated we are going to wage against these evil people.

We believe money can be as lethal as a bullet. If we are to deter and prevent future calamities, and if we are to root out terrorists that threaten to do violence to our people and our communities, we have to enlist the active help of financial institutions to hunt down the financial benefactors who underwrite murder and mayhem. We

have already made an excellent start with the President's Executive Order and the adoption of the United Nations Security Council resolution. The U.N. resolution represents a confirmation by the global community that an aggressive hunt for terrorist funds is underway and merits the cooperation of all countries.

The importance of this global campaign cannot be overstated. Building an action-taking coalition for the financial campaign against terrorism is as important as a military campaign. We have set a deliberate course to prosecute that campaign. First we are engaged in an effort to identify the potential financial intermediaries of suspected terrorists and their associates. The interagency task force that we chair includes the CIA, the Departments of State and Justice, the FBI and the NSC.

Second, we are acting on that intelligence with the issuance of domestic blocking orders that freeze accounts and bar all trade with terrorist associates.

Third, we are engaged with the FBI in the investigation of the financing of the September 11 attacks and are making significant contributions in ferreting out those who financed those horrendous acts.

Fourth, we are engaged in an outreach to secure the endorsement of our blocking orders by allies in the G7, the EU, and throughout the world.

Fifth, we have begun to link the disparate databases and to analyze the patterns of terrorist financing.

Here at home, you can help arm us with additional legislative tools to enhance Treasury's capability to track, block and seize those assets, to secure our borders, and to freely share information about terrorist activity between law enforcement and U.S. intelligence services. Our intent is straightforward: to remove structural limitations that handicap the Government efforts to eliminate the violence of terrorism.

To date, the President's program has produced meaningful results. As this committee knows, we have taken action domestically, and, just as importantly, scores of countries have followed suit with bank freezes and pledges to take measures to heighten scrutiny of suspicious transactions. In our effort we are partnering with the private U.S. banking industry which has helped us to interpret and analyze financial data. Finally, international financial regulators have made clear their willingness and commitment to provide us with whatever assistance we may need to track down the assets of international terrorists. Other countries have been asked to provide assistance under treaties that provide Treasury and the Justice Department with evidence in the current probe and to share leads for the pursuit of new names. In addition, numerous international banks have made plain that they will assist us in any manner lawfully permitted under their respective domestic laws.

Additionally, we have formed the Foreign Terrorist Asset Tracking Center to help identify patterns in terrorist financing practices discoverable only through interagency coordination and analysis. The center joins for the first time disparate databases from law enforcement, the intelligence community, banking regulators and open-access data libraries. The data is then linked to build a mosaic of terrorist financing activity. This operation allows us to take

a different tack by sustaining a targeted effort at terrorist financing. This approach is not limited to the episodic, targeted and staccato-like pace of a case-specific criminal problem. Instead, we are using intelligence and law enforcement resources to find patterns that will allow us to address the global problem of terrorist financing.

This is admittedly ambitious, but it is at the core of our declared end. This hunt is not about money. It is about money that kills. Our approach is proactive and preventative. Our goal is to drain the financial lifeblood that allows terrorists to finance and accomplish their deadly goals, and in doing so, we aim to shackle their ability to strike again.

The Treasury Department is committed to this purpose. It is for this reason that we believe the provisions of the Administration's anti-terrorism bill are essential. In particular, the IEEPA amendment that would protect classified data from disclosure would remove barriers to the successful prosecution of our cause. While I understand these provisions are not currently a part of the House anti-terrorism package, we are hopeful that they will ultimately be included.

In addition, I look forward to working with this committee on some issues not addressed in the anti-terrorism package; in particular, additional provisions to ensure more effective sharing of information between law enforcement and intelligence agencies.

Government should not be handcuffed in this endeavor. More can usefully be done, and Under Secretary Gurulé is prepared to outline potential additional measures.

But my pledge to you is simple. The Treasury Department will use every tool we have at our disposal to shut down terrorist fundraising and dismantle their organizations one dollar at a time. Their moral bankruptcy will be matched by an empty wallet.

I thank you very much for the opportunity to appear, and I look forward to your questions, Mr. Chairman.

[The prepared statement of Hon. Paul H. O'Neill can be found on page 117 in the appendix.]

Chairman OXLEY. Thank you, Mr. Secretary. It is good to have you with us this morning.

Let me make an announcement. The Chair will recognize Members in the following order for questioning our witnesses: the Chair and Ranking Minority Member of the full committee, the Chairs and Ranking Minority Members of the subcommittees, and other Members in the order of their appearance, with seniority determining the order of Members present at the fall of the gavel.

Because of the size of the committee and the importance of the issues, the time limit for our witnesses, the Chair will vigorously enforce the 5-minute rule. The Chair appreciates the cooperation of the Members and witnesses.

Mr. Secretary, based on what Treasury has learned in the investigation so far, is it fair to say that the vast majority of the financial assets used to underwrite the terrorist operations of al Qaeda are overseas rather than in the United States?

Secretary O'NEILL. What we have seen so far, we believe that to be true, but that doesn't mean we are not continuing to pay attention to the possibility of financing that we don't yet know about.

But your suggestion is like what we have seen so far, specifically the al Qaeda resources seem to be mostly in non-U.S. accounts.

Chairman OXLEY. Can you share with the committee the effect so far that the President's September 24 Executive Order has had in freezing known assets of terrorists and their financial supporters?

Secretary O'NEILL. Well, the President indicated the other day on the basis of an interim report that we had identified 27 specific accounts and individuals that we wanted assets frozen. And we have blocked assets in the U.S. The numbers are changing on a daily basis. The figure the President used the other day was $6 million. The amounts of money that have now been targeted, but without a return yet from the financial institutions that have been tasked, we are looking at something over $13 million in the U.S. and substantially larger sums offshore. The UK has indicated that their total blocking numbers are $88 million, and on the same basis, if you incorporate data even before the 11th of September that has been blocked or challenged on the basis of authorities that existed before and then the President's expansion, the numbers in our case equivalent to the Brit number is something over $250 million.

But, we are at the beginning of this phase, and your question prompts me to say this: In discussions with the President, he has made very, very clear how he intends to measure our effectiveness, and that is by the number of individuals that are identified and accounts that are identified and by the amounts of assets that are blocked. So it is not our intention to measure effectiveness by inputs, but by actions taken to actually interfere with, and hopefully near-term, close down al Qaeda's financing operations and those of other terrorist organizations.

Chairman OXLEY. You mentioned the list of 27 organizations. I am led to believe that there is another list forthcoming. Could you share with us exactly, or perhaps when that might be available, and perhaps how many other groups would be involved?

Secretary O'NEILL. Hopefully in the next few days we will be adding a substantial number of additional names to the list. As we are doing this, and I think it is pertinent to the legislation that you are considering, and to the past practices, for the first time there is a dedicated and determined sharing and vetting of information between the law enforcement and intelligence agencies that, for a variety of reasons, has not taken place before, some blockages and some narrowness of scope in earlier Executive Orders. This is now a full-front effort that involves all the resources.

And I might say in furtherance of what I said about the response of countries outside the U.S., without exception I have had, I would guess, dozens, maybe even more than 100, letters from Presidents, Prime Ministers and Ministers assuring us, both at Treasury and in my role as the Treasury Secretary, that they are fully committed to doing anything and everything that they can, including amending their own laws where that is necessary to do, in order to be full partners in going after the financial networks of terrorists, individual terrorists and terrorist groups.

We have had nothing but outstanding cooperation. Last week I had about a 90-minute telephone call linking the Finance Ministers

of the G7, and their response was without reservation they will be here this Saturday for a full-day meeting in the furtherance of pursuing this objective.

And so we are getting nothing but what we ask for, including from all the financial institutions that we have talked to in the United States.

Chairman OXLEY. The Chair's time has expired.

The gentleman from New York.

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

Secretary O'Neill, are you familiar with the bill that was reported out of the House Banking Committee in the last Congress by a vote of 33-to-1 that we worked on with the Clinton Administration? And if so, is your Administration supportive of that bill?

Secretary O'NEILL. Yes. Generally there is one provision that the Under Secretary reminds me. I think we have filed them, a memorandum with you indicating that we would like to provide what we call a due process provision so that——

Mr. LAFALCE. That could be accommodated.

Secretary O'NEILL. With that change we are going to be fine with what you are proposing to do.

Mr. LAFALCE. OK. Good.

Now we have got this Financial Action Task Force list of noncooperating countries and territories. Is the United Arab Emirates on that list?

Secretary O'NEILL. I don't think so. No, they are not on that specific list.

Mr. LAFALCE. Is Pakistan on that list?

Secretary O'NEILL. I don't think so.

Mr. LAFALCE. OK. Well, with respect to countries that are not on that list, but whose standards might not be what we think they should be, do we have a different list, and are we trying to get them to improve both their laws and their practices? I mean, I have heard and read that much of al Qaeda's funding has come from accounts belonging to charities and others and banks in the United Arab Emirates. And apparently Mohamed Atta received a wire transfer of $100,000 from a bank account in Pakistan under the control of one of bin Laden's lieutenants. And so I am just curious about that.

Secretary O'NEILL. The President has said, in this war against terrorism, that other countries and people are either with us or against us. And as I said to you, we believe running the financial network of the terrorists to the ground is an essential part of waging this war, and we are going to put to all the other nations of the world the issue of finally coming to grips with issues that in the past were looked at under the umbrella concept of money laundering and put each of them to the test of providing information in a structured way that we have said we want to do with everyone.

And as I said to you, so far, as we have put these questions, people have been very responsive. Finance Ministers of——

Mr. LAFALCE. Mr. Secretary, I have a limited amount of time, and I concur with the language that is being used by virtually every country that has corresponded with you. The question is not so much the language and the good intent. The question is, you

know, the proof is in the pudding. And so I am just wondering—it is difficult to bring about international harmonization of standards, and somehow we have got to do it quickly, within weeks or so. And we have to have some standards. We have to know whether each country, especially certain targeted countries where the terrorists might be most active, have in place a set of standards that we think is adequate, and if not, we have got to get them to do it yesterday. And that is why I am focusing in on the United Arab Emirates and Pakistan, for example, not getting letters of good intent.

Secretary O'NEILL. The answer is I agree with you, and I am also a results-oriented person, as your question suggests. I am not interested in having more paper and good wishes and resolutions. I am interested in getting action, and, yes, we are going to work with every one of these countries, including the list of countries that have not yet entered information-sharing treaties with the U.S. so we can prosecute this part of the war as diligently and successfully as I am sure the President and the military establishment will prosecute the more familiar part of the war.

Mr. LAFALCE. Thank you, Mr. Secretary.

Chairman OXLEY. The gentleman's time has expired.

The gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. I thank the Chairman.

Secretary O'Neill, I will be yielding my time to Mr. Riley, but I did want to commend you for one statement. Your opening statement, I thought, was magnificent.

Secretary O'NEILL. Thank you.

Mr. BACHUS. You said the hunt is not about money, it is about money that kills. And I think that is really the essence of what we are talking about here. Prior to September the 11th, I said the issue is very basic: dollars or lives. And sometimes that is going to be the choice. When it comes to a question of dollars or lives, there should be no question. And we are going to have that—that is going to confront us from time to time. So thank you.

I will yield at this time my remaining time to the gentleman from Alabama, Mr. Riley, who is very knowledgeable on these issues.

Mr. RILEY. Thank you, Mr. Bachus. I appreciate that. I have got another meeting I was going to, but I did want to ask a couple of questions, Mr. Secretary. Following up on Mr. LaFalce's line of questioning, how many countries would you say today are not being helpful?

Secretary O'NEILL. So far, as I said, no one has said no. Most have volunteered a willingness to do anything and everything that we suggest they might do within their own boundaries. But you all know, because you have followed this subject for a very long time, there is a long list of countries that don't have information-sharing treaties with the United States so that we can track even the narrower subject of money laundering, and I believe it is now time to put the question to them, actually the demand to them, that we finally create a basis so that we can follow money around the world, both for the broader purpose of money laundering and for the specific purpose of interdicting and confiscating the money of terrorists and suspected terrorists.

Mr. RILEY. Well, I couldn't agree with you more, Mr. Secretary, but, again, I think Mr. LaFalce is absolutely right. Now time is of the essence. If we could, I would love to see a list of the number of countries that have not participated or have been reluctant to participate.

But, because our time is short, let me ask you one other question. Prior to September the 11th, what kind of policies and procedures did the Treasury Department have in place that allowed us to track the terrorist money before the attack on New York?

Secretary O'NEILL. I guess I would say, now I am thinking about on the intelligence side, we had an ability in the intelligence community to identify terrorists and to look at information on a worldwide basis outside of the United States to pursue the financial affairs of terrorists. But we had a habit and a practice, and I think even a legal prohibition, against using in a direct way the information collected by the international intelligence agencies without a very complex procedure to bring it on board in the United States and to systematically pursue potential terrorists inside the geographic borders of the United States.

And, you know, one of the things that is happening, as a consequence of these terrorist acts, I think we are finally going to use the resources of our own community and the intelligence agencies of the rest of the world to go after terrorists, not without protections to make sure that there isn't overreach, but to take away the handcuffs that I think perhaps were applied and supplied with the best of intentions to protect individual liberties, but at a cost that made it very difficult to systematically erase the financial sources of terrorist operations.

Mr. RILEY. Well, sir, again, prior to September the 11th, could you categorize on a scale of 1-to-10, compared to what you are doing today, how active your department was, or how active this Government was, in tracking terrorist money, knowing where the accounts were, and did we have the ability before to do something preemptively that we should have done?

Secretary O'NEILL. I think one measure of where we were is frankly not one I like very much, but one measure of where we are, you can look at the annual reports on so-called money laundering activity and attempts to interdict money that was flowing from illicit, base purposes. If memory serves me right, last year the number was $670 million. That is a fair amount of money. And, you know, I began, when I came asking the question, and what did we get for it, and I was not, frankly, satisfied that we were getting results for dollars spent.

I have a great deal of confidence that we are now going to start seeing results for dollars spent, because at the very top of our Government, the President of the United States has said he wants to know how many individuals have we identified; how many accounts have we blocked; how much money have we either blocked or confiscated. So I think with a clarity of purpose you are going to begin seeing results.

And I think also, as a consequence of these unbelievable acts, the cooperation from other governments around the world is going to be the difference between night and day. This is no longer going to be a conversation about convenience or something else. What I

have seen from everyone that I have talked to is a determination that the world is not going to be a hostage to terrorists, and we are going to use every means at our disposal, including attacking their financial sources, to put them out of business.

Chairman OXLEY. The gentleman's time has expired.

The gentlelady from California.

Ms. WATERS. Thank you very much.

Mr. Secretary, I would like to see the legislation. I am seeing it for the first time. We just got it last night. I would like to see this be a three-pronged attack. While most of the references in this Act are to terrorists, it should be terrorists, drug traffickers and corrupt dictators. There is a nexus in all of this. Even as we talk about the terrorists and the Taliban, I don't know at this time how much drug trafficking plays a role in this. It appears that the Taliban is only going to be able to finance anything, even war, through its drug trafficking, and it appears that that is on the rise in Afghanistan. So I would like to see us talk about terrorists, drug traffickers and corrupt dictators in all that we do.

Number two, are you willing to shut down big banks right here at home who are found to be laundering terrorist money, along with—and I would like to see in that also drug money and money that is deposited in our banks by bloody dictators. Are you willing to shut down the big boys?

Secretary O'NEILL. If I believe that we find evidence that big banks or small banks or medium-size banks are aiding and abetting terrorists, you bet my recommendation to the President will be that we shut them down tomorrow morning.

Ms. WATERS. Thank you.

Mr. Secretary, also, one of the biggest banks in this country was under investigation for laundering drug money at the same time they were under investigation they were purchasing small banks in Latin America that had strong representations for laundering drug money. Can you think of, or will you think about, as we should think about, ways by which we can discontinue the practice of our banks buying banks that have strong representations for laundering money, because they end up using it as an excuse. "It is not the bank's policy," they will say, "but some individual in the bank who is misusing his or her power like a private banker," and so forth. But they knew when they bought that bank that that is what they had the reputation for doing, and the same employees are in the bank. Are you willing to deal with that issue?

Secretary O'NEILL. Not on the basis that you suggest. I don't think that—and this is a question of protecting our freedoms as we work the subject diligently. I don't think that we should act on the basis of so-called reputational opinions. I think we should operate on the basis of facts. And if we can demonstrate through intelligence and investigation that institutions deserve, as you say, the reputation that they have, then I am for stopping their activity, interdicting their activity, taking their money away. But I am not for operating on something as flimsy as reputation, because I am wary of the dangers that are associated with attacking individuals or institutions on the basis of reputation.

Ms. WATERS. I am not thinking about reputation in the case of Citibank. They bought a bank called Confia. It was under inves-

tigation by our own DEA agents, and they covered and they documented that it was involved in laundering money, and they bought the bank anyway.

Finally, can you give me an update or have someone give me an update if the statute of limitations has not run on the investigation of the Salinas money that was deposited in Citibank, assigned a private banker who purchased all of the assets for Salinas through the private banking situation, just as in our book today we find that one of our U.S. bankers helped to—testimony demonstrated how a U.S. banker was used by bin Laden to send money from the Shamal Bank to a bin Laden associate in Texas using a corresponding account. Essam Al Ridi, who worked for bin Laden, testified that he received $250,000 wire-transferred at his bank in Texas that was sent by the Shamal Bank, which he then used to purchase a plane for bin Laden, which he later delivered himself to bin Laden.

I want to tell you again, let me just reiterate, we have got to clean up our act. Our banks have got to be willing to stop taking money from every bloody dictator, terrorist-associated persons and drug traffickers. Until we get tough on them, other countries are not going to believe us.

Chairman OXLEY. The gentlelady's time has expired.

Mr. Secretary, again, we appreciate your testimony today, and your appearance really sent a strong signal of the Administration's intense desire to work on a money laundering bill, and we most appreciate it. We understand your time constraints to go over to the other body. We appreciate your testimony, and we look forward also to your excellent colleague, Mr. Gurulé, who will testify on the next panel. Thank you very much.

Secretary O'NEILL. Mr. Chairman, Members of the committee, thank you all very much.

Chairman OXLEY. We are pleased to have our second panel, and let me introduce the panel as they are taking their seats. The aforementioned, the Honorable Jimmy Gurulé, Under Secretary for Enforcement, the Department of the Treasury; Mary Lee Warren, Deputy Assistant Attorney General, the Criminal Division; Mr. Dennis Lormel, Chief, Financial Crimes Section, from the Criminal Investigations Division of the FBI.

Gentlemen and lady, we appreciate your appearance today before the committee, and Mr. Gurulé, we will begin with you.

STATEMENT OF HON. JIMMY GURULÉ, UNDER SECRETARY (ENFORCEMENT), DEPARTMENT OF THE TREASURY

Mr. GURULÉ. Chairman Oxley, Chairman LaFalce and other distinguished Members of the House Committee on Financial Services, permit me to begin by thanking you for inviting me to testify before the committee on the Administration's policies and proposals for dealing with the threats posed to the United States and the global financial systems by international terrorists and terrorist groups. It is an honor to meet with you this morning as we assess the Treasury Department's strategy to cut off the financial lifeblood of the individuals and organizations responsible for the heinous, cowardly acts of September 11.

Insofar as possible, my testimony today is structured along the lines requested by you, Mr. Chairman, in your September 27 letter to Secretary O'Neill inviting him to testify. On September 24, President Bush stated, and I quote: "We will direct every resource at our command to win the war against terrorists, every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence. We will starve the terrorists of funding."

It is that last statement by the President that has been the mandate for the Department of the Treasury, starving terrorists of funding. The strategy that we can employ to accomplish that goal is a multistep process. It includes the following: The Department of the Treasury is intensely involved in investigating and identifying targets; second, identifying assets for potential blocking or seizure; third, identifying methodologies, systems, techniques used to move funds for operational support of these terrorist organizations; fourth, the sharing of information with appropriate law enforcement personnel, specifically the FBI and Department of Justice officials; and lastly, application of an array of authorities, regulatory tools and law enforcement initiatives to deprive terrorists of access to their funds within the United States.

With respect to the first question that you have asked the Department of the Treasury to address today, the financial networks and operations of terrorist groups, let me say the following: The schemes used by these terrorist organizations to move money that underwrites these terrorist activities are challenging and complex, to say the least. Make no mistake about it. It is very complex, varied schemes that are used, and they defy easy definition. So I don't want to create any unreasonable expectations with respect to the ease in identifying these systems of operation.

Certainly, we know from our investigation that in some instances these organizations use charitable organizations that on the one hand are involved in raising funds for humanitarian and legitimate activities, but at the same time are involved in raising funds that are used to underwrite terrorist activities. They use front companies, businesses, banks, and underground money transfer systems such as the "hawala" system, which we are actively investigating. And, of course, they attempt to smuggle bulk cash in and out of the country to support their activities.

And so our strategy with respect to undermining these financial networks must be multilayered, must attempt to address and confront these diverse and varied schemes. There isn't a kind of single, one-fits-all type of strategy that we can implement if we intend to be successful in dismantling these operations.

What are the tools that we are currently using to dismantle these financial networks? Secretary O'Neill spoke briefly about IEEPA, the International Emergency Economic Powers Act. This is the principal tool that is being used to stop terrorism financing. President Bush issued Executive Order 13224 on September 24 declaring a national emergency under IEEPA with respect to acts of terrorism and threats of terrorism committed by foreign terrorists against the United States. This Executive Order is important for a number of reasons. First, it expands the coverage of existing Executive Orders from terrorism in the Middle East to global ter-

rorism. Further, it expands the targeted groups to include those who provide financial or other support or services to terrorist groups or persons associated with terrorist groups. So it is much broader in its scope and coverage.

It further makes clear our ability to block U.S. assets and deny access to the U.S. financial markets to foreign institutions that refuse to assist the United States in tracking and freezing terrorist assets abroad.

With respect to this Executive Order, we have put in place the means to carry out the goals of the Executive Order. The vehicle that is being used for this purpose is the Foreign Terrorist Asset Tracking Center that is being administered by the Office of Foreign Assets Control.

Its goal is to identify the source of funding for terrorist organizations and to cut off the cash flow to these groups. It has been in operation, as you know, a short period of time. However, I do believe that the progress that we are making with respect to the tracking center is substantial, and the early news is certainly encouraging, and we are very optimistic about with respect to the future effectiveness and success that is going to be realized by use of the Foreign Terrorist Asset Tracking Center.

As the Secretary stated, its value is multifold. It brings together and accesses multiple databases, law enforcement databases, intelligence community databases, public source information, and the Bank Secrecy Act databases, which include currency transaction report information and suspicious activity report information. So we are pulling together, coordinating the utilization of these important bases of information and doing so in a coordinated fashion with the law enforcement community and the intelligence community.

One additional tool that we are using in this war against these financial terrorist networks is the Bank Secrecy Act. As you know, the Bank Secrecy Act is administered by the Financial Crimes Enforcement Network, or FinCEN. The Bank Secrecy Act permits us with a database—the data that is collected via the Bank Secrecy Act permits us to develop linkages between individuals and particular banks and particular bank accounts with respect to specific transactions. It gives us a much clearer picture of who is involved in the financial network. And, of course, we are sharing the information that we are learning through FinCEN with the Federal Bureau of Investigation and Department of Justice prosecutors and officials. So it is one other important tool that is available to us.

At the same time, Treasury enforcement bureaus are actively engaged in investigating the terrorist acts of September 11th, including the United States Customs Service, which has extensive expertise in the area of anti-money-laundering; IRS-C.I., which, again, has extensive knowledge and expertise with respect to investigating complex money laundering schemes, following the money, following the paper. We are working closely with IRS and the Secret Service. So we have a strong intra-agency cooperative effort. And again, these agencies, Treasury bureaus are working closely with the Department of Justice and the Bureau.

What additional legislation is needed? Well, let me address that in general terms initially, and I am happy to respond in a more specific way during the question-and-answer session. There are

current laws on the books that make it difficult for law enforcement to do its job with respect to investigating these financial networks. For example, there are some provisions that permit access to relevant data by Department of Justice officials, but prohibit or deny access to the same information by the Department of the Treasury law enforcement officials. And it seems to me that if the evidence or the information is relevant for criminal justice law enforcement purposes, it should be accessible at the same time by FinCEN, by the Office of Foreign Assets Control, and by the Foreign Terrorist Asset Tracking Center.

Currently, laws on the books do not permit the sharing of that information by Treasury bureaus. At the same time, there is information that Treasury may access, but is prohibited from sharing with the intelligence community. So we can share it internally within Treasury, but we are prohibited from sharing it with the intelligence community. And, again, I think these are obstacles and hurdles that make it difficult to do the job that we need to do in an expeditious and efficient way.

And the Secretary commented on IEEPA and the importance of being able to defend, let's say, a blocking action in court by being able to submit *in camera, ex parte* to a judge, the classified information that was used to support a blocking order. If we don't have that ability, it really places the tracking center in a quandary, if you will, because they are having to decide whether or not to block accounts based upon classified information. And if the fear is that we may have to disclose this classified information, then the question is perhaps we shouldn't block the account. Or if we block the account, maybe we should block it on information other than classified information. And so the underlying evidentiary basis for the blocking is not as strong as it otherwise would be. Or if we block the account, we may find ourselves in a situation at court where the blocking order is being challenged where—because it is classified information, and if we are ordered to disclose it, we may then have to make a decision to withdraw the blocking order, because we can't disclose the classified information in open court.

So, we certainly would welcome your support with respect to amendments to the IEEPA legislation to fix this problem.

Lastly, let me just comment briefly on the extent of international cooperation. There isn't much that I can add to what the Secretary stated in his statement. The cooperation has been—first of all, the activity has been aggressive, and it has been on multiple fronts. The effort has first and foremost been one of seeking cooperation with our allies to block accounts that we believe are linked to terrorist activities, and the response has been quite positive.

With respect to the Financial Action Task Force, we are undertaking efforts to ensure that banks that maintain accounts that are linked to terrorist organizations, that that is prohibited conduct under the 40 recommendations of FATF, and that may serve as a basis to have such a country listed on the list of noncooperating countries and territories.

These are just a few of the things that we are undertaking at this time. And again, thank you for the invitation. I am happy to answer any questions that you have at the appropriate time. Thanks very much.

[The prepared statement of Hon. Jimmy Gurulé can be found on page 121 in the appendix.]

Chairman OXLEY. I thank you.

Our next witness, Mary Lee Warren from the Justice Department, speaking for Michael Chertoff.

STATEMENT OF HON. MICHAEL CHERTOFF, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DELIVERED BY MARY LEE WARREN, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Ms. WARREN. Thank you, Mr. Chairman, and I appreciate the opportunity to appear today before this distinguished committee to discuss the Administration's strategy to attack the financial lifeblood of these individuals and organizations responsible for the September 11th attack. Mr. Chertoff, the Assistant Attorney General for the Criminal Division, regrets not being here today, but the White House has tasked him with other anti-terrorism matters today.

Let me report for my part that we are making substantial progress toward unraveling the network that provided the financial support for the attacks of September 11th. Unfortunately, our work is made much more difficult, because many of our existing money laundering laws are out of date. As this committee well knows, those laws that were originally enacted in 1986 sought to address what was then a domestic problem of money laundering. It is now an international, global problem of money moving across borders, being transferred electronically and smuggled from time to time.

The seriousness of this problem has been repeatedly underscored in the days since the attack. Press reports have indicated that some of the money was drawn from other crimes, that cash was smuggled, and that money moved electronically.

The terrorists, and certainly other international organized criminals, are fully aware that the United States, among other countries, is ill-equipped to permit the international cooperation necessary to restrain and forfeit the funds as they move around the globe. We need to modernize our money laundering laws to be able to respond to today's threats of terrorism as well as the international crime problem today.

Our present laws are simply inadequate to deal with these, or with the variety of new methods that our criminals are now using to move money across borders, of moving money as proceeds of crimes they committed abroad into the United States, and money that is the profits of crimes here moved out of our country. To meet this challenge we must do all we can to prevent foreign criminals, first of all, from using our banking system to hide their dirty money; and second, we must ensure that criminals who commit crimes here and send their money abroad will also be subject to the confiscation and prosecutions necessary.

Our Federal courts must be able to enforce foreign judgments of forfeiture. When crimes have been found and forfeiture ordered by a foreign court, we are able to enforce those judgments if it is a drug case, but not for any other crime, including terrorism, today. Such enforcement is in the broad interest of international justice, but it is also in our own justice interest. Foreign courts will be less

likely to work with us and cooperate on enforcement of our judgments if we cannot provide the same reciprocal authority.

In addition, we must take steps to crack down on the ease with which foreign criminals use correspondent accounts of foreign banks maintained here in U.S. banks to hide the profits of their crimes. We must prevent fugitives from hiding behind a corporate veil or "front" from challenging those forfeitures. They can't do it in their own right while they are on the run. They shouldn't be able to do it behind a corporate front.

We also have to take new steps to address the most recent methods that money launderers have employed to hide the proceeds of their domestic crimes by moving that money abroad. The success that we have had in enforcing the Bank Secrecy Act has led criminals to deal increasingly in cash. Hoards of cash are routinely moved across borders, and couriers move that cash interstate. They conceal it in many different ways and move through many types of transportation. It should be a violation of Federal law for a person to transport such currency knowing that it is derived from crime or that it is intended to be used for an unlawful purpose. Similarly, it should be a crime to smuggle cash across borders to avoid the reporting requirements that we have.

The Money Laundering Act of 2001, which the Attorney General sent to Congress on the 18th of this month, contains many of these and numerous other provisions intended to update our money laundering laws to address today's globalization of crime. We are gratified to see that many of these provisions are incorporated in the House bill.

The inadequacy of our present laws has been brought into sharp and sad relief by the horrific events of September 11th and the ensuing reports of the means by which the terrorists financed their crimes, but this is a problem that goes beyond terrorism in this era of globalization. We must find ways to make our laws keep pace with the methods employed by all those who would prey upon our citizens. We look forward to working with this committee and your colleagues in the House and those in the Senate in realizing our shared commitment to an effective anti-money-laundering regime in the United States.

Thank you very much. I look forward to your questions.

[The prepared statement of Hon. Michael Chertoff can be found on page 131 in the appendix.]

Chairman OXLEY. Thank you, Ms. Warren.

Agent Lormel.

STATEMENT OF DENNIS M. LORMEL, CHIEF, FINANCIAL CRIMES SECTION, CRIMINAL INVESTIGATIONS DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. LORMEL. Thank you, sir. On behalf of the FBI, I would like to express my gratitude to the committee to afford us the opportunity to participate today. I have submitted a written statement for the record which broadly addresses the issues your invitation letter asked me to address.

The terrorist acts of September 11th were among the most horrific crimes ever committed. We in the FBI are deeply committed to conducting a comprehensive investigation. Director Mueller has

committed the full resources of the FBI to this initiative. An important adjunct component of the investigation has been the formation and inclusion of a multiagency financial review group. My colleagues here at the table have both referenced some of the initiatives, and we will get into a little more detail on that.

From the financial investigative standpoint, our mandate is to conduct a collateral investigation consistent with the terrorism investigation, and certainly to rely on our friends in Treasury in accomplishing this. My oral comments will briefly touch on the specific questions you asked me to address.

First, the description of the financial networks and operations of the terrorist groups involved in the September 11th attack. Mr. Gurulé and Ms. Warren each made some references to them. I don't think it is appropriate to get into specifics; however, it is important to note there was a financial network and a support mechanism that supported the hijackers responsible for the September 11th attack. We are conducting, as I mentioned, an exhaustive and comprehensive financial investigation in this regard, unlike anything we have done before. I applaud the committee for your efforts and your initiative in addressing this issue and recognizing the importance of cutting off the lifeblood of financial support to the terrorist organizations.

Second, you asked about the FBI's strategy for identifying and taking action against those involved in financing the individuals and the organizations involved in the terrorist attacks. Again, I don't think it is appropriate because of the ongoing nature of the investigation to comment specifically on that, but I would like to specifically emphasize that there is a partnership among the Federal law enforcement community including the Department of Justice and the Department of Treasury and coupled with the financial services community, the financial institutions of America, and the general businesses, the general business community itself. In fact, personally I find it very heartening the response and the cooperative initiatives that we are receiving.

You asked about vulnerabilities and high-risk areas in the financial services sector. There are a number of those areas, and, again, my colleagues have addressed those a little bit, but certainly the areas of wire transfers, correspondent banking, money service businesses. You referenced the "hawala" system. Traditional fraud schemes; certainly the use of false identification, credit card fraud, insurance fraud and traditional fraud schemes are what are prevalent here. We have seen that with the hijackers in this case.

As an aside, I would also like to address a vulnerable area which is internet gambling. The internet gambling and online capabilities have become a haven for money laundering activities. We believe there is a huge potential for offshore sites being utilized to launder money, and there are examples of pending cases, particularly in our organized crime program, involving enterprises using these types of services as conduits for money laundering.

You asked about any obstacles the FBI is encountering in its efforts to obtain the cooperation of U.S. financial institutions. I would like to say that in my 25 years of experience, I have never seen the level of cooperation and support toward law enforcement that we are encountering in this particular case. The responsiveness of

the financial industry, financial services sector and the entire business community has been most heartening and symbolic of the spirit of patriotism that has galvanized the country.

You asked about the extent to which the current law provides the necessary tools for the FBI and other law enforcement agencies to stop the financial operations of the terrorist groups. Again, my colleagues here at the table have addressed those issues, and I will certainly defer to their comments. I have articulated in my written statement that the FBI strongly supports the Money Laundering Act of 2001, which the Justice Department submitted to Congress. We are encouraged by what we have seen in your write-up, sir. And we concur with Ms. Warren's testimony. Enactment of these proposals would greatly assist our efforts to fight terrorism as well as a wide variety of financial crimes.

If I may just make one anecdotal comment. Mr. Gurulé commented about the machinations and some of the prohibitions that we deal with in dealing with sharing of information. In our financial review group, FinCEN is an active partner, yet we have some problems that we are trying to overcome in sharing information and taking full advantage of the capabilities and databases that FinCEN offers us, and that would certainly be an area we would like to see pursued.

You asked about the degree to which the FBI, FinCEN, Customs, DEA and other law enforcement agencies are working collaboratively to end terrorist funding. In conjunction with the Assistant Attorney General Mr. Chertoff and his staff, to include Ms. Warren, the Financial Crimes Section of the FBI recognized the importance of establishing a financial review group to participate in the immediate criminal and terrorist investigation as well to establish a template for future terrorist and significant criminal enterprise investigations that certainly we have to coordinate with the Department of the Treasury.

In order to succeed, the financial review group will require the full participation of the Federal law enforcement community. Secret Service, the Internal Revenue Service, the Customs Department, the Postal Inspection Service, FinCEN, the CIA, and the National Drug Intelligence Center are full partners in our financial review group, kind of an ad hoc task force if you would. We have reached out to the entire Inspector General community and have gotten their pledge of support, and they are reviewing their databases for any type of linkage and nexus to the terrorist groups.

It should be noted that there are myriad agencies in addition to the agencies I have mentioned here that participate in the terrorist side of the investigation. This is a very unique case for the FBI because it is first time, I believe, that we have a fully integrated financial component in a terrorist investigation.

You asked about the nature and extent of international collaboration on law enforcement. Again, based on my experience, the full international coordination and cooperation is unprecedented. The worldwide law enforcement community has rallied to support our investigative efforts.

In conclusion, cutting off the financial lifeblood of the individuals and organizations responsible for the September 11th acts of terrorism is a vital step in dismantling the organization and pre-

venting future terrorist attacks. With the assistance of Congress, the combined resources of the Federal law enforcement community and law-abiding people throughout the world, we are confident we can succeed in this challenging mission.

With that, sir, we are all available for questions.

[The prepared statement of Dennis M. Lormel can be found on page 140 in the appendix.]

Chairman OXLEY. Thank you, Agent Lormel, and thanks to all of our witnesses.

The Chair now recognizes the Vice Chairlady of the full committee, Mrs. Roukema.

Mrs. ROUKEMA. I thank the Chairman.

I have been listening very carefully here, and I want you to know about my own background on this subject not only with bulk cash smuggling, but the McCollum-Roukema bill of 2 or 3 years ago, Congressman McCollum, formerly a Member of this panel as well as a major senior representative of the judiciary panel probably. And that bill went noplace, but it is my understanding from the Attorney General that their proposal and the proposal that I hope we are going to be marking up hopefully next week here in this committee and the one that is reflected in the Senate is 90 percent of what we were doing at that time.

Now, what does that have to do with our hearing here today? I was more than a little disappointed that Secretary O'Neill had to leave before we were able to ask him with more specificity what he would be recommending. I would like to know a little bit more from this panel with specificity what we should be doing to get corrective legislation.

I was concerned that, Mr. Gurulé—I am sorry, Mr. Gurulé, people mispronounce my name all the time, too—but, Mr. O'Neill implied that we have the legal authority to close some of these money launderers down tomorrow. I don't believe that. I don't believe that that is possible. But I wonder if Mr. Gurulé would please help us, when you say the Bank Secrecy Act permits—you made it sound as though that is adequate. I don't believe that is adequate, and I think we need additional legislation. And you did indicate that Treasury, law enforcement, the current law restricts Treasury and law enforcement cooperation. You did indicate that.

Now, are you familiar with not only the bulk cash smuggling portion of our legislation, which I am forcefully advancing, but the more comprehensive proposal that we and the Senate hope to get passed? Could you please give us your assessment of that legislation not only in terms of bulk cash smuggling, but also in terms of how we are going to facilitate information gathering and the cooperation as was already stated about the correspondent banking and wire transfers that I believe the FBI representative here today referenced? Could you give us your help on that, please?

Mr. GURULÉ. Certainly. Since taking office as Under Secretary for Enforcement, I have identified money laundering as the top priority for the enforcement office at the Treasury. The first task upon becoming Under Secretary was the development and publication of the 2001 National Money Laundering Strategy, and that was released just a few weeks ago. It was released in September, and it

sets forth a very comprehensive strategy with respect to anti-money-laundering efforts.

With respect to legislation specifically, I have had an opportunity to review the bill that has been prepared by the Department of Justice, and I think that the provisions that are contained therein are important provisions, necessary provisions in terms of strengthening our current anti-money-laundering laws.

So, on one hand, with respect to new legislation, again, the provisions articulated there are ones that we view quite favorably. In addition, as the Secretary stated, we have had an opportunity to review the Kerry bill or the House version that, of course, has been submitted sponsored by Congressman LaFalce, and we believe that the authority, the discretionary authority, that is set forth in that bill with respect to the Secretary of the Treasury being able to impose special measures where there is a finding of a primary money laundering concern is important. It is valuable.

The one caution, the one objection that we have raised with respect to that is the need for a due process provision, which I believe, if I understand Congressman LaFalce, he supports as well. We have been working with the staff of Senator Sarbanes, who is the Chairman of the Banking Committee, the staff of Senator Gramm, who is the Ranking Member. We have been working cooperatively there in an effort to craft what that due process provision should look like and what process should be due under the circumstances that are set forth therein. So there, again, is another specific example of where I think we can support legislative initiatives that are currently being undertaken.

Chairman OXLEY. The gentlelady's time has expired.

The gentleman from New York, Mr. LaFalce.

Mr. LAFALCE. Thank you very much.

Mr. Gurulé, I thank you for your endorsement of the bill that I have introduced so long as we can come up with some due process provisions. I do want to caution you, however, that the same bill was held up in the Senate last year by one individual, the former Chairman of the Senate Banking Committee. I caution you that it is possible to come in with due process provisions that will choke the effectiveness of the bill. And so I would encourage your staff to work with my staff in coming up with some reasonable due process provisions.

Next point: Your office is extremely important. It is responsible for money laundering, but it is also responsible for the Customs Bureau. And as a northern border Congressman, I have the following questions. First of all, do we know how many of the 19 or so hijackers who were killed may have come in from Canada, if at all, if any?

Number two: Do we know if any came in illegally as opposed to legally from wherever they came?

And number three: There has been a gross inadequacy over the years in the number of Customs and Immigration personnel on the northern border. We have increased the amount of traffic exponentially, and we have fewer personnel. Second, the Customs Department has had on the books for about a decade what is known as a proposal for ACE, an automated commercial environment, that would cost in excess of a billion dollars, but we are woefully behind

the times in implementing that. Is there any way that we can make a giant leap forward both with respect to numbers of personnel and to an automated commercial environment that would: A, enhance our security and: B, facilitate the flow of traffic?

Mr. GURULÉ. I think that was four questions, so let me see how I can respond to them and take them in order.

Let me first comment that I am pleased to announce that the U.S. Customs Service has a new Commissioner as of last week. Robert Bonner was sworn in as the new head of the Customs Service. Mr. Bonner is someone that I worked closely with when he was a U.S. attorney for the U.S. Attorney's Office in Los Angeles and I was a Federal prosecutor heading up the drug section, deputy chief there.

The issues that you raised with respect to ACE, the issue that you raised with respect to the inadequacy of Customs inspectors at the northern border are issues that Commissioner Bonner and I are addressing. Clearly, both of those are important, and I agree with you. I think the numbers in terms——

Mr. LAFALCE. There is $40 billion that we have appropriated, a significant portion of which can be used in the absolute discretion of the President. Is your office putting in for a significant portion of that for more personnel and the most expeditious of ACE that is possible?

Mr. GURULÉ. With respect to additional Customs Service inspectors, yes. They are being addressed, and there will be and there is a request in there for additional inspectors.

With respect to the ACE program, the Secretary has spoken on that as well. We are going to do everything that we can to ensure that it is implemented. We understand and appreciate the importance of it.

Mr. LAFALCE. I want you to come back to me with the—when ACE was first suggested, how much it would cost in toto, what the implementation plans are for it right now, and what the most ambitious implementation plan for it could be if you had all the financial resources you need; second, the number of additional personnel that you have requested of the Administration for the northern border.

Now, what about individuals coming in from Canada? Have we identified any as having come in from Canada at all?

Mr. GURULÉ. I am not aware of any.

Mr. LAFALCE. Of those who have come in, the 19 hijackers, do we know if any have come in illegally, or did they all come in quite legally, or do we know that?

Mr. GURULÉ. Perhaps that question may be better addressed with Mary Lee Warren.

Mr. LAFALCE. Mary Lee, your answer.

Ms. WARREN. The best that comes to my recollection at the moment, they came in legally, but then overstayed their visas or went beyond the authority of their visa.

Mr. LAFALCE. They all came in legally. So it wasn't a question of a deficiency of a border question to your present knowledge?

Ms. WARREN. At the moment not to my knowledge, but I remind you that Ressam, who came in, who was captured at the time of the Millennium, came across the Canadian border.

Mr. LAFALCE. I am well aware of that. I am talking about these 19.

Mr. LORMEL. If I may follow up. We don't believe that any of them came in through Canada. They may have all had legitimate identification, but some of it may have been counterfeit. That is a possibility and certainly is something we are looking at.

Chairman OXLEY. The gentleman from Nebraska, Mr. Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman. I would like to use my time for comments directed to the panel or the people they work for.

First, Mr. Lormel, I want to tell you that one of your highest priorities is to protect the American citizens here and abroad against terrorism. It is an important but lower priority to bring these terrorists to courts. You must share information with the intelligence agencies and with the other domestic agencies and not put your first priority on simply protecting information so that you can prosecute terrorists.

I hope that change in attitude can affect the FBI. I know Mr. Mueller had only been there 6 days when this terrorist attack happened.

I, too, am disappointed that Secretary O'Neill is not here, but I understand perfectly. Just want to say if you will take this back to him, Mr. Gurulé, that, first of all, I appreciate his statement that you are going to use every tool at your disposal, and that the President has given you the authority under an EPA to go after the U.S. assets of foreign banks that refuse to freeze terrorist assets abroad.

I have an interesting nexus between my service on this committee and service on the Intelligence Committee where I am doing my second tour as Vice Chairman, and I would like to say that we have notoriously had insufficient cooperation between the law enforcement agencies and the intelligence agencies in this country. It has been going on for decades. That has to be corrected.

I wrote a letter to Secretary O'Neill on August 2nd to clarify the position of Treasury with respect to the Financial Actions Task Force, which is an international effort primarily focused on OECD, and he clarified that indeed the Administration is very supportive of identifying the noncooperative countries and territories. I hope you will keep the pressure on those countries and territories. We have to have their cooperation.

With respect to Treasury's Office of Foreign Assets Control, my experience with them gives me only minimum at the most—minimum confidence that they are the entity that should be placed with some responsibility for pursuing this important task for Treasury. I hope that the Secretary will look, Mr. Gurulé, at Section 116 in our draft legislation which relates to the Financial Crime Enforcement Network. I think Section 116 has to go forward, and I hope that Treasury will support it. I am not at all enthused, and I think many people on the staff and Members here in this committee are not enthused, about the organizational structure that you are coming up with.

Finally, I want to say that within our Government we have information about a relatively small number of financial managers and lawyers and law firms in the world, primarily in Europe, but also

in the United States, that are facilitating the movement of massive amounts of money for drug trafficking, for international criminal syndicates and for terrorist organizations, and we need to come down hard on those. The Treasury bureaucracy, I hope, will be fully behind an effort to come down on those groups. Among the few Americans are people who actually live and work in Manhattan. And if they survive a terrorist attack, I hope they never have a peaceful night of sleep in the future.

So you have got your work cut out for you, and I think you can count on the Congress to give you the tools. I only regret that you are coming to us—not you personally, but Treasury is coming us to and Justice is coming to us so late in the game. We all have some catching up to do. We all have some responsibilities. But I hope you will understand that we want to work cooperatively. We will work cooperatively to try to close the loopholes that do exist.

And, finally, I would say to all of you as key representatives for our Government, I hope you are going to investigate whether you are getting the degree of cooperation you need from the U.S. Postal Service on this matter as well, because I understand there are some real problems there.

Thank you, Mr. Chairman.

Mr. LORMEL. May I make a couple of observations? First, a couple of comments that you made at the outset about the investigation and the interagency cooperation, your points are well taken. I think that the playing field has changed forever, and I believe firmly that there is a growing consensus and a sharing as allowable in terms of the investigation. Mr. Mueller has made it his top priority to look at future activities, and in that regard that is the primary investigative focus right now.

In terms of Postal, from our involvement with Postal, they have been nothing but absolutely cooperative and a full partner. In fact, we are relying heavily on some of their databases.

Chairman OXLEY. The gentlelady from California, Ms. Waters.

Ms. WATERS. Yes. I would like to ask any of the members of the panel who would like to answer, what do you know about private banking and concentration accounts, and do you think there are loopholes that we can close?

Mr. GURULÉ. Well, in terms of loopholes that we can close, my view is that with respect to criminal investigations involving money laundering, that everything should be on the table. I mean, if there is any vehicle that is being used to conceal criminal proceeds to make it appear that the funds were generated from legitimate activity, we need to follow the money trail, wherever it leads us. If it leads us to a concentration account, then so be it. If it leads us to a bank, and if the bank officials are knowingly complicitous——

Ms. WATERS. Yes, I know. Reclaiming my time. Are you in favor of closing down concentration accounts as a method of operation where you lose the identity of the persons who have money in those accounts, usually transferred or operated or handled by private bankers?

Mr. GURULÉ. Not based on that alone. What I would want to know is whether or not these accounts—just because they create—or perhaps there is a possibility of misuse, I don't believe that.

Ms. WATERS. Do you know what a concentration account is?

Mr. GURULÉ. Yes.

Ms. WATERS. Would you describe it for us?

Mr. GURULÉ. I think you described it quite well in terms of different sources of funds that are being directed into a particular account intermingled, commingled, if you will, and then the monies are being distributed into separate entities or separate accounts.

Ms. WATERS. Does the money lose its identity?

Mr. GURULÉ. Perhaps.

Ms. WATERS. Do you think that is a problem?

Mr. GURULÉ. It might be.

Ms. WATERS. If you tried to freeze assets and follow the money line for traffic evidence and money launderers, do you think it is important to be able to follow the money? If you lose the identity of the account, doesn't that cause you some problems?

Mr. GURULÉ. It does. It complicates law enforcement's mission.

Ms. WATERS. Don't you want to do something about that?

Mr. GURULÉ. In a particular case I certainly would. If there was evidence that that system was being used to further criminal activity, absolutely.

Ms. WATERS. Well, you need to know that there are some bankers who are coming forward and saying, yes, it is bad, and they are going to voluntarily stop using concentration accounts. Will you please take a look at that?

Second, would you describe to us what is expected of private bankers in relationship to know your customer? In the case of Raul Salinas, there was not even a card on file to tell us where he lived, where he got his money from. He had a private banker that was assigned to him who purchased cars and homes, and so forth, and so forth. Are private bankers required to follow know your customer rules, laws, and so forth? How do they escape that?

Mr. GURULÉ. You want me to comment on which of the many questions that you asked?

Ms. WATERS. I wouldn't have asked you if I didn't want you to comment. Please do your best.

Mr. GURULÉ. Know your customer certainly is important, and it is certainly important with respect to aggressive and successful enforcement of money laundering.

FTAF, as you know, is a multilateral organization that the U.S. Treasury and the Department of Justice are actively involved in. We have assumed a strong leadership role with respect to FTAF.

One of the 40 recommendations is the know your customer recommendation. It is one that we support. It is a measurement by which countries are measured in terms of their cooperation and whether or not the banking systems have an aggressive banking regulatory regime that is not vulnerable to money laundering.

Ms. WATERS. I yield back the balance of my time.

Chairman OXLEY. The gentlelady yields back.

The gentlelady from New York, Mrs. Kelly.

Mrs. KELLY. Thank you, Mr. Chairman. I just have a couple of questions. One is about an article in the September 20th *Wall Street Journal*, I have a copy of this, and I would like to enter it into the record, Mr. Chairman. I would like unanimous consent to do that.

Chairman OXLEY. Without objection.

[The information can be found on page 111 in the appendix.]

Mrs. KELLY. It talks about the bin Laden network, and it refers to a money exchange called "hawala." Hawala is something that bothers me a great deal, because I don't see how—given the nature of the beast, how you are going to be able to address that with regard to drying up any money that is being moved. How would you combat this? I am throwing this out to each of you. I have only 5 minutes, and I really want to ask another question as well as a follow-up, because in this article it talks about the bin Laden networking run on a shoestring. Other people say that bin Laden's network is extremely wealthy, that he has put a lot of money into it, and there is lot of money there. I need a clarification on that as well.

Could we start with you, Mr. Lormel?

Mr. LORMEL. Yes, ma'am. I am not familiar with the article, number one. I will just speak from an investigation.

Mrs. KELLY. Are you familiar with "hawala"?

Mr. LORMEL. Yes.

Mrs. KELLY. Have you any idea what we can do to try to stop or reach into that to regulate it?

Mr. LORMEL. In terms of regulation no, ma'am, I would defer to the Department of Justice. But in terms of investigation, certainly we will do everything in terms of tracking back and exploiting all of our databases and exploiting the expertise of all of our fellow agencies in terms of tracking it back.

Mrs. KELLY. Mr. Gurulé.

Mr. GURULÉ. Hawala, as you stated, and accurately so, certainly complicates the ability to follow the money, because based upon a hawala system, money can be exchanged without the money ever being transferred from a foreign country into the United States.

Mrs. KELLY. Therefore you have no record anywhere, and you can't go to a database and try to extract it?

Mr. GURULÉ. It depends. I am not sure, up to that the point. But what if the request in the foreign country is for, let's say, $25,000 to be transferred by a hawala dealer in the United States to someone that is associated with a terrorist organization, unless that $25,000 is being kept in a shoe box in the broker's business in the United States, you are right, in that situation there would be no money trail. But if the hawala dealer in the United States has to go to a bank to withdraw $25,000 to make the payment in the United States, certainly that would generate a CTR and might, in addition, generate a suspicious activity report that would be submitted to FinCEN.

So, I am not convinced that we need to throw up our hands and despair that there is no way that we can trace the money. I think it makes it more complicated, you are absolutely right. It may make it necessary for us to rely upon informants more than we have with respect to these types of money laundering operations. But it is a challenge. It certainly poses a challenge.

Mrs. KELLY. I am surprised that you would assume that someone would have to go to a bank to withdraw something like $25,000. Having been on this committee for a little while, we have had other hearings that indicate there is a lot of cash that is lying around

in suitcases and so forth. There is no way to find that because there is no record.

Mr. GURULÉ. I agree.

Mrs. KELLY. I would suggest that there be some thinking about how we combat this. I also want to know if any of you can give me any information about whether you think that the bin Laden network was actually run on a shoestring rather than having a great deal of money pumped into it?

Mr. LORMEL. I think that is highly speculative. I believe that there were clearly monies—and significant amounts of monies—coming directly to the 19 terrorists from the support mechanisms. In some regard, they will be linked to Mr. bin Laden.

With regard to your concerns about the hawala accounts, we are in the front end of our investigation. What we are seeing is a pattern of cash activity which I believe——

Mrs. KELLY. Flight school cost $20,000. They had to get that money somewhere.

Mr. LORMEL. Yes. Right on the front end, ma'am, they wired over $100,000 in to Mr. Atta a year ago, and we are aware of that. And we tracked that back to accounts in the UAE.

Mrs. KELLY. Just want to make one final statement. We know that there is a problem with agencies sharing information, but if you don't trust each other to share information, how can we trust you to protect us?

Mr. LORMEL. I don't believe it is a matter of trust, ma'am. I think that is what the heart of this hearing is about. It is the ability to share information. I don't believe for a second, and I represent the financial section at headquarters with the Bureau, we have no qualm about sharing information. We went out at the outset of this investigation specifically to bring in our fellow agencies because we need their expertise, and I don't believe it is a matter of the sharing as much as the regulatory concerns as to what we can share.

Chairman OXLEY. The gentlelady's time has expired.

Mr. Frank.

Mr. FRANK. On the point of sharing, and Mr. Gurulé mentioned the constraints currently on the sharing information, the anti-terrorism part of the legislation does include, as you know, sections that greatly increase the ability to share tax information, but it does look to me like we have dealt with that. On that subject I want to thank you, Mr. Gurulé, and maybe stress there is one thing you ought to share with the Justice Department, and that was the very commendable concern you and Secretary O'Neill showed for adding due process provisions to this kind of regulatory legislation. Frankly, when some of us in the Judiciary Committee held up the anti-terrorism bill for exactly that purpose, we had to explain that to people. So I agree that providing due process provisions is a very important thing to do.

People should understand that is one of the things that was happening in the Judiciary Committee on anti-terrorism, because obviously we don't think that due process is only important for people with money and not for people without it. So we are putting it in both places.

I want to return in my question to a point that the gentlemen from Nebraska raised, and that is the question of the OECD ap-

proach. What bothered me, frankly, was earlier in July—I am sorry, too, that with we could only get 45 minutes or 50 minutes from the Secretary—he told Senator Levin's committee that he was not at this point in favor of sanctions to force compliance from countries that were allowing total bank secrecy. And what particularly disturbed me was that was raised in a September 24th press conference, and Ari Fleischer was asked about this whole question, the OECD has been going after tax havens, the Administration hasn't shown support, is it changing, his answer, and his answer troubles me. It is, "I think you should not confuse the two issues. One deals with domestic laws and dealing with tax consequences and tax dodgers or tax evasions. This deals with terrorism."

In fact, what we are talking about is total secrecy of financial assets, and that can be for purposes of tax evasion or drug money or terrorism. So this separation, this notion that worrying about the tax havens—and maybe we shouldn't call them tax havens, we should call them total bank secrecy entities—seeing that not related to terrorism is disturbing to me. I wonder if you would comment on that.

Mr. GURULÉ. First, make no mistake that the Department of the Treasury and Secretary O'Neill are deeply committed to investigating and prosecuting tax fraud.

Mr. FRANK. Excuse me. We only have 5 minutes. You have got to get specific. OECD, is, in fact, that notion of bank secrecy relative to terrorism or not?

Mr. GURULÉ. I believe that is certainly has the potential. With respect to how to go about confronting the problem, I was going to say that the Secretary has undertaken to engage with our foreign counterparts information, and tax-sharing agreements so that we have the information that is needed to aggressively prosecute cases. He made that commitment to Senator Levin, and we are well on our way.

Mr. FRANK. But he also said to Senator Levin that at this point he did not want to threaten sanctions. I think that is a mistake. The question is has there—we are not just talking about tax fraud. That is what he said. We are talking about—Mr. Gurulé, you have got to wait. We are not just talking about tax fraud. I asked you about bank secrecy. You went back to tax fraud. I quote, for instance, Mr. Chertoff, who noted in Senator Levin's committee, "We are dealing not only with the issues of Americans who put money in these banks, we are talking about foreign criminals who put money in these banks and then move them into the United States."

In other words, this is not a tax haven issue only. Allowing this total bank secrecy which the OECD was going after has to do with exactly what we are talking about, leaving aside the tax issue. The Secretary said, well, he didn't want to threaten sanctions yet against these countries that would not put an end to that. I want to know what the status of that is.

Mr. GURULÉ. I don't think that is—that is not what the Secretary said. The Secretary said that he doesn't want to go ahead and impose sanctions based upon a requirement of uniform tax rates; that simply because there isn't a uniform tax rate, that all——

Mr. FRANK. I am sorry, but that is not an accurate representation because we were not talking only about uniform tax rates. In-

deed that wasn't specifically part of it. I read the testimony. The Secretary seemed to be saying that he was not ready to threaten sanctions for a period of time on the question of secrecy. I am not now talking about taxes.

Secrecy helps tax evasion, but secrecy enables a lot of other things. That is my problem with Ari Fleischer. He seems to, again, equate the anti-bank secrecy thing to the tax evasion issue. So, from the standpoint of bank secrecy, should we not be threatening sanctions right away against these countries?

Mr. GURULÉ. We are against bank secrecy. I think our position on that is clear. With respect to the role we played if FTAF, I think it is further clear based upon the Secretary's statements with respect to these tax information——

Mr. FRANK. Sanctions if they don't comply. Has the time come to threaten sanctions against countries that continue to maintain the kind of secrecy that frustrates our efforts to find out where that money is?

Mr. GURULÉ. It is a hypothetical. I would want to look at the particular——

Mr. FRANK. It is not hypothetical. I am talking about the world today. There are countries that refuse to sign those treaties that still have bank secrecy. Not hypothetical. It is real. There are countries that still maintain that secrecy. Should we threaten them with sanctions against their banking situations here if they don't immediately comply?

Mr. GURULÉ. FTAF may have to implement sanctions, countermeasures, and further list these countries that are not complying on the list of noncooperating countries and territories. And the U.S. has been at the forefront of that effort, as has the Department of the Treasury.

Chairman OXLEY. The gentleman's time has expired.

The gentleman from Iowa, Mr. Leach.

Mr. LEACH. Thank you, Mr. Chairman. I want to express my appreciation for the thoughtful legislation you have just proffered. I would also like to express my appreciation for the comments of the FBI present on two scores; one, the cooperation of U.S. financial institutions in this probe, and second, the notion that internet gambling has many difficulties, but one of them is that it is a money laundering haven, and that is something that the committee has to bear in mind.

I want to note that, as the committee Members know, last year we passed legislation both in this area of money laundering as well as on internet gambling. And at other levels of the Congress and other parts of the Congress, this was pretty highly objected to, even though it had strong votes from this committee, and objected to by industry representatives in particular. And I think we all have to recognize that there is a burden involved in implementing money laundering and internet gambling kinds of approaches.

On the other hand, ironically, the people that opposed this legislative approach yesterday are those most in need of protection today. And I stress this as strongly as I can, because if you look at vulnerabilities in our society, this is obviously very significant. But if you look at American institutions most vulnerable in the world today, there are diplomatic outposts, and there are financial

services outposts, and it strikes me that for the financial industry to continue, if they choose to, to object to approaches that do involve some extra burden on constraining terrorism and narco-trafficking, that not only weakens the fabric of our society, but puts in jeopardy the very lives of the people most identified with democratic market-oriented kinds of values that are globalist in nature.

And so I just have a couple of questions, one to the Justice Department. You know, when it comes, for example, to internet gambling, we have the Wire Act and other prohibitions that might well apply. But many of us have come to the conclusion that one of the most effective tools to deal with internet gambling relate to prohibitions and financial instruments. And I understand that is the Justice Department's position. Is that the case?

Ms. WARREN. That is correct. But beyond that, I mean, in principle we support the provision as written. There are a few suggestions we might make in subprovisions, but in principle we support it.

Mr. LEACH. I appreciate that.

Second, as we look around the world—and Mr. Frank, I think, was going at a point that I think many on this committee shared his concern about the United States is always in a difficult position if it acts alone in that there is a lot of international cooperation that is needed, but also the United States is in a difficult position if it doesn't have model laws that can be looked at by other countries. And it strikes me that if we don't enact that kind of legislation here at home, we are going to have a very hard time expecting other countries to enact similar approaches in their lands.

And so, to some degree, when we deal with legislation, it is simply an expression of how it affects our sovereign laws. But by the same token, as we deal with legislation that is often looked at as models for our societies, and it puts the Treasury in particular, but not alone, in a position of saying to other countries, "We have done this, why don't you follow a similar pattern?" Does that make sense to you, representative from the——

Mr. GURULÉ. Well, it certainly does, and that is a position that we have taken with respect to the Executive Order on blocking assets. I think it is important that this new Executive Order be signed by the President that the Foreign Terrorist Asset Tracking Center be up and operating in order to block assets. Having established that foundation, then we have much greater credibility when we reach across to our allies and ask them to do the same with respect to blocking of assets in foreign bank accounts.

So, by analogy, certainly it holds true. We need to be the model. We need to demonstrate strong leadership with respect to criminal justice issues and enforcement of our laws.

Mr. LEACH. Thank you.

Ms. WARREN. If I could just add something to that, also. When we are lagging behind, that sets a very poor example. One of those instances is that we cannot enforce foreign forfeiture judgments, but we ask other countries to do that for our judgments. They have many foreign crimes as predicates to their money laundering act. We have very few. We need to increase those to be the leader that we need to be.

Chairman OXLEY. The gentleman's time has expired.

The gentleman from Pennsylvania, Mr. Kanjorski.

Mr. KANJORSKI. Thank you very much, Mr. Chairman. A couple of observations. Actually just one. One of the successes learned at Treasury from the IRS is the award for performance. If I remember reading somewhere, almost two-thirds of the successful prosecutions occur because either the accountants or the spouses become the informant. Now, it would seem to me that if you are serious about using that methodology with tax collection, why can't you create an informant's reward for money laundering? An informant would get to keep half the proceeds if he or she turns the perpetrator in. I don't think you are going to be able to cover all the cases of information you will get from bank employees or from cohorts of the smugglers themselves. Quite frankly, it may upset the entire money laundering scheme in this country and abroad and probably be quite rewarding. Why hasn't someone thought about that stimulus?

Mr. GURULÉ. Actually we do have that authority.

Mr. KANJORSKI. Well, it is good you have the authority. How about implementing it?

Mr. GURULÉ. Well, absolutely. I don't necessarily want to go into specific cases with specific individuals other than to say that with respect to some major Federal money laundering investigations, those money laundering investigations were made possible, the success possible, based upon cooperating informants and cooperating informants that were ultimately paid for their services.

Mr. KANJORSKI. Well, they may be paid, but that is on a one-by-one or an *ad hoc* basis. Why don't we make it a public policy in the Treasury of the United States and the Justice Department that if people come forward in the laundering of illegal money in this country or externally, then they are going to get a 30 or 50 percent reward. Let's see what we can upset. There must be an awful lot of people in the drug countries that would love to retire to Miami Beach if they could stop the transfer of $100 million in drug money. There must be an awful lot of people in Mexico or Colombia that would like to do the same thing. I would also imagine that some of the lawyers that were talked about in New York with their level of ethics, they may just as easily turn on their clients instead of getting fees to get rewards as being informants. So why don't we use that mechanism?

Mr. GURULÉ. I agree with you. I was a Federal and State prosecutor for 10 years and was deputy chief of the major narcotics section in Los Angeles, and we had to rely extensively on informants to make these important cases.

Mr. KANJORSKI. Nest week, I am going to see if the Treasury announces they are going to pay informants, announce the amount, and let it be publicly known. Come forth if you have any ideas.

The next thing I want to do is off the subject. We are talking about what laws we can pass, what rules and regulations and simplicity. And I get to worry about implementation. I am not sure, particularly at Treasury, that Congress is going to get all of the laws we pass implemented. I will tell you why, and I would like you to take the message back.

Besides money laundering and security, we have a problem with the economy in the United States. I mean, Congress is trying to

put together fiscal programs, and one of the things that disturbed me is we passed a fiscal program last year in the omnibus bill called the New Markets Initiative, and the law said it had to be implemented in 120 days, and that would have ended April 15. Now, I know we had a change in Administration, but it is now more than 150 days since the law was on its face to be implemented, and it is still not implemented. The New Markets Initiative is a major economic development tool and a fiscal tool to help the economy. And if Treasury can't implement these acts, I am not certain any powers we give you will be able to be implemented.

Now we are going into a meeting this afternoon that I would like to favorably report back that this program will be implemented. We have already lost the first year of the billion dollars in credits under the Initiative. We are into the second year, another a billion-and-a-half. That is $2.5 billion in tax credits that are to be released, and we are thinking of doubling or tripling that amount to help the economy. Mr. Gurulé, can you tell me on behalf of Treasury when I can tell my colleagues that this is a worthwhile activity for us to undertake because it will be done?

Mr. GURULÉ. With respect to the issues that you raise involving domestic policy, I am happy certainly to take those concerns back to the Under Secretary for Domestic Policy, Peter Fisher, and have him prepare a more specific response, to your questions.

With respect to your general concerns about the Treasury's ability to get the job done, make no mistake about it, we are going to get the job done. We are going to get the job done with respect to these terrorists and undermining and dismantling their financial networks, seizing accounts, and convincing our foreign counterparts to do the same. We are committed to that, and the job will get done.

Mr. KANJORSKI. I am going to test you on that, on the fact of offering rewards publicly for money laundering, and see how fast that gets out on the street.

Chairman OXLEY. The gentleman's time has expired.

The gentlelady from New York, Mrs. Maloney.

Mrs. MALONEY. Thank you Mr. Chairman.

I would first like to thank all of the panelists and their agencies and really the entire Administration for your extraordinary efforts in New York in the wake of the attack, especially the FBI. Some of my neighbors told me that the FBI agents saved their lives rushing them out of buildings, rushing them out of the vicinity before the buildings fell, and I am aware of one agent that fell and died, and I want to express our appreciation. I know I speak for many New Yorkers for all that you have done to help us during this tremendously difficult time.

I have always been of the opinion that the country needs stricter money laundering laws and enforcement. Whether it's terrorism or the drug war, cutting off the money that funds criminal activities is sometimes the most effective way for the Government to stop unlawful acts. I would like to know if you have any proof if hawala was involved in the September 11 attack, that medieval financing system. Do you have any indication that that was involved?

Mr. LORMEL. No, ma'am, not at this juncture. Certainly there a lot of questionable cash transactions that we are looking at and

questionable cash that we are looking at, but at this point we have no direct correlation.

Mrs. MALONEY. But it seems from listening to your testimony today that we are talking about all types of high-tech sharing of information, sort of Star Wars technology. But what we are really looking at is a Middle Age financing system that seems the prevalent way that they are moving their monies. The bank, the al Shamal Bank, has correspondent accounts with European and other non-U.S. banks, and what steps has the Administration taken to identify these banks, and what steps have you taken to prevent money from al Shamal banks from entering the U.S. banking system?

Mr. GURULÉ. Well, the Foreign Terrorist Asset Tracking Center is the vehicle that is being used to identify monies, bank accounts that are linked or associated with terrorists and terrorist organizations, and more specifically, we are taking advantage of and examining all relevant sources of intelligence, law enforcement intelligence, CIA intelligence information, classified information, Bank Secrecy Act information, as well as open-source public records information. So we are looking at a multiple array of different sources to make those determinations. We are doing it now. And as the Secretary stated, in addition to the 27 individuals and entities that were listed a little over a week ago, we anticipate that in the next couple of days that there will be others that will be added to that list and a significant number of others and additional accounts being blocked with respect to this first group and this anticipated second group.

With respect to a particular bank and a particular one that you mention, I would prefer not to comment publicly on anything that specific.

Ms. WARREN. Could I just comment on correspondent banking generally? We could do a lot better in law enforcement with some additional tools, and one of those that we have suggested is that if a foreign bank is going to maintain a correspondent account in a U.S. bank, that they must also have a representative for acceptance of service of subpoenas here in the U.S. so that we don't have to try to find a bank that has no physical existence anywhere in the world. If they are going to do that kind of business in a U.S. bank, they need to have someone who will accept service of process and can respond to our investigative inquiries.

Mrs. MALONEY. Sounds like a good idea to me. I would say there is a great deal of bipartisan support and cooperation now during this time of crisis, and really you should use all of your leverage for increased funding or whatever tools you feel you need to get the job done to track these people down.

Some of our allies and some of our friends in the international community have told us that they will only support U.S. military action in Afghanistan if we can prove that bin Laden is responsible for the attacks. And could you comment, any of you who wish to comment, on how existing laws have contributed to your efforts to prove that the hijackers are tied to al Qaeda and the Osama bin Laden network?

Ms. WARREN. Maybe if I could just——

Mrs. MALONEY. Specifically, how have you tied him to the hijackers?

Ms. WARREN. That I won't be able to do, but I can tell you that we do use the financial side to not only track the money, but also to prove associations. The ways they work together, the people who share accounts, draw money from another's account, that it is as good as evidence of a conspiracy and association as it is a financial tracking system. So we use that kind of information, both ways. In this particular case, I cannot comment.

Chairman OXLEY. The gentlelady's time has expired.

The Chair recognizes the gentleman from Nebraska Mr. Bereuter.

Mr. BEREUTER. Mr. Chairman, I would ask unanimous consent that a letter of August 2 to Secretary O'Neill and his response of August 29 be made a part of the record and, incorporated by reference, the latest report of the Financial Action Task Force on Money Laundering dated June 22, 2001.

Chairman OXLEY. Without objection.

[The information can be found on page 72 in the appendix.]

Chairman OXLEY. The gentleman from Texas, Mr. Gonzalez.

Mr. GONZALEZ. Thank you very much, Mr. Chairman. A couple of questions and comments from the witnesses. You say there are impediments to the sharing of the information. I have always just been under the impression that once the appropriate law enforcement agency or department zeroes in on somebody and identifies them as a suspect, then all sorts of doors would be open regardless of the other agency or department that may be in possession of information as a result of the regulatory obligations. My understanding is what you are asking for now is not necessarily being privy to that information once you have established that somebody is a suspect, but rather more of a coordination between departments, agencies and so on, with all the information that they may be gathering in the regulatory duty or responsibilities that would not be privy to law enforcement agencies, for instance.

What I am saying is the FBI or the Department of Justice can't make certain requests of financial institutions for the sake of making the request for that kind of information and such. Treasury can in the regulatory scheme of things, which is appropriate. So we would be expanding that universe of individuals or parties that would be privy to this information in the past; would we not? So I suspect that you want this coordination so that you can have this information-gathering facilitated to identify individuals in such suspicious activities.

Now, what you are also saying is now we can't have that without some sort of due process consideration. I am not really sure what we mean by due process today. I mean, it is always in the eye of the beholder, and at the present time my question is I am not really sure about our vision being 20/20 under the circumstances. So I am looking at potential abuses, misuse. What do you all see is the downside, the potential abuse of what we are contemplating in doing? Because we are going to do it because we have to do it, and there has to be some sort of a downside, and no one has addressed that. So I would want you all to tell me what you see is the potential abuses of opening up all of the information that different de-

partments might have that at one time you weren't sharing for all the obvious reasons.

The second question is if, in fact, we had moved forward with everything that you are asking, and had this been in place prior to September 11, would it have prevented the occurrence, the criminal acts of September 11? And I would like your views or whatever your thoughts are on that.

Mr. GURULÉ. Let me respond first to your question with respect to the legislative proposals that we are supporting or considering or asking you to consider. It isn't simply a question of coordinating. I mean, coordination is certainly important here. But, for example, with respect to Section 6103, the sharing of tax record information, the Department of Justice, upon an application to a judge, to a Federal judge, may obtain tax record information in furtherance of a criminal investigation, but that information is limited to the Department of Justice attorneys; I mean, in terms of its sharing, cannot be shared outside of the Department of Justice attorneys in furtherance of that investigation.

So, if Treasury went to the Department of Justice and said, "Gee, this information would be very helpful to the blocking efforts underway involving the Foreign Terrorist Asset Tracking Center," DOJ would say, "We would like to help, but we can't, because we are prohibited under Section 6103 from sharing that information because it is not in furtherance of our criminal investigation. It is in furtherance of this blocking effort that you are involved in." So they can't do it.

We could take a look at grand jury secrecy information as well under Rule 6(c), what FinCEN is doing, or the use that FinCEN would be making of grand jury information with respect to its use for comparing and analyzing Bank Secrecy Act information, or the use that would be made of that information with respect to the Foreign Terrorist Asset Tracking Center would not necessarily be part of the criminal investigation, and therefore, the Department of Justice would say, we would like to help, but we can't.

And so these are ways in which the Department of the Treasury is being handcuffed in its ability to investigate these kinds of cases as aggressively as possible.

With respect to whether, you know, if we had these laws prior to September 11, would it have prevented, I mean, we can only speculate. I mean, there are some other issues here with respect to airport security that obviously need to be considered. But I think the point is that it certainly would have made it more difficult. I think we would have the ability to be more proactive in terms of disrupting the ability of these organizations to fund their operations, and, therefore, they are valuable tools that we need, and we need them now.

Chairman OXLEY. The gentleman's time has expired.

The gentlelady from Illinois, Ms. Schakowsky.

Ms. SCHAKOWSKY. Were Secretary O'Neill here, I really had a message for him that I hope, therefore, you will relay back to him. The amount of money that we are going to need to investigate and fight this terrorist attack, and all the other costs associated with the attack, is just immense, and we need to spend the money. But it seems to me that as we are rethinking the spending side of the

ledger, we also ought to be looking at revenue; that many of us who are concerned that the $1.7 trillion, whatever it was—some of us think more—tax cut—feared that it left no cushion to deal with emergencies or possible economic downturn, and in the last few weeks, now we see that we face both. And as we take money from the Social Security and Medicare Trust Funds to pay for this, it seems to me that it is time to rethink the tax cut that gave the wealthiest Americans such a disproportionate amount of that, in my view, and particularly since Social Security is only paid for on wages up to $80,000 a year. So those people are paying a disproportionate amount, it seems. So I would hope that we would step back as we are stepping back on spending and look at revenue as well.

You answered in part my question. You know, this whole attack has been estimated, at least in press accounts, to cost about $500,000. Relative to the amount now that we are looking at spending in response, it seems like such a small amount of money, and I wanted to ask you what specifically are the new tools that we need that would have addressed this specific incident, not some hypothetical future incident, but what could we have done on the investigative and the enforcement side that would have made us safer and protected us from this attack that we absolutely need to have?

Throughout this morning we have talked about some, and I wonder if you could just quickly enumerate those things that you think would have, could have perhaps prevented this.

Ms. WARREN. One of the new tools we are looking at is just expansion of the foreign predicates for money laundering. We could have looked at a lot of these individuals on—and certainly the larger organization on money laundering crimes if we had those foreign predicates. Terrorism at the moment is not a predicate to money laundering. We have used other violent crimes as substitutes in some instances, but it should be declared a predicate.

There are other parts of the proposed legislation that I think would assist as well, and one was raised in the inability to share information. One bit of information that might be corrected by the proposed legislation and the legislation as drafted by this committee is to move the 8300 reporting requirements out of Title 26 into Title 31 so that information can be shared broadly with law enforcement so that we can look at who is purchasing an aircraft in cash, or paying for other things with large amounts of cash, against other databases that we already have. We might find them on our drug registers. We might find them elsewhere. But that information now is kept separately under the Tax Code and not available broadly to law enforcement. So there are more ways that we could get more information that would help us.

Ms. SCHAKOWSKY. Let me ask you this: Are there things that were left on the table in the way of tools that we need to now make sure that we are making better use of? And it would seem to me there are those who think that there were intelligence failures, but are there tools of investigation that we did not fully utilize that we, in addition to new ones, need to be concentrating on?

Mr. LORMEL. From the standpoint of lessons learned, I think what we will see more emphasis on predictive financial analysis

and profiling, for lack of a better word, but I think that there is a predictive analytical tool out there that perhaps we need to focus on collectively as the law enforcement community in terms of proactively looking to deter or prevent any future activities.

This was a very well-planned act that took an incredible period of time to carry off. And I think when the template is set, and we are able to really go back and do a study of how they conducted and the characteristics that they followed, we can do and implement, I think, predictive analytical steps that will help us identify future such attacks.

Chairman OXLEY. The gentlelady's time has expired.

The gentleman from Texas, Mr. Bentsen.

Mr. BENTSEN. Thank you, Mr. Chairman. Let me say at the outset I know Mr. LaFalce brought up the issues of the Customs Service. And after September 11, I met with the Customs Service personnel who worked the Port of Houston Authority. And I think this is true elsewhere. I would hope that the Administration, when we work the final Treasury-Postal bill, will accept the higher figures of either the House or the Senate bill than what was in the original budget request. I think the original budget request was about a 4.6 percent increase in the Customs Service budget. The Senate passed a 12 percent increase, the House a 17 percent increase, and obviously, things have changed since this past March or February when the new Administration submitted their budget requests. But if we are going to want to enhance our security, we obviously are going to have to pay for it. So I would hope that would you take that back to your superiors.

We heard some talk from both the previous Chairman and Mr. LaFalce about the bill that we passed last year in this committee, and it never went beyond that committee, and I supported it. Most of the Members supported it, and I would support it again. All right. A lot of that bill is in the draft bill that I have looked at today, it appears, with some modifications. And I want to raise a couple of issues about that. But before I do, Ms. Warren, in response to an earlier question, you talked about the ability—in order to enhance cooperation with other nations in tracking and freezing assets, that we should enhance our ability to freeze assets that might be the result of, or would be part of, a foreign judgment against a U.S. party. Now, I don't necessarily disagree with that, but I think it does raise some concerns that we should look at very closely.

There was some discussion about the OECD and their efforts to fight laundering and corruption, and some saw that as a way to equalize tax levels throughout the industrialized world, and there was some objection to that in the Administration and throughout this town. But I would hope you all would look very closely at that, that we are not in some way ceding some rights of U.S. citizens that we do not want to cede. And I assume you all are doing that. And you don't need to respond. If you want to, you can, but I just—that is something that I—you know more than I, but I would hope you would look at that.

Ms. WARREN. Let me just offer some of the safety provisions in that, enforcing foreign judgments of confiscation, of forfeiture. First of all, the Attorney General must certify that the judgment was ob-

tained according to due process, and it cannot proceed without that kind of certification from the Attorney General. And the second, the forfeiture must be for a crime that we recognize, either through our extradition relationship or on our predicate list.

Mr. BENTSEN. I appreciate that.

Now, I also want to ask you about the way your bill is drafted, and this is an issue that came up with us last year, and I pulled the file from last year. I have got a letter from a State banking association, I won't say which State it is, but that raised a great deal of concerns about how the bill was drafted and the enhanced requirements. And the gentleman from the FBI raised the issue of CTRs and SARs and what—and I don't think you quite said this, but I at least interpreted or inferred that you might be saying whether the levels were accurate. But in your bill on the one hand you talk about enhancing the criminal penalties for failure to file SARs or CTRs, and then in another section of the bill, you raise the concern that too many CTRs are being filed for otherwise exempted persons or accounts, and that, if, in fact, that it requests a study, and, in fact, that there might be some additional penalty for those institutions which file, I don't want to say, erroneous, but unnecessary CTRs.

And I understand what you are getting at, but I just want to warn you where you are going to hear a great deal of criticism from otherwise law-abiding institutions that are going to say that, in our efforts to help in tracking the money laundering of terrorists or drug traffickers or others, we are going to get hit with an avalanche of regulations that will make it impossible for us to conduct our business. And, again, I would urge you—again, I supported the bill last year, and I am going to support the bill this year, because I think we need to do these things. But I would urge you to take a very hard look at that.

I read the testimony of the banking institutions that are going to be here next, and they don't quite say this, and we are all being cautious because we do want to be together, and we want the Administration to succeed in this effort. But I would urge you to take a very hard look at how you approach those issues going forward.

Chairman OXLEY. The gentleman's time has expired.

Let me ask Mr. Gurulé, under my time, we have provisions in the bill that Mr. LaFalce and I will be introducing later today that attempt to address the obstacles to information-sharing among the agencies that you identified in your testimony. To the extent that there are specific areas that we have not addressed in the bill, can I have the Treasury's commitment that you will work with us over the next few days to make sure that those necessary revisions are made?

Mr. GURULÉ. Certainly. Absolutely.

Chairman OXLEY. Thank you.

Ms. Warren, what is the Department's position on the Leach-authored internet gambling provisions of the bill that we are going to be introducing today?

Ms. WARREN. In principle we support it. We can offer some suggestions on some of the subparts. For example, I believe there is a requirement before instituting a civil injunctive action for the At-

torney General to seek either advice or consultation with the bank regulators. We believe we should be able to go right into court.

Chairman OXLEY. Thank you.

Agent Lormel, in prior hearings and staff investigations on the issue of internet gambling, we have heard from law enforcement officials that there is a link between offshore internet gambling and money laundering. A lax regulation of offshore internet gambling operations would seem to lend itself to the possibility that large amounts of terrorists' funds could be laundered through these sites with relative impunity. What are your comments in that regard?

Mr. LORMEL. Well, sir, it is certainly a possibility and a concern, as we have seen here. This network of terrorists, if you use them as a model, they have certainly exploited the system, our system, as well as they could, and that is a very attractive and lucrative area of financing and potential financing. So it certainly is a concern, and we certainly should be vigilant in monitoring that. And certainly, beyond the terrorism, the network of enterprises that certainly do exploit that particular area is something we must look at.

Chairman OXLEY. I won't ask you to discuss specifics, but is the Bureau pursuing any cases that involve a linkage between internet gambling and money laundering?

Mr. LORMEL. Yes, sir. There are a minimum of two pending investigations as we speak that I am aware of. It is more in keeping with our organized crime side of the house, which is not my area of expertise, but from my prior assignment in Pittsburgh, I am aware of a case that we actually worked in our shop out there.

Chairman OXLEY. And are you pursuing any cases linking organized crime to internet gambling?

Mr. LORMEL. I believe so, sir, yes.

Chairman OXLEY. Thank you.

The gentleman from New York.

Mr. LAFALCE. I thank you, Mr. Chairman.

The bipartisan bill which Chairman Oxley and I are working on, hopefully to be introduced sometime this week, is a work in progress, very much so. For example, there has been an agreement to include the money laundering bill that was authored by myself and Chairman Leach with the assistance of Stu Eizenstat of the Clinton Administration and passed this committee. But, while I have agreed to go along with some due process provisions, it is due process provisions that I would find productive to the approach of the bill rather than counterproductive. And I am recalling that Senator Gramm unilaterally stopped this bill in the last Congress on the Senate side. So I am a little concerned about your negotiations with him. I would prefer you be negotiating with some of us who are promotive of the bill.

Second, something similar is true with respect to internet gambling. I offered the bill that created the national commission to study the problems of gambling, and I introduced legislation to effectuate the recommendations with respect to internet gambling. And the former executive director of that commission endorsed my bill. My bill is not the one that is included in the draft so far, and I am very, very fearful that the bill that is presently in the draft could be counterproductive. I mean, if we are going to say that we

will choke off credit for unlawful gambling, then we have to define unlawful gambling, and we don't. Or if the State defines something as lawful and we are not preemptive, or if an offshore entity permits some type of gambling lawfully and we do not make it unlawful, then the provisions of our bill can be counterproductive.

I am also concerned that we have to act expeditiously, and knowing the huge gambling industry that is out there that has hampered internet gambling legislation in the past, I am not sure whether we will be able to move expeditiously with such a provision in this bill.

So my first question, and I do want to get around to Justice so I can go into the subject of short-selling and FBI pursuits of illegal short-selling, taking advantage of this situation, or inappropriate use, or use of information about short-selling to detect individuals that might have been involved in.

My first question is to Justice, though, on internet gambling. Are you aware that the principal intent of the bill could be counterproductive if the wording of the bill is not helpful?

Ms. WARREN. Well, I understand your point. Perhaps the best thing that can I offer, and both for Justice and Treasury at this time, that we are more than willing to have our staffs work with your staff to try and find these problems and iron them out in the next minutes, hours, days.

Mr. LAFALCE. Understand there is a fundamentally different approach between saying we are going to choke off credit for internet gambling unless the following conditions are met and to say we will not choke off credit unless it is deemed unlawful. Very different approaches.

With respect to FBI, what are you doing to detect inappropriate short-selling that may have taken place in connection with airline stocks, insurance stocks, and so forth?

Mr. LORMEL. That is a very good observation. One of the very first things we did in forming our financial review group was to have a team specifically designated to look at that particular area. The team has coordinated with all of our field offices and with all of the regulatory agencies, particularly SEC, for any such activity.

To date there are no flags or indicators that the people that were associated with this particular attack, nor are there any indications that people took advantage of this. That is certainly not to say that didn't happen, and there are certainly some rumors out there to that effect, but we are fully exploring that. And as I said, we have a team totally dedicated to that aspect of the investigation.

Chairman OXLEY. The gentleman's time has expired.

And, again, we thank all of you for your participation today. It has been most helpful.

The Chair will call the third panel. While they are making their way up, let me introduce the panel. Mr. Edward Yingling, Deputy Executive Vice President of the American Bankers Association; Mr. Marc E. Lackritz, President of the Securities Industry Association; Ambassador Stuart E. Eizenstat, former Deputy Secretary of the Treasury; and Mr. John F. Moynihan, partner of BERG Associates.

Gentlemen, thank you, and we appreciate your appearance today. Thank you all for your appearance.

Let us begin with Mr. Yingling.

STATEMENT OF EDWARD L. YINGLING, DEPUTY EXECUTIVE VICE PRESIDENT, AMERICAN BANKERS ASSOCIATION, ACCOMPANIED BY JOHN BYRNE, SENIOR COUNSEL AND COMPLIANCE MANAGER, AMERICAN BANKERS ASSOCIATION

Mr. YINGLING. Mr. Chairman, thank you for inviting ABA to testify today on this critical issue. Accompanying me is John Byrne, Senior Counsel with ABA. He is responsible for ABA's efforts on money laundering and is a well-known expert in this field.

We were all shocked and saddened by the events of September 11, and we mourn for those who lost their lives that day and their families. The financial community was particularly hard hit by the attack. Nevertheless, the banking system continued to run smoothly and consumer confidence in the system held steadfast. We are proud of our preparedness and response. We are also proud about how we have assisted law enforcement agencies in tracking the money trail of terrorists, and we immediately instituted the account freeze order announced by the President. Today we reaffirm our pledge to support fully efforts to find and prosecute perpetrators of these acts and their supporters. We commend you, Mr. Chairman, for holding this hearing and moving so quickly to address this issue.

Today, I would like to emphasize three points. First, the banking industry strongly supports efforts to track the flow of money that finances terrorism, and we will do everything in our power to help shut that flow down. It takes close coordination with the Government to identify individuals and groups suspected of illegal activities. While banks facilitate $2 trillion a day in transactions, a large volume flows outside traditional banking channels. Dealing with these flows is critical. We believe that by forging an aggressive public-private partnership, we will make significant progress in the fight against terrorism.

Second, it is important to understand there is already a strong base in law and regulation to prevent money laundering through the U.S. banking system. In my written statement I outline extensive laws and regulations already applicable. A feel for the extent of current laws is given by the fact that banks filed over 12 million currency transactions reports last year.

Our third point is that we are committed to strengthening and extending current law where needed. By working together we can assure that any new laws maintain the right balance, one that is both effective and that protects the due process concerns of Americans.

Let me touch on a few of our recommendations. The ABA strongly supports the President's initiatives announced on September 24, and we will continue to fully implement them as more names are added to the freeze list and as international efforts are extended.

The ABA strongly supports the 2001 national money laundering strategy recently announced by the Treasury and Justice.

The ABA recommends advanced training for law enforcement agents in techniques for combatting money laundering and investigating financial transactions of terrorists.

ABA strongly supports expanding money laundering laws to all providers of financial services including those in the nontraditional channels. This is essential for effectiveness.

The ABA strongly supports the expansion of money laundering laws recommended in recent days by the Attorney General.

The ABA strongly supports provisions that would make currency smuggling a criminal offense.

The ABA strongly supports giving the Secretary of the Treasury more flexible authority to designate matters that should be subject to special treatment because they raise money laundering concerns. However, we do suggest that bank regulators be included in the process and that a public comment be required. We believe our suggestions will make the authority even more effective.

And finally, ABA strongly recommends that improved methodologies be developed for identifying individual account holders, particularly for non-U.S. Citizens.

We hope our recommendations are helpful to the committee, and we pledge to work with you on an expedited basis as you move forward. Thank you.

[The prepared statement of Edward L. Yingling can be found on page 150 in the appendix.]

Mr. TIBERI. [Presiding.] Thank you.

Mr. Lackritz.

STATEMENT OF MARC E. LACKRITZ, PRESIDENT, SECURITIES INDUSTRY ASSOCIATION

Mr. LACKRITZ. Thank you, Mr. Chairman.

I am Marc E. Lackritz, President of the Securities Industry Association, and I am pleased to appear before you today to testify about strengthening the means to cut off the financial activities of terrorists or terrorist organizations. We strongly commend the committee for holding these hearings.

I also want to take this opportunity to express the very deep appreciation of everyone in our securities industry for the heroic firemen, policeman, FBI agents and other rescue workers who made unimaginable sacrifices, including their lives in far too many instances, trying to save the lives of others.

The atrocities of September 11 also inflicted a terrible toll on the securities industry. While that day was a grievous one for our Nation and our business, our industry has shown remarkable resilience, reopening the bond markets 2 days after the attacks and the equity markets the following Monday. In fact, the New York Stock Exchange handled record trading volumes in the first trading session after the attacks, and NASDAQ handled almost a record volume. We, in cooperation with our regulators, our self-regulatory organizations, utilities and data facilities, have all pulled together magnificently in this difficult time, and I have never been prouder to represent this industry.

SIA and our member-firms have long been strong supporters of the Government's anti-money-laundering efforts. Public trust and confidence in our industry is our most important asset, and we are fully committed to completely eliminating any possible money laundering from the securities industry. Securities firms presently are subject to a number of statutory and regulatory requirements that enable the Federal Government to better identify and combat money laundering.

Since 1970, broker-dealers have been subject to certain Federal anti-money-laundering laws imposing reporting and recordkeeping requirements. Like banks, securities firms have been required by the Bank Secrecy Act to report currency transactions over $10,000. Most major broker-dealers also file suspicious activity reports with the Treasury Department. Further, securities firms, like banks, are subject to the provisions of various sanctions programs administered by the Office of Foreign Assets Control, known as OFAC.

While the securities industry has been subject to many specific rules, many firms have gone beyond these requirements and developed their own anti-money-laundering programs. Most firms on their own initiative have developed a policy of prohibiting or restricting the receipt of currency or cash equivalence at the firm. Firms also have procedures when an account is opened, pursuant to self-regulatory organization know your customer rules, to obtain information pertaining to the customer. As a matter of good business practice, many securities firms go beyond the know your customer rules and suitability rules and seek even more information.

Many firms, particularly large firms, have adopted special procedures and written software programs to monitor transactions and detect even very sophisticated patterns of money laundering. For many years we in our firms have worked very closely with regulatory agencies and Members of Congress on anti-money-laundering initiatives. Among other things, we have worked with financial regulators to develop regulations extending the requirements to file suspicious activity reports to all broker-dealers, and we have worked with the SEC on its examination program for anti-money-laundering compliance, and we have also taken additional systems that I have outlined in my written testimony.

I would like to now turn to what our industry is doing in response to the President's September 24 order freezing U.S. assets of and blocking transactions with 27 individuals and organizations. We immediately sent notice of that order to our member firms and posted it on our website and have asked firms to check their records for individuals or organizations named in that order or in the list of names issued by the FBI. Many of our firms have received requests from self-regulatory organizations for information on certain trading in securities that occurred before September 11, and they are responding to those requests. Firms are going beyond those requests, however, and are examining and looking for unusual trading patterns in equities, fixed income, options and futures in certain industries.

SIA is also supportive of the need to have further anti-money-laundering legislation and would welcome any legislative tools that will enable our members to combat money laundering. To the extent any legislation imposes additional due diligence obligations, we think it is important to provide flexibility with respect to those requirements.

We also think legislation should facilitate communication between broker-dealers and between banks and broker-dealers when they are investigating suspicious activity. Presently brokerage firms are constrained from sharing with each other or with banks information they have received which they believe may be suspicious.

We support the expansion of the Bank Secrecy Act Advisory Group's mandate to include terrorism and other issues related to the security of our financial system. Alternatively we would support the creation of a joint industry-government task force to examine these issues.

We have had a long and constructive working relationship with regulators and Congress on preventing money laundering, and we look forward, Mr. Chairman, to continuing those efforts. Thank you very much.

[The prepared statement of Marc E. Lackritz can be found on page 164 in the appendix.]

Mr. BACHUS. Thank you.

Ambassador Eizenstat.

STATEMENT OF HON. STUART E. EIZENSTAT, FORMER DEPUTY SECRETARY OF THE TREASURY

Mr. EIZENSTAT. Mr. Chairman, Mr. LaFalce, I want to thank you for the leadership that you have shown in the last Congress and in this one, Mr. LaFalce, and the fact that you and Chairman Oxley are going to have a joint bill I think is a tremendous step forward.

Money laundering is the financial side of crime, and money launderers are the criminals' investment bankers. The IMF has estimated that the amount of money laundered annually is between $600 billion and $1.5 trillion, or 2 to 5 percent of the world's annual GDP, and at least a third of that amount, up to half a trillion dollars annually, is thought to pass through U.S. financial institutions at least once on its clandestine journey.

Now we are brought face to face with another aspect of the criminal financial system that is used by merchants of terror. Terrorists must have money to pay for weapons, travel, training, and even benefits for the family members of suicide bombers. We shouldn't be misled by the supposed low cost of the September 11 atrocities.

The fact is, huge amounts of money are raised by the central operations of bin Laden and al Qaeda to support terrorism around the world. Terrorists raise funds in many ways through financial donors, through so-called charitable organizations by relying on state sponsors of terrorism, by making investments, some legal, and by the commission of crime. Each of these is camouflaged at each step.

The fight to curtail money laundering has always been a product of bipartisan consensus and should remain so, and hopefully an Oxley-LaFalce bill will be a further indication of that.

The fact is, we have too few tools to protect the financial system from international money laundering. On one end of the spectrum, the Secretary of the Treasury can issue advisories, as we did in the summer of 2000, to encourage U.S. financial institutions to pay special attention to transactions involving certain jurisdictions, but they are only advisories. At the other end of the spectrum, IEEPA, the International Emergency Economic Powers Act, following a Presidential finding of a national security emergency, can be used for a full-scale set of sanctions and blocking orders to suspend financial and trade relations with the offending targets. President Clinton issued two of these, one in 1995 and the other in 1998, and

President Bush, a week ago Monday, invoked IEEPA, appropriately sending a forceful and blunt message.

The problem is, however, there is nothing in between these two ends of the spectrum, and there are other situations where we will not want to block all transactions or in which our concern centers on underregulated foreign financial institutions or holes in the foreign counter-money-laundering effort. We need these more flexible tools, and that is what H.R. 1114, which Mr. LaFalce has introduced, and what the discussion draft seems to provide. There would have to be a finding of primary money laundering concern, and that would then trigger, subject to very significant protections which I will get to in a moment, special recordkeeping, customer identification requirements, especially important being the identification of foreign beneficial owners of accounts opened in the U.S. and permitted through correspondent or payable-through accounts.

H.R. 1114 and the discussion draft is carefully tailored against real abuse. Actions would be graduated in the sense that the Secretary could act in a manner proportional to the threat. They would be targeted so the Secretary could focus his or her response to particular facts and circumstances, and they would be discretionary so the Treasury could integrate any possible action into bilateral and multilateral diplomatic efforts.

On the due process concern, which has been mentioned several times, the fact is that the bill you passed last year in H.R. 1114, Mr. LaFalce does have significant due process already built into it; namely, the Secretary, for one thing, can only act after consulting with other members of the Cabinet, including the Secretary of State and Attorney General. But more important, the Secretary's determination there is a primary money laundering concern is itself fully reviewable under the Administrative Procedure Act in court by any bank which feels that that determination is inappropriate.

Importantly, the legislation would not jeopardize privacy. The focus of the legislation is not on American citizens, but on foreign jurisdictions, foreign financial institutions and certain classes of transactions with or involving a jurisdiction outside the U.S. It is narrowly tailored and does not burden financial institutions.

Let me close by just saying that there ought to be a whole range of steps that we take in addition to passing this legislation promptly and giving the Secretary of the Treasury the authority that is required. First, in addition to this, additional crimes should be added, including terrorism, official bribery, arms trafficking and certain crimes of violence which are now not predicate crimes and, therefore, against which we cannot use money laundering tools. So we should broaden the number of predicate crimes.

Second, we should level the playing field for U.S. banks by assuring, as Mr. Lackritz, I think, appropriately said, that broker-dealers and casinos are covered. The regulations for that have been delayed. They need to be promptly issued so that broker-dealers and casinos know the rules under which they are playing.

Third, the hawala system, which clearly was a part of the bin Laden process here, the informal money traders should be required to register. There is a hawala in every major city in this country, and they are facilitating terrorism in many cases. This is an age-

old practice that goes back decades, if not centuries, in the Middle East and South Asia, but if they are going to operate in the United States, they should be required to register.

Fourth, diplomatic efforts should be marshaled to bring foreign money laundering regimes up to international standards. The so called FATF process has been successful, but it needs to be accelerated with particular attention to the Arab world.

Fifth, we should identify and publicize foreign world banks as we identify those countries whose own regimes don't come up to international standards.

And last, we should apply much greater scrutiny to charitable organizations in the United States and particularly encourage our friends abroad in the Gulf and in the Arab world to more closely check Pan Islamic charities or so-called charities which are often front groups for terrorism.

This kind of multiplicity of actions is necessary to deal with the problem, and certainly this committee can take an important first step by trying to pass the same legislation you did last year and by moving on the joint legislation that Mr. LaFalce and Mr. Oxley are considering cosponsoring this year. Thank you.

[The prepared statement of Hon. Stuart E. Eizenstat can be found on page 179 in the appendix.]

Mr. BACHUS. Mr. Moynihan.

STATEMENT OF JOHN F. MOYNIHAN, PARTNER, BERG ASSOCIATES, LLC

Mr. MOYNIHAN. Mr. Chairman and Members of the committee, I want to thank you for inviting me here today for this very important hearing. For the record, my name is John Moynihan, and I am founding member and owner of the consulting firm BERG Associates. Among other things, BERG offers our clients services that assist them in prevention and detection of money laundering and other related forms of financial crime. My experience in this area of investigative expertise derives from my professional background both in public and private sector, which I have summarized in my written statement which I have submitted for the record.

Let me begin by stating that the Achilles heel of any criminal organization is its financial infrastructure. If you can break the link between a terrorist like Osama bin Laden and Pablo Escobar and his money, you have greatly impacted on his ability to succeed in realizing his stated objective.

Mr. Chairman, today there is much that we do not know about the financial dealings of Osama bin Laden and his surrogates across the globe. However, we do understand how informal money markets work.

Unregistered, unlicensed money remittance businesses: In the United States there exist many individuals at international business corporations that have opened bank accounts at U.S. banks for the purpose of engaging in the unlicensed exchange of monies and/or for the remittance of these monies to recipients. These accounts, which are used by these persons and businesses, are opened as mainstream retail accounts or through the private banking departments. These accounts can generate millions and sometimes billions of dollars in transactions within a given year.

So what exactly is being accomplished by these underground banking systems? The underground banking system provides the following services or benefits: one, a source of money; two, a system for aiding in avoiding of taxes; three, a system for moving wealth anonymously; four, a system to move money to support or sustain criminal activity.

The underground banking system thrives in the United States because the people who move money know how to exploit the key vulnerabilities in our financial and banking system. If I may, I would like to present an example. One, a man from a Middle Eastern company sells perfume in Boston. He sells wholesale and retail and collects payments in checks and cash for deposits into his regular checking account.

Second, a second man, with cash or checks, wishes to send his money home to a South American country. He approaches the perfume seller. He purchases from the perfume seller either, one, a check in dollars that is not filled in on the payee line, or, two, perfume for resale in a South American country.

Three, if the South American man purchases checks, he carries this check to his country and sells it to an intermediary broker, a money exchanger, at a discount to the value of the check. He in turn receives the local currency sought. The money exchanger can now resell the check to another customer seeking these dollars. Given that the check has not been endorsed and the payee section has not been filled in, the check can be sold to anyone or used to pay for anything.

Fourth, if the South American man purchased perfume, and he does not want to pay import duties, he smuggles the perfume into the country and resells it, thus accomplishing his goal of converting his dollars from Boston to local currency without paying duties or exchange fees for just converting the funds.

Fifth, the Boston perfume man now has his customer's funds, and he wants to accumulate his wealth in his country of origin in the Middle East without paying taxes. He, therefore, sells the funds received to an intermediary in the Middle East who is seeking to purchase dollars. Upon the sale of these dollars, the intermediary instructs the perfume man where he or his agent can pick up the local Middle Eastern currency.

Six, the Middle Eastern intermediary tells the perfume man a number or code, and it is to be used by the man who purchased the dollars in the Middle East with the local currency.

Seventh, the Middle Eastern intermediary tells his Middle Eastern customer the code and where to pick up the dollars in the U.S. All transactions are complete and everybody wins.

My recommendations: The issue of underground banking and payment systems must be immediately addressed by the Legislature. The Federal law criminalizing the act of engaging in money exchanging without a license should be promulgated. Although 18 U.S.C. 1960, Subsection (b)(1)(B) provides for violations for people who fail to comply with the money transmitting registration requirement, the regulations have not been promulgated, and therefore, law enforcement has had to rely on 18 U.S.C. 982 for criminal forfeitures. It is recommended that 18 U.S.C. 1960 be included in the civil forfeiture statute, 18 U.S.C. 981.

As well, such underground banking should be identified as a specified unlawful activity so as to be able to seize and forfeit real property and funds that facilitate the activity. This will significantly hinder persons who are engaging in underground banking from delivering monies to person as a favor, for those people will fear criminal sanctions.

Second, if it is the intent of the Congress to add to existing forfeiture laws a component addressing terrorism, the assets associated with the terrorist groups that are identified should be forfeited using guidelines prior to CAFRA 2000. There exists a carve-out section to this law, to the existing civil forfeiture statute.

Under present conditions, the reality is that it is going to be incredibly difficult to investigate and develop the kind of evidence required to meet the burden of proof with regard to identified terrorist assets. Without the use of hearsay evidence, barred under the new law, there is a very high probability that there won't be much more evidence. The truth is if we believe differently, then we are fooling ourselves and being somewhat naive.

Three, future laws to combat money laundering and illegal transfers of funds must address all identified forms of this activity, including those involved through banking financial institutions and the sale of goods and services. Additionally, said laws must be flexible enough to allow U.S. law enforcement agencies to address new and creative forms of money laundering as they appear.

Fourth, ensure that the United States Drug Enforcement Administration plays a vital role in the investigation of these terrorists. The people who appear to be responsible for these acts are not religious. They are thugs and criminals who have distorted religion and hijacked the country. Osama bin Laden's accomplices are clearly protected by the Taliban, a group of fanatics who have distorted the Islam faith and want us to think that they are religious and acting as a government over Afghanistan.

The reality is that Afghanistan is the major producer of heroin, and the verdict is out on what role the Taliban plays in this heroin trade. The DEA has the best international informant and intelligence-gathering capability on transnational drug crime. They are expert on the collection and presentation of conspiracy evidence.

Mr. Chairman, Members of the committee, this concludes my remarks. I would be pleased to answer any questions that you may have.

[The prepared statement of John F. Moynihan can be found on page 198 in the appendix.]

Mr. BACHUS. I appreciate your testimony, and I will commence questions, and then we will go to other Members of the committee.

Ambassador Eizenstat, let me direct the first question to you. I can recall back in 1997 as Oversight Chairman the Treasury Department trying to come up with new money laundering business regulations, and we still don't have those regulations in place. Law enforcement has given sort of short shrift to addressing these underground-type movements of money, hawalas and others. Why is it that the Treasury Department has taken years to put these requirements in place?

Mr. EIZENSTAT. I am not familiar with the particular regulations you refer to.

Mr. BACHUS. Yeah. The MSB regulations.

Mr. EIZENSTAT. I think that the Treasury was so preoccupied with the Financial Modernization Act and all the requirements that it had that that may have delayed action, but certainly there should be movement on this. And there should be movement on covering the regulations which have also been delayed in covering broker-dealers and casinos and others.

And I agree very much also with Mr. Moynihan that we need to take much firmer action to license and register and criminalize if they don't, those informal underground money exchangers or the so-called hawala system.

Mr. BACHUS. Some have argued that terrorist funding differs in significant ways from traditional money laundering. And what I mean by that, if you have drug traffickers, they take dirty money and they try to convert it into clean money. With terrorist organizations, they are taking basically clean money—we talked about money given to charities—and converting that to dirty money, or money used for dirty purposes to kill people.

Do you agree, and if so, are money laundering statutes ill-suited to deal with the kind of terrorist operations that we are now confronted with?

Mr. EIZENSTAT. Well, first I think terrorism, particularly as organized by bin Laden and al Qaeda, represent a level of sophistication that one rarely sees in drug traffickers, although they are also very sophisticated, but even more so. And they differ in the following ways as well, Mr. Chairman. That is, with respect to drug traffickers, they are making, as you indicate, their money illegally at the outset. Here, money is being organized through so-called lawful donations, and those donations through charitable organizations, which the donors in some cases know to be fronts for terrorist organizations, and others do not. They are advertised as being for Bosnian orphans, for example, or for Gazans. Get very wealthy donors to make presumably lawful contributions.

So that is why we need the legislation that Mr. LaFalce and Mr. Oxley are talking about. But in addition, we need a much broader net. We need to get foreign financial institutions to come up to international standards. We need to have our diplomacy work to get the Gulf States and Arab countries to look through these charitable organizations. We need them to educate their own citizens about being careful not to donate to such organizations. We need a kind of panoply of powers that I have talked about in addition to going after the registration of hawalas, because you are quite right. This is a qualitatively different set of problems.

Mr. BACHUS. All right.

Mr. Moynihan, let me ask you a question. There have been news reports that some of the funding associated with the hijackers can be traced to formal banking networks, particularly in Islamic banks like al Shamal in the Sudan and banks in the United Arab Emirates. Do those banks handle funds for bin Laden, al Qaeda or charitable groups that have been associated with al Qaeda?

Mr. MOYNIHAN. I can't say precisely right now, but the commentary on the unlicensed money remitters, unlicensed banking that goes on in this country is prolific. I am very involved with my

own clients and with the United States Government as an expert for cases in helping them dismantle these things.

What I think needs to be recognized here is that there are different groups of people within the hijackers. There are those people who might have been more organizers of the efforts, and others who might have been more underlings of the efforts. The crime that was committed on 9/11/01, in my opinion, was only the conclusion to the crime that began last February in 1993. To investigate this case, I think people should recognize that maybe the reason they went after the World Trade Center is they tried it one time before and failed. They didn't bring the building down.

To go further in this investigation, people might want to look back at that time period and shortly thereafter for those people who were involved at that time period or those associations. Money laundering is only about relationships and association, and that might be the time period I would suggest people start to look and bring that forward. You might find people that were involved in this incident on 9/11 having been in this country, in geographical areas, having somewhat of a loose affiliation or some relationships to those previous acts. This was just a culmination of it, and that is where I would suggest people should look.

Mr. EIZENSTAT. Mr. Bachus, may I just add one more point to your very important question about the difference in terrorism and other criminal activities, and that is, in addition to the donors and the charitable organizations, in most instances drug traffickers and other criminals don't have overt state sponsorship. In the case of terrorism, they do. State sponsors provide money, provide sanctuary, provide camps for training, provide facilities without which terrorist groups would have a great difficulty operating.

Mr. BACHUS. You know, Ambassador, I was surprised after these attacks to again read actual information that we had before, but I think none of us focused on with the same attention, that many of these terrorist organizations were receiving $100 million or more a year from certain Middle Eastern countries, and this was a yearly annual funding of these organizations. So you are talking about very well-funded organizations, and, obviously, it took state sponsored funding.

Mr. LaFalce.

Mr. LAFALCE. I will yield to Mr. Frank.

Mr. FRANK. I have a meeting with the Governor of Massachusetts in a few minutes, so I appreciate this.

Mr. Eizenstat, particularly with your experience, I want to get back to the OECD issue, because the Administration had taken the position that that had to be reconsidered, and they had watered down the support, and the Secretary of the Treasury did tell Senator Levin in July that he thought he would like a chance to negotiate before deciding whether or not they were going to try to implement sanctions.

But part of my problem with the approach is over and above the question of taxes, part of the problem that I tried to get across to Mr. Gurulé, and I think, frankly, he kind of reinforced the mistake, I asked him about it, and he said, well, we are working hard on tax evasion. Part of the problem is collapsing the OECD effort into that single issue of tax evasion.

And, again, I was unhappy to see Mr. Fleischer's answer. Just last week he was asked about this. The question, the OECD has been going after tax havens for a while. The Administration hasn't shown a whole lot of support for that effort. Mr. Fleischer: I think you should not confuse the two issues. One deals with domestic laws in dealing with tax consequences and tax dodgers or tax evaders. This deals with terrorism.

And the problem, of course, is that once you have bank secrecy, you don't know whether it is just your garden variety tax evader or somebody else. I mean, isn't that the problem?

Mr. EIZENSTAT. Yes. And I—frankly, some of the pre-September 11 signals both on money laundering and on tax havens were very discouraging. With respect to the OECD effort on tax havens, this is part and parcel of the problem. That is terrorists, terrorist organizations and other criminals will seek out those jurisdictions to put their money in whose bank laws have no questions asked, who don't have to file suspicious activity reports, and they will also seek to hide from taxation their ill-gotten goods by going to tax havens so that there is a definite relationship.

And the other point, Mr. Frank, which you properly raised, it is in the OECD, and this will never be successful, the whole effort to attack this problem, unless it is done multilaterally. Otherwise, for one thing, we are disadvantaging our own institutions, but it will simply squeeze money to jurisdictions that don't abide by them. So they ought to be considered as simply problems, and both should be addressed.

Mr. FRANK. I would hope that would mean that we have to tell other countries that are refusing to end this total bank secrecy and refusing to allow their financial institutions to be used to provide total cover that they will be subject to sanctions if their financial institutions will not have the access to ours, and that up until September 11 the Administration hasn't been willing to say.

Let me just say to reinforce this, just to paraphrase some comments, because I had been reading the uncorrected transcript, I acknowledge, of the eleven hearings, but Assistant Attorney General Chertoff, whose deputy testified, saying essentially we are dealing not only with Americans who put money in these banks, we are talking about foreign criminals who put money in the bank and then move them into United States; for example, not a tax issue, but an issue of using that anonymity for criminal purposes. And District Attorney Morganthau, I think, the world's oldest living prosecutor, says for all of these defendants the principal attraction of doing business in offshore havens was not the nonexistent tax rates. They sought to take advantage of other benefits that provided tax haven jurisdictions, strict bank and corporate secrecy, lack of transparency, lack of any meaningful law enforcement supervision.

So again we want to be clear. The OECD effort is an essential part of an anti-terrorism fight. It is not simply an anti-tax fight.

Mr. EIZENSTAT. Yes, and I would also say that those countries which are tax havens tend to be those countries which have the most lax money laundering laws.

Mr. FRANK. Thank you.

One other point I just want to make, because I was confused about this, I have been asked by some members of the press, and that is, you know, what is the legislative status here. And I think we ought to be clear. The Administration has clearly decided that there are two levels of urgency here. I am on the Judiciary Committee. At 2:00 we will be marking up a compromised version of the Anti-terrorism Act. It did not include, as submitted by Attorney General Ashcroft or as amended by the Republicans and Democrats on the Judiciary Committee, any money laundering pieces. It did deal with one of the things that Under Secretary Gurulé mentioned, and that was the lack of sharing information. And the bill that will be marked up in Judiciary as a compromise does explicitly authorize sharing of tax information for appropriate legislative purposes. It has got a 2-year sunset for people who are worried about how that will work out.

So the use by the Justice Department and others in fighting terrorism of tax information will now be clearly allowed in this bill, but, at least to date—and I am told the Judiciary Committee has a lot of the jurisdiction here, and I have been at all these Judiciary Committee meetings and conversations—we have not been asked by the Administration to take any action on the money laundering issue.

Now, that is apparently coming, but people should understand that, that the money laundering piece, much of which is under the jurisdiction of the Judiciary Committee, isn't part of the anti-terrorism bill and wasn't part of the anti-terrorism bill as requested. So probably there is a second order. I would hope, because it now looks as if the Judiciary Committee will be voting out the first part of the anti-terrorism package that the Attorney General sent us, that the Administration will now show some eagerness to get the other part through.

And I would just say in closing, finally, Mr. Chairman, I appreciate this. I was pleased, and I want to repeat this, when Secretary O'Neill and Under Secretary Gurulé said they liked Mr. LaFalce's bill as long as it had due process protection. That is what we said about Ashcroft's bill on the Judiciary Committee, and I think we ought to be very clear what is due process source for money laundering is due process source for the anti-terrorism bill, too. That is one of the reasons why we did not instantly enact what the Attorney General asked us, but held it back to put in precisely the kind of due process provisions that he has asked for and that Mr. LaFalce agrees should be in there.

Thank you, Mr. Chairman.

Mr. BACHUS. I thank you.

Mr. LaFalce.

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

I thank you all for testifying, especially Ambassador Eizenstat. It is always a pleasure to see you and to work with you. I thank you for your comments about the administrative procedures, and the fact of the matter is that we have heard nothing from the Administration with respect to so-called due process. I think they were just responding to concerns that were expressed in the Senate, and they said, yes, we will be glad to have some. I see no language whatsoever that they think improved upon the bill, and that

is one of the difficulties in trying to do it quickly. But we will be vigilant on that point.

You made the statement, Mr. Ambassador, that hawala exists in every single major city in America, and, Mr. Moynihan, you made some suggestions for dealing with underground illegal banking. I need a better handle on that. Can you better explain what the difference between the hawala system and underground banking is, if any? Is it one and the same? Is there something different about it? To what extent would your existing law work? The proposals that we have fashioned thus far deal with it. Is it necessary to go beyond that? Because, you know, we don't want to come up with a solution to a decade ago problem. We want to come up with a solution to today's modus operandi.

Mr. EIZENSTAT. Well, I'll let Mr. Moynihan deal with some of the underground banking systems. But the hawala system is a system which would operate as follows. Someone would go to a hawala in, say, Pakistan, Karachi, and these are often families that have been in the business for decades or centuries, passed along, oftentimes completely legally. And, say, we have a customer who is going to pick up $5,000 in cash in Chicago or Buffalo. And this should be honored, and he will have this identification number which we are now giving you. That person then comes into Buffalo, picks up the $5,000 in cash, and there is no actual movement of money between Pakistan and Buffalo. There is no wire transaction. All there is—"hawala" means "trust," and so there is ultimate accounting that will go on between those two hawala dealers so that it is a system that depends on informality and personal trust, and there seems to be little doubt that some of the cash which was used at the end of this process for the atrocity that was carried on probably came through that kind of hawala system.

But we ought not to be daunted in going after money laundering by the difficulty of getting at that, because that $5,000 will, in turn, have come from a hierarchy that at the central level has raised tens of millions of dollars by state sponsorship, by charitable organizations, and that will have touched, through investments and other ways, the actual financial system.

Mr. LAFALCE. Now, the system of trust, though, has to be verified or accounted for. So there has to be some type of verification that the $5,000 was given in order for it to be accounted for wherever it originated.

Mr. EIZENSTAT. Yes, but the verification is often, Mr. LaFalce, not by a paper transaction, not by a paper trail. It would be by perhaps a personal phone call or some other indication.

Mr. LAFALCE. There has got to be some method of communication though. There has to be some method of communication.

Mr. EIZENSTAT. Yes, there is.

Mr. LAFALCE. Either in person or electronically.

Mr. EIZENSTAT. There is, because there has to be accounting at the end of the day.

Mr. LAFALCE. Yeah. Yeah.

Mr. Moynihan.

Mr. MOYNIHAN. Mr. LaFalce, I think there is so many permutations on what goes on, and we have to start at that point. It could be as simple as a guy who owns a gas station down the street here

who wants to secrete his wealth in Pakistan or Iran or whatever, and he just flat out doesn't want to send a wire transfer over there because he is afraid someone's going to see it at the Fed. He just doesn't want anybody to know what he is doing. So he offers that money that he has earned here, cash, for sale simply through the internet, maybe a message and putting it on the street, making a phone call to someone who he knows on the other end who is either an intermediary or someone who seeks out an intermediary. It is merely a system of swapping money. That is it.

What is unique about the hawala, from my experience in doing these cases, unlike Colombian drug traffickers who generally will set up a contract, I have experienced this with a number of DEA cases that I do, they will set up a contract and broker the money at a discount some time out. It could be either a spot transaction, but generally it goes out 30, 60, 90 days, and you earn different discounts based upon how far it goes and the form of the money.

The hawala is different in that it is still underground. It is still the gas station owner engaging in unlicensed money exchange, and that is why I made the suggestion that should be criminalized across the board. People should just not be using their checking accounts to make money on money. If you sell gas, sell gas. If you want to be a money exchanger, go get licensed. That is not what goes on. But here, in the hawala, it is more of a loose affiliation, and, as the Ambassador has said, it is based on trust. These people make these swaps and exchanges of money in volumes you just can't imagine. It is huge. It is massive. It is everywhere. It is not reported. People trust it, and if those hawala participants aren't satisfied, they are back out of it, and they use somebody else. There is so many people who do it.

The last thing I will say on this, of grave concern, from the cases that I have been——

Mr. LAFALCE. If it is that widespread, it would seem to me that the more widespread it is, the more detectable it would be, assuming we had widespread usage, utilization of undercover agents.

Mr. MOYNIHAN. That is the key. The techniques have to change. The techniques for penetrating those organizations have to change. One of my partners in my business, Larry Johnson, has been seen on the television all week, and he keeps using the term, "you are not going to catch these rats by not getting into the sewer." And that is true. These cases are not being made in the Vatican. If you want to make these cases, you have got to get down and get dirty with these people, and if you won't, the techniques are not going to work, and that is why it has proliferated.

Mr. EIZENSTAT. We have had some experience with similar systems. For example, the so-called black market peso system operates in some respects in the way that Mr. Moynihan was describing with respect to imports. In fact, oftentimes major American companies have their products used as part of the exchange, and we had a meeting last year at the Justice Department with the Attorney General and others, and we had some of the major corporations come in to alert them to the fact that their products were being used as part of this process.

The hawala system operates in a sense even more underground, and it will require human intelligence and penetration if we are

going to be successful at rooting that out. And, again, all of these things we are talking about, including legislation, are not going to end the practice per se. What we want to do is throw sand into the gears, make it more difficult, complicated, make people come up from the subterranean level they operate, take greater risks and disrupt the process.

Mr. BACHUS. Thank you.

Ambassador Eizenstat, we actually had hearings on the black market peso back, I think, in 1997.

Mr. EIZENSTAT. Yes. We appreciate it.

Mr. BACHUS. A lot of that is categorized as trade mispricing, too, to avoid taxes. And I think some U.S. corporations have spoken up against the practice.

Mr. EIZENSTAT. They have. But now that they have been alerted to it, they are trying to be much more sensitive about suspicious transactions involving their products.

Mr. BACHUS. And that, obviously, is something that ought to be brought into this.

Mr. Yingling, without divulging any investigative details, can you tell us whether or not any banks that are members of the ABA have found and frozen any of the accounts of the parties that were named in the President's Executive Order?

Mr. YINGLING. We understand that there are several that have, but they don't report to us on an ongoing basis about it. They report to law enforcement.

Mr. BACHUS. I would ask Mr. Lackritz. Can you tell us whether any securities firms have found and frozen any accounts of the persons named in the President's Executive Order?

Mr. LACKRITZ. I can't tell you right now. They are in the middle of doing searches for all that information now, and as Mr. Yingling said, they don't have the obligation to report to us. I don't have that information at this time.

Mr. BACHUS. Does it concern you? And I am sure that you heard the testimony of Under Secretary Gurulé about the al Qaeda operatives using brokerage accounts.

Mr. LACKRITZ. Well, absolutely. It concerns us, and, in fact, our members have all been working with the self-regulatory organizations and the SEC in terms of going back into unusual trading patterns prior to September 11. But, yes, of course that would concern us.

Mr. BACHUS. OK. What are some of the operational differences between a securities firm and a bank that we in Congress should be mindful of as we craft legislation preventing money laundering?

Mr. LACKRITZ. Well, I think that they are very different businesses, and I suspect Mr. Yingling would be happy to point out some of the differences between banking and securities. But, in general, the relationship with customers is very different in the sense that, generally speaking, when customers open accounts with securities firms, there is an ongoing relationship that is fairly frequent, and there is many points of contact on a regular basis where professionals from the industry will be talking to the customer about what has happened.

In addition, when the account is actually opened, our firms are subject to know your customer rules. I think it is Rule 401 of the

New York Stock Exchange, and I think it is 3110 of the NASD, have know your customer requirements for our firms when they open accounts, and that is to assure that our firms, in fact, follow suitability obligations which they have owing their customers to make sure that their recommendations are suitable for that customer in the account.

In addition, the industry has a number of obligations under the regulation to make reports on a regular basis to self-regulatory organizations. For example, U-4 reports about employees, U-5 reports when they are terminated articulate reason for dismissal or reasons why something hasn't worked out.

In addition, we have forms called RE3s to report possible rule violations. We also have to report to our self-regulatory organization and the SEC.

And finally, Mr. Chairman, I would just suggest that the regulatory regimes that deal with banking and securities philosophically are very different and are grounded on very different assumptions. Banking regulation tends to be more focused on safety and soundness of the financial system, and as a result there is a lot of oversight and review of individual decisions by bankers. On the securities side the philosophy has to do with disclosing material fast, protecting the integrity of the marketplace, protecting the investors, and let competition determine the outcome, and as a result there are very substantial differences in that respect.

Mr. YINGLING. And if I could just comment, I think there are differences along the lines that Mr. Lackritz just outlined. But, we do believe that it is very important to extend the rules beyond the banking system, and we just had a long discussion about the underground system. We are not going to be effective if we don't do that. But it is very important that this be done in a flexible manner where the expertise of the regulators and the various industries can come into play to design the right response.

And I think one of the big advantages of the approach in Congressman LaFalce's bill that was worked out in the Banking Committee last year, and Ambassador Eizenstat was involved in that, is that the way it is written, it does give that kind of flexibility. Therefore, you can identify the different types of transactions or relationships or groups or countries, and you can identify different responses to each.

There is, on the Senate side, as you may know, similar legislation that is in the process of being looked at. And we support, Mr. LaFalce, the kind of approach that you are talking about. We have a couple of suggestions which we will get to you, but there is an alternative out there that is very rigid, and we think that is a big mistake because you are going to end up with situations where in some cases you need a fly swatter, and you are going to have a sledgehammer; then in other cases you need a tank, and you are going to have a sledgehammer. So, we think the approach that you are working on is the right approach, as opposed to a very rigid approach written into law.

Mr. BACHUS. We do hope to incorporate flexibility in how you deal with your clients. You know, why, I mean, there are varying ways in which firms conduct their business and take that into effect. And, Mr. Yingling, you actually—in your written testimony,

not in your oral testimony, but you made some suggestions on how the legislation should be modified. So we will take those into account.

Mr. Moynihan, we earlier had testimony from the FBI, and Mr. Lormel mentioned the offshore internet gambling sites and abuse there. You have been in the trenches. I would like to get your opinion on any possible nexus between internet gambling and money laundering and, you know, what we could do in that regard.

Mr. MOYNIHAN. In my firm, with my partner Bobby Evers and Larry Johnson, we travel the globe doing anti-money-laundering initiatives and investigations of internet gambling and the banks associated with that. We have done a considerable amount of work on it.

One of the keys that we have found has been where the actual CPU that drives and conducts the transactions is actually located. For example, you might have a person in New York City who gets on his computer to play a sports book game. He thinks he is playing it in the Bahamas because that is where it was advertised out of, but traditionally in many cases that CPU is resting in Belize. The transactions will actually be transacting in that particular country, where, in fact, in that country where they are looking for hard currency and they try to drive hard currency into that location. They want this business. They want this business.

And as the Ambassador said, a bilateral approach to this is very important because we may recognize ourselves as the First World economic type of situation, and other nations want to rise to that level of economic activity quickly because they watch the television and they visit Disneyland. They want to get there as fast as they can. That is just the reality of it. So they are going to offer things that we want, whether it is drugs or whether it is internet gambling.

So the internet gambling situation is as complex as it gets, because the participants in the gambling aren't necessarily participating in the way that they think they are. They think they are participating in the Bahamas. They are not. They are not, and their credit card might be clearing through a bank somewhere else. So it is multi-jurisdictional.

Mr. BACHUS. Thank you.

Mr. Yingling, let me ask you one other question. In the money laundering bill that we have drafted, there is a provision that would prohibit the U.S. banks from having correspondent accounts with offshore shell banks. Do you all have any objection to that?

Mr. YINGLING. We do not have any objection to that. We had some questions about making sure we have a clear definition of what a shell bank is so we know what the rules are. We haven't had a chance to look at it in detail, but I think you have a good definition in there, so we are supportive of that.

Mr. BACHUS. Thank you.

Mr. LaFalce, do you have any questions?

Mr. LAFALCE. Just to the extent that any of you are involved in future discussions or deliberations with respect to internet gambling, I want to, first of all, make one point. I have yet to discern anything that is at all socially redeeming about the concept of

internet gambling, so to even sanction a little bit of it causes me some difficulty.

Second, please help impress upon others that the legislation that they enact could have negative rather than positive consequences if it is inappropriately drafted. And to say that internet gambling is permitted unless it is specifically deemed unlawful would require a finding of unlawfulness in virtually every State or the entire United States or offshore jurisdictions, and so forth. That is not the approach to take.

I do want to ask Mr. Yingling a question, and then I will conclude. You know, one way that terrorists can help shut down the economy of the United States is by going to its transportation network. That could include airlines, buses, borders, and so forth. But another way would be to choke off its source of credit. And as we try to have redundancy and backup systems for our stock exchanges, and we were able to get them up in a relatively short period of time, what group within ABA, for example, discusses the redundancy of the capacity to make sure that credits, credit cards, ATM machines, and so forth, are able to function and not shut off at some choke points?

Mr. YINGLING. It is a very good question and one that is maybe the other shoe here, if you will. We have the money laundering side of it that we need to work on, and we have the securities side of it. We are very proud of what happened in the immediate aftermath after the attack in terms of the way the banking system was able to respond. Mr. Lackritz in his statement talked about the great job the securities industry did.

Part of that, quite frankly, was a result of preparing for the changeover in the Millennium—all the work we did there that a few days afterwards everybody scratched their head and said, "Well, maybe we did more than we needed to." A lot of that work was building in redundancy, and a lot of that work was making sure we had contingency plans.

There is no one group to address your point—although John Byrne sitting behind me is an expert in security and does a lot of work in that regard—because we are many different industries—for example, the credit card industry, and we are the clearing industry for a lot of what goes on in the securities area. We also transport cash around, so we have to cut across many different aspects of our business.

We have been talking internally about the need to really address this question in a comprehensive fashion. We have had preliminary discussions with Treasury about the need to do this. We have actually talked with the SIA about the importance of getting the key groups together and reviewing everything we are doing in security.

Mr. LAFALCE. I would encourage you to create some type of a committee or a task force, and so forth, because if we couldn't use the credit cards, if businesses couldn't, you know, our economy is really devastated. If we couldn't have an effective clearinghouse system, our economy would be devastated. And I think that this is an extremely important issue, and I don't know that we have a problem. I hope we don't. And it may have been anticipated, but it is something that I think should be looked into very seriously.

Mr. YINGLING. We will definitely do this, and we have also on a very preliminary basis raised the issue with Governor Ridge that this ought to be done in a comprehensive fashion. We agree completely with your concerns.

Mr. EIZENSTAT. If I could just reinforce what has been said, the backup systems and the work which was done for the Y2K exercise really proved themselves, because with the disaster that occurred, the fact that the securities markets and banking system were able to get back on their feet so quickly meant that there were sufficient backup systems. The firm which handled all the bond work, much of the bond work, for example, used their London system. So a lot of that investment, although no one realized it would be for this, did come in handy.

Mr. LAFALCE. All right. Thank you very much.

Mr. BACHUS. Mr. Leach.

Mr. LEACH. Let me first start with the big picture in terms of the financial services community here. I think it has to be underscored and underscored, and that is that despite this kind of instant stability in the United States, A, dependent on financial services and, B, our financial services community is incredibly stable, and that is the big picture, and that is wonderful and all that that represents. The financial community ought to take pride. This is for a good cause, and it is principally private sector.

Having said that, there is a trauma on some little picture issues that you can have some big pictures ramifications, and that is the history of the 20th century has been one that too much regulation has been helpful, and we all recognize that. On the other hand, there is some regulation that is prudential. We don't normally think of this in the national security vein, but suddenly it has been a national security vein.

So issues like money laundering have implications in tracking accountability of people who have committed crimes. They also have some implications for preventing crimes before they are led forth, and that can be in the realm of terrorism. It can be narco-trafficking. It can be corruption of many different levels. And I think that the financial community is going to have to rethink the position they took in the last Congress on objecting to some legislative approaches that were on the table at the time.

I have been particularly surprised that the banking community hasn't been leading the charge on everything to do with internet gambling. In fact, I have been so startled with that, Mr. Yingling, I cannot tell you. The approach that originally confronts one is that based upon that, why should we take accountability, and that is a very reasonable question. Why should the banks be the principal law enforcement for internet gambling?

But it ends up, for whatever reason, all other approaches have proved to be frail, if not lacking, in virtually any capacity to me. For example, many of us believe current laws preclude internet gambling, and yet they are unenforceable. And so the only way that we know to bring some enforcement is through putting some prohibitions in through financial instruments. I would wish there were other approaches.

But I will tell you, forgetting everything you do with terrorism, the implications of internet gambling for credit card companies is

going to be stunning new losses as people are headed out with these credit cards. There are people that get hooked on it, and it looks like a small percentage of the American public easily gets hooked on internet gambling. It is going to be very devastating on the credit card industry. It is going to be very devastating for certain parts, with losses.

Now we come to the issue of terrorism. It appears that there is a role for money laundering, and it also is pretty evident, perhaps, not tied to the events of last month that gambling is historically a wonderful technique for money laundering. Internet gambling in particular is a good technique for money laundering.

It is also of interest in terms of terrorism that the country that we are most interested in today is the country that has become one of the leading heroin producers in the world, if not the leading heroin producer. And money laundering is traditionally a narco-trafficking circumstance. And so the linkage of narco-trafficking and the potential of terrorism is not direct, but there is a tangential link that I think we all have to be concerned with.

But I would, as strongly as I can, tell you that when I talk to small bankers, they all are appalled by internet gambling. When I talk to big bankers, there is no support for internet gambling. And yet the body of conversation has gone to the assemblage of institutions that represent financial institutions. Some of the bigger credit card companies have been in desperate opposition to anything that involves dealing with financial instruments and internet gambling. And I think that is a true mistake, and I think people ought to think about this in a very deep way, not only the implications for the issues of the week, but what it is going to mean for our economy if this internet gambling takes off to the degree that most people now assume it is going to. I think we are at the last edges of the timetable to try to bring it down.

We worked very carefully with the Treasury in the last Congress, and I am pleased that they came out with the approach that seemed relatively realistic. I am very disappointed that in the bowels of the legislative channels, opposition was brought to bringing this kind of approach to the floor. But I really think all of you are going to have to think this through much deeper, much more carefully.

Finally, with regard to money laundering, I don't think it is, by any means, the answer to terrorism, but it is one of the tools that can be applied. And I would only stress what I did a little bit earlier. It is self-evident. The institutions of finance abroad and in the United States of America can be vulnerable to terrorism in the years ahead. And I think, frankly, supporting legislative efforts of this nature is about as prudential as anything I know of, and I just am really, truly calling for a real look within the financial community at both of these issues.

I don't want to ask for a response. I know you all have difficulties because you represent a processed way of reaching decisions, but I am really hopeful that this is thought of in a new kind of parameter. Thank you.

Chairman OXLEY. Gentlemen, thank you for your testimony, and I know you have answered numerous questions. The hearing is now adjourned.

[Whereupon, at 1:50 p.m., the hearing was adjourned.]

A P P E N D I X

October 3, 2001

Opening Statement

Chairman Michael G. Oxley

Committee on Financial Services

"Dismantling the Financial Infrastructure of Global Terrorism"

October 3, 2001

Today the Committee on Financial Services meets to hear testimony on the issue of terrorist financing and money laundering.

We remember today the thousands of people who died in the four attacks in September. The terrorists used American freedoms and American dollars against us.

They executed their plans with access to our financial system, including credit cards, ATMs, local checking accounts, and wiring money overseas.

The best way for our Committee to commemorate the victims' lives is to take every step possible to ensure that the gates to the financial services system in this country are locked to terrorists.

Today, along with Ranking Member LaFalce and other members of this Committee, I will introduce bipartisan legislation that will demonstrate to our friends and enemies, here and abroad, that the United States Congress stands shoulder to shoulder with the President in his campaign to dismantle the financial infrastructure of terrorism and to "starve terrorists of funding."

I applaud the President and our distinguished witness today, Treasury Secretary Paul O'Neill, for taking swift action to block terrorist assets that may be located here in the United States and to warn foreign banks that the U.S. is poised to block their assets in this country and deny them access to U.S. markets if they refuse to freeze terrorist assets overseas.

The Secretary is also to be commended for setting up a new Foreign Terrorist Asset Tracking Center which I hope will become a model for interagency cooperation in law enforcement and in the sharing of financial intelligence.

Finally, I applaud the Administration for sending us its legislative proposals, many of which are included in our bill.

This crime was not about money, but about mass murder, and so we have a major challenge before us. Many in Congress and in the financial services sector are asking questions like: "What is terrorist financing?" For example, are terrorist organizations moving funds into the U.S. banking system through third party correspondent accounts at major U.S. banks, or are they relying more on cash transfers through underground money services businesses?

How did they get credit cards, checking accounts, and the like without raising suspicion? If the attacks could be executed without leaving an obvious financial trail, what might we be missing now? And finally the chilling question, is it possible that terrorist financing is continuing undetected in the U.S.?

These are urgent questions, and our goal today is to learn the answers and to craft effective legislation to stop it wherever and however it occurs.

I am not convinced our money laundering laws are adequate to address the particular features of terrorist financing we have witnessed. The current money laundering regime seems better designed to detect the kind of money laundering associated with crimes that generate significant proceeds. It does not appear to be particularly well suited to catch an unconventional terrorist operation.

We know, too, that there are limitations to what we can expect from Federal laws that allow for the freezing of terrorist assets. Osama Bin Laden and his organization, Al Qaeda, have been on Treasury's blocking list for a couple of years. Any financial role Bin Laden and his organization played in those horrific acts appears to have escaped detection and to have fallen below our financial radar.

The Committee's work on money laundering will produce effective, targeted solutions to the immediate problems we encounter following the events of September 11. We will not throw in the legislative kitchen sink for no clear purpose.

This is our first important step on money laundering---but it will by no means be our last.

With that in mind, members of this Committee will introduce today 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 in 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.

Today marks the beginning of the legislative process on this comprehensive package, which should be enacted before Congress adjourns this year.

It is time for the civilized international community to exclude financial outlaws – whether they are Bin Laden's terrorist operatives or shadowy offshore banks – from access to the international financial system. This is the time and this is the place to draw the line.

Subcommittee Financial Institutions and Consumer Credit
Chairman Spencer Bachus
Testimony
Full Committee Hearing: Dismantling the Financial Infrastructure of Global Terrorism
October 3, 2001

Thank you Mr. Chairman, I commend you for having this hearing. I applaud the President and Secretary O'Neill for the decisive action you took last week to block or freeze terrorist assets in this country and around world. I am gratified to hear that Treasury is receiving a high degree of cooperation from our allies in following the money trail and helping to choke off the sources of terrorist financing.

From what investigators have pieced together of the evidentiary trail thus far, there are still more questions than answers as to how the operation that culminated in the horror of September 11 was bankrolled. But what we do know suggests we should place a much higher priority on non-traditional or "underground" banking systems, that fall largely outside the scope of the formal reporting and record keeping requirements that have been the backbone of the government's anti-money laundering efforts for the last three decades.

While we need to give our law enforcement officials the additional tools they need to uncover and root out the financial infrastructure of terrorism, we must also make sure that the existing tools are being used effectively and wisely. As chairman of the Banking Committee's Oversight Subcommittee in the 104th and 105th Congresses, I chaired a number of hearings examining the operations of the Financial Crimes Enforcement Network, which is the government's lead agency in collecting and analyzing financial intelligence. Those hearings yielded troubling findings -- substantiated by several GAO studies that I commissioned -- suggesting that more can and must be done to enhance and to coordinate the government's efforts to track the dirty money that fuels narco-traffickers, international terrorists, and other large criminal organizations.

The President's executive order freezing and blocking terrorist assets was a powerful first step, and sent a strong message that we will track down and cut off the terrorists' blood money wherever we can find it. Congress needs to examine other measures, including an approach similar to the one that I have put forward in the context of the genocide taking place in Sudan -- conditioning access to U.S. financial markets on other countries' willingness to assist us in the financial war on terrorism declared by our President.

I look forward to hearing the testimony from Secretary O'Neill and other distinguished witnesses today.

Financial Services Committee
Financial Infrastructure of Global Terrorism
Congressman Doug Bereuter
October 3, 2001

Chairman Oxley and Ranking Member LaFalce, I would like to thank you for conducting this important hearing on the Financial Infrastructure of Global Terrorism. In advance, I also would like to thank Secretary O'Neill and the other witnesses for their testimony.

The September 11th terrorist attacks on the World Trade Center and the Pentagon illustrate the extensive financial infrastructure which can be associated with terrorism. As has been well documented in the press, Osama Bin Laden and his organization, Al Qaeda, are the prime suspects in this horrific tragedy. As both the Vice Chairman of the House Intelligence Committee and as the House Intelligence Subcommittee Chair of Intelligence Policy and National Security, I have been actively studying the details surrounding the tragic events of September 11th.

Therefore, I would like to focus on the following two specific aspects of the fight against the financial infrastructure of terrorism: (1) the Financial Action Task Force on Money Laundering; and (2) informal banking systems used by terrorists such as the South Asian "hawala" system.

First, the importance of the international Financial Action Task Force on Money Laundering, of which the United States is a member, should be emphasized. This task force, which is associated with the Organization for Economic Cooperation and Development (OECD), actually identifies non-cooperative countries or territories in the fight against international money laundering.

In fact, every February since 1985 I have visited the OECD's headquarters in Paris as a member of the House of Representative's delegation to the NATO Parliamentary Assembly (NATO PA) and have led a delegation of House Members to this meeting between the NATO PA's Economic Committee and the OECD each year since 1996. As such, the House NATO PA delegation has been following the substantial efforts of the Financial Action Task Force on Money Laundering throughout its establishment.

In February of 2000, the U.S. delegation to the NATO PA learned that there were efforts to suppress the names of non-cooperative jurisdictions with money laundering laws. As a result, the distinguished lady from New Jersey (Representative Marge Roukema), a member of the House NATO PA delegation and then Chairwoman of the Financial Institutions of the House Banking Committee, at my urging introduced H.Res. 495 in the 106th Congress, which was cosponsored by me and seven key Members of the House delegation to the NATO PA on a bipartisan basis. This House Resolution, which was approved on the House Floor on June 19, 2000, stated that the U.S. should support the public release of the list naming noncooperative jurisdictions identified by the Financial Action Task Force on Money Laundering.

Three days after H.Res. 495 was passed by the House, the Financial Action Task Force on Money Laundering released its report identifying the non-cooperative jurisdictions with money laundering laws. The following jurisdictions were identified in this report as being non-cooperative with respect to money laundering laws: Bahamas, the Cayman Islands, the Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, the Marshall Islands, Nauru, Niue, Panama, Phillippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines.

Moreover, on June 22, 2001, the Financial Action Task Force on Money Laundering issued another report which, among other things, listed the following jurisdictions as having addressed deficiencies in money laundering laws identified by the Financial Action Task Force on Money Laundering and thereby are no longer considered non-cooperative: Bahamas, Cayman Islands, Liechtenstein, and Panama. In addition, the following jurisdictions were listed in this report as having made progress in enacting legislation to address deficiencies in money laundering laws: Cook Islands, Dominica, Israel, Lebanon, Marshall Islands, St. Kitts and Nevis, St. Vincent and the Grenadines, and Niue. This 2001 report illustrates the positive effect that the Financial Action Task Force on Money Laundering is having on combating money laundering.

Therefore, I would encourage the United States to continue to emphasize the importance of the efforts of the Financial Action Task Force to combat money laundering. In fact, I recently sent a letter to Secretary O'Neill stressing the importance of the Financial Action Task Force on Money Laundering. I would like to thank Secretary O'Neill for his prompt response which emphasized the support of the Department of Treasury for the productive efforts of this task force.

Second, the U.S. also needs to combat the informal money laundering efforts which are being conducted through systems such as "Hawala." Many terrorism experts believe that a share of terrorist financing is conducted through an ancient South Asian money exchange system called "Hawala." Hawala is an underground network of financiers who acquire funds in one country and subsequently have a partner in a different country pay a certain amount per recipient. In this case, no transaction records are kept with no funds crossing any borders. It is vital that the U.S. money laundering strategy also consider how to combat these informal banking systems.

In conclusion, I am looking forward to the hearing today and playing a constructive role in combating the financial infrastructure of global terrorism.

SEP 10.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

August 29, 2001

The Honorable Doug Bereuter
Chairman
Subcommittee on International Monetary Policy and Trade
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter of August 2, 2001, and the opportunity to provide you with a clear statement of the Administration's support of the Financial Actions Task Force's (FATF) efforts to fight international money laundering and identify Non-Cooperative Countries and Territories (NCCTs).

The FATF initiated a review of NCCTs in order to identify weaknesses in the global fight against money laundering. The aim of this work is to enhance the level of protection for the world's financial system and to prevent the circumvention of anti-laundering measures introduced over the last ten years. To ensure transparency and sound operations in the international financial system, it is desirable that all financial centers across the world have fundamental controls, regulations and supervisory arrangements in place.

While this review began before I assumed my role as the Secretary of the Treasury, I have been impressed by how productive it has been as a catalyst for significant legal reforms in many notorious bank secrecy havens. Just two months ago, FATF placed six new countries on its NCCT list, and Treasury will respond to this action by formally advising U.S. financial institutions of the risks associated with doing business in these countries. If all financial centers throughout the world adequately supervised their financial institutions and cooperated with their foreign counterparts, money launderers would soon be out of business. This is the goal that we are seeking to achieve.

On June 22, I publicly praised the FATF for its work and expressed optimism that the FATF process will generate further progress. I would like to give you my personal assurance that the Department of the Treasury and the Bush Administration as a whole are committed to continuing the United States' role as the international leader in this area.

Thank you again for your letter and your interest in these important matters.

Sincerely,

Paul H. O'Neill

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August 2, 2001

The Honorable Paul O'Neill
Secretary
Department of Treasury
15th and Pennsylvania Avenues, NW
Washington, D.C. 20220

Dear Mr. Secretary:

I am writing to you about the recommendations of the Financial Action Task Force on Money Laundering (FATF) which cover the categorization and identification of non-cooperative countries or territories in the fight against international money laundering.

By way of background, I would tell you that almost every February since 1985 I have visited the Organization for Economic Cooperation and Development's (OECD) headquarters in Paris as a member of the NATO Parliamentary Assembly's (NATO PA) Economic Committee. Furthermore, I have led a sizable delegation of House Members to that meeting each year since Republicans took control of the U.S. House of Representatives in 1996. Therefore, we have been following the OECD and FATF efforts against money laundering for some time, but in February of 2000 we learned that the FATF might be facing efforts to suppress the names of the non-cooperative jurisdictions.

With the encouragement of members of the United States OECD delegation and some quiet requests of the OECD leadership itself, I determined that we should introduce legislation in the U.S. House of Representatives to address the important subject of international money laundering and to "stiffen the backbone" of certain members of the FATF who otherwise might be expected to gloss over or suppress the names of the non-cooperative jurisdictions. Accordingly, Congresswoman Marge Roukema (R-NJ), then Chairwoman of the Financial Institutions Subcommittee of the House Banking Committee, at my request, introduced H.Res. 495 on May 4, 2000, which was co-sponsored by me and seven key Members of the House delegation to the NATO PA on a bi-partisan basis. Subsequently, the resolution was approved on June 19, 2000, by the House of Representatives – the final legislative step for this variety of resolution. I have enclosed a copy of the resolution for your review.

Mr. Secretary, I bring this action of the House to your attention because of the strong views that those of us in the House have in support of the timely and public identification of non-cooperative jurisdictions by the FATF. Secondly, the interpreptation of some of your statements (incorrect interpretations, I understand) that you and the United States Government were not supportive of this FATF effort may still remain -- even after hearing some clarifications on this

matter which were given too little attention in the media. After a recent conversation I had with Under Secretary John Taylor, I understand that the objections you voice were really to be directed at perceived efforts to move towards a greater international tax uniformity -- a much different issue.

Mr. Secretary, I would urge that you continue to make it clear that you and the Bush Administration are strongly supportive of the FATF effort to fight international money laundering by the timely and public identification of non-cooperative jurisdiction including especially the effort of the FATF and the involvement of the OECD. I am sure that you would agree that shutting down these money-laundering centers is a worthy objective and that the international pressure brought upon them by increased international scrutiny and pressure would be helpful to accomplish that end.

Thank you very much for considering these comments.

Best wishes,

DOUG BEREUTER
Chairman, International Monetary
Policy and Trade Subcommittee

DB/p

Enclosure

c: Dr. John Taylor, Under Secretary for International Affairs
Honorable Mike Oxley
Honorable John LaFalce
Honorable Marge Roukema
Honorable Paul Gillmor

Financial Action Task Force on Money Laundering

Groupe d'action financière sur le blanchiment de capitaux

Review to Identify Non-Cooperative Countries or Territories: Increasing The Worldwide Effectiveness of Anti-Money Laundering Measures

22 June 2001

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TABLE OF CONTENTS

EXECUTIVE SUMMARY .....

INTRODUCTION AND BACKGROUND .....

I. PROCESS .....

(i) Review process .....

(ii) Assessing progress .....

(iii) Monitoring process for jurisdictions removed from the NCCT list.....

II. FOLLOW-UP ON JURISDICTIONS IDENTIFIED AS NON-COOPERATIVE IN JUNE 2000 .....

(i) Jurisdictions which have addressed the deficiencies identified by the FATF through the enactment of legal reforms and concrete steps taken to implement them, and are not considered as non-cooperative .....

(ii) Jurisdictions which have made progress in enacting legislation to address deficiencies .....

(iii) Jurisdictions which have not made adequate progress in addressing the serious deficiencies identified by the FATF.....

III. EXAMINATION OF A SECOND SET OF JURISDICTIONS .....

(i) Summaries of the reviews .....

(ii) Conclusions .....

IV. OVERALL CONCLUSION AND THE WAY FORWARD .....

APPENDICES: LIST OF CRITERIA FOR DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES .....

FATF POLICY CONCERNING IMPLEMENTATION AND DE-LISTING IN RELATION ON NCCTs .....

EXECUTIVE SUMMARY OF THE JUNE 2001 NCCTs REPORT

1. In order to reduce the vulnerability of the international financial system and increase the world-wide effectiveness of anti-money laundering measures, the FATF agreed to the following steps:

Removal of countries from the list

- It recognises that the Bahamas, the Cayman Islands, Liechtenstein and Panama, listed as non-cooperative in June 2000, have addressed the deficiencies identified by the FATF through the enactment of legal reforms. These countries have also taken concrete steps to implement these reforms and are therefore removed from the NCCT list. Consequently, the procedures prescribed in FATF Recommendation 21 are withdrawn. To ensure continued effective implementation of these reforms, the FATF will monitor the situation, in consultation with the relevant FATF-style regional bodies, in particular in the areas laid out in the NCCT report.

Progress made since June 2000

- It welcomes the progress made by the Cook Islands, Dominica, Israel, Lebanon, Marshall Islands, Niue and St. Kitts and Nevis, in addressing deficiencies and calls upon them to continue this work. Until the deficiencies have been fully addressed and the necessary reforms have been sufficiently implemented, it believes that scrutiny of transactions with these jurisdictions, as well as those with St. Vincent and the Grenadines, continues to be necessary and reaffirms its advice of June 2000 to apply, in accordance with Recommendation 21, special attention to such transactions. The FATF notes with particular satisfaction that Israel, Cook Islands, Lebanon and Marshall Islands have enacted most, if not all legislation needed to remedy the deficiencies identified in June 2000. On the basis of this progress, the FATF has asked those countries to submit implementation plans to enable the FATF to evaluate the actual implementation of the legislative changes according to the principles agreed upon by its Plenary.

Identification of new NCCTs

- following the assessment of thirteen countries and territories, it identifies six new jurisdictions as non-cooperative in the fight against money laundering: Egypt, Guatemala, Hungary, Indonesia, Myanmar and Nigeria. The report contains a brief explanation of the issues or deficiencies identified and of the remedial actions that need to be taken to eliminate these deficiencies as well as any positive steps taken.

Countermeasures

- It considers that inadequate progress has been made by Nauru, the Philippines and Russia in addressing the serious deficiencies identified in June 2000. In addition to the application of Recommendation 21, it recommends the application of further counter-measures which should be gradual, proportionate and flexible regarding their means and taken in concerted action towards a common objective. It believes that enhanced surveillance and reporting of financial transactions and other relevant actions involving these jurisdictions is now required, including the possibility of:

    - Stringent requirements for identifying clients and enhancement of advisories, including jurisdiction-specific financial advisories, to financial institutions for identification of the beneficial owners before business relationships are established with individuals or companies from these countries;

- Enhanced relevant reporting mechanisms or systematic reporting of financial transactions on the basis that financial transactions with such countries are more likely to be suspicious;

- In considering requests for approving the establishment in FATF member countries of subsidiaries or branches or representative offices of banks, taking into account the fact that the relevant bank is from an NCCT;

- Warning non-financial sector businesses that transactions with entities within the NCCTs might run the risk of money laundering.

– It recommends that its members apply countermeasures as of 30 September 2001 to Nauru, the Philippines and Russia, unless their governments enact significant legislation that addresses FATF-identified money laundering concerns. This date should allow time for these governments to fulfil their political commitments and complete parliamentary processes to enact reforms. The FATF urges those countries to place emphasis on the criminalisation of money laundering; the mandatory creation of a suspicious transaction reporting regime; the establishment of a proper customer identification requirements; the elimination of excessive bank secrecy; and international co-operation.

2. The FATF looks forward to adequate progress being made by Nauru, the Philippines and Russia so that the coming into force of the countermeasures can be avoided. With respect to those countries listed in June 2000 whose progress in addressing deficiencies has stalled, the FATF will consider the adoption of additional counter-measures as well.

3. In sum, the list of NCCTs is comprised of the following jurisdictions: **Cook Islands; Dominica; Egypt; Guatemala; Hungary; Indonesia; Israel; Lebanon; Marshall Islands; Myanmar; Nauru; Nigeria; Niue; Philippines; Russia; St. Kitts and Nevis; and St. Vincent and the Grenadines**. The FATF calls on its members to request their financial institutions to give special attention to businesses and transactions with persons, including companies and financial institutions, in countries or territories identified in the report as being non-cooperative.

FATF REVIEW TO IDENTIFY NON-COOPERATIVE COUNTRIES OR TERRITORIES : INCREASING THE WORLD-WIDE EFFECTIVENESS OF ANTI-MONEY LAUNDERING MEASURES

INTRODUCTION AND BACKGROUND

4. The Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF) have been established as the international standard for effective anti-money laundering measures.

5. FATF regularly reviews its members to check their compliance with these Forty Recommendations and to suggest areas for improvement. It does this through annual self-assessment exercises and periodic mutual evaluations of its members. The FATF also identifies emerging trends and methods used to launder money and suggests measures to combat them.

6. Combating money laundering is a dynamic process because the criminals who launder money are continuously seeking new ways to achieve their illegal ends. Moreover, it has become evident to the FATF through its regular typologies exercises that, as its members have strengthened their systems to combat money laundering, the criminals have sought to exploit weaknesses in other jurisdictions to continue their laundering activities. Therefore, to foster truly global implementation of international anti-money laundering standards, the FATF was charged in its current mandate to promote the establishment of regional anti-money laundering groups to complement the FATF's work and help spread the FATF's philosophy throughout the world.

7. In order to reduce the vulnerability of the international financial system to money laundering, governments must intensify their efforts to remove any detrimental rules and practices which obstruct international co-operation against money laundering. Since the end of 1998, the FATF has been engaged in a significant initiative to identify key anti-money laundering weaknesses in jurisdictions both inside and outside its membership.

8. In this context, on 14 February 2000, the FATF published an initial report on the issue of non-cooperative countries and territories (NCCTs) in the international fight against money laundering[1]. The February 2000 report set out twenty-five criteria to identify detrimental rules and practices which impede international co-operation in the fight against money laundering (see Appendix). The criteria are consistent with the FATF Forty Recommendations. The report also described a process designed to identify jurisdictions which have rules and practices that can impede the fight against money laundering and to encourage these jurisdictions to implement international standards in this area. Finally, the report contained a set of possible counter-measures that FATF members could use to protect their economies against the proceeds of crime.

9. The goal of the FATF's work in this area is to secure the adoption by all financial centres of international standards to prevent, detect and punish money laundering. A major step in this work was the publication of the June 2000 Review[2] to identify non-cooperative countries or territories. This initiative has so far been both productive and successful because most of the 15 jurisdictions identified as being non-cooperative in June 2000 have made significant and rapid progress.

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[1] Available at the following website address : http://www.oecd.org/fatf/pdf/NCCT_en.pdf

[2] Available at the following website address: http://www.oecd.org/fatf/pdf/NCCT2000_en.pdf

10. At its Plenary meeting on 20-22 June 2001, the FATF approved this new review. Section I of this document summarises the review process. Section II highlights progress made by the 15 jurisdictions which were deemed to be non-cooperative in June 2000. In section III, the report briefly describes the findings with respect to a second group of jurisdictions which were reviewed. Section IV outlines future steps to be taken and identifies the seventeen countries or territories which are viewed by the FATF as non-cooperative in the fight against money laundering.

I. PROCESS

11. At its February 2000 Plenary meeting, the FATF set up four regional review groups (Americas; Asia/Pacific; Europe; and Africa and the Middle East) to analyse the anti-money laundering regimes of a number of jurisdictions against the above-mentioned twenty-five criteria. In 2000-2001, the review groups were maintained to continue this work and to monitor the progress made by NCCTs.

(i) Review process

12. The jurisdictions to be reviewed were informed of the work to be carried out by the FATF. The reviews involved gathering the relevant information, including laws and regulations, as well as any mutual evaluation reports, related progress reports and self-assessment surveys, where these were available. This information was then analysed against the twenty-five criteria and a draft report was prepared and sent to the jurisdictions concerned for comment. In some cases, the reviewed jurisdictions were asked to answer specific questions designed to seek additional information and clarification. Each reviewed jurisdiction provided their comments on their respective draft reports. These comments and the draft reports themselves were discussed between the FATF and the jurisdictions concerned during a series of face-to-face meetings which took place from the end of May to the beginning of June 2001. Subsequently, the draft reports were discussed by the FATF Plenary. The findings are reflected in Section III of the present report.

(ii) Assessing progress

13. The assessments of the 15 jurisdictions identified as non-cooperative by the FATF in June 2000 were discussed as a priority item at each FATF Plenary meeting during 2000-2001 to determine whether any jurisdictions should be removed from the list of NCCTs. These assessments were discussed initially by the FATF review groups, including through face-to-face meetings, and then discussed by the Plenary of FATF. In making such assessments, the FATF seeks to establish whether comprehensive and effective anti-money laundering systems exist in the jurisdictions concerned. Decisions to revise the list published in June 2000 are taken in the FATF Plenary.

14. In deciding whether a jurisdiction should be removed from the list, the FATF Plenary assesses whether a jurisdiction has addressed the deficiencies previously identified. The FATF relies on its collective judgement, and attaches particular importance to reforms in the area of criminal law, financial supervision, customer identification, suspicious activity reporting, and international co-operation. Legislation and regulations need to have been enacted and to have come into effect before removal from the list can be considered. In addition, the FATF seeks to ensure that the jurisdiction is effectively implementing the necessary reforms. Thus, information related to institutional arrangements, as well as the filing of suspicious activity reports, examinations of financial institutions, international co-operation and the conduct of money laundering investigations, are considered.

15. The FATF views the enactment of the necessary legislation and the promulgation of associated regulations as essential and fundamental first step for jurisdictions on the list. The jurisdictions which have enacted most, if not all legislation needed to remedy the deficiencies identified in June 2000 were asked to submit implementation plans to enable the FATF to evaluate the

actual implementation of the legislative changes according to the above principles. Finally, the FATF has further elaborated a process, which includes on-site visits to the jurisdiction concerned, by which jurisdictions can be de-listed at the earliest possible time.

(iii) Monitoring process for jurisdictions removed from the NCCT list

16. To ensure continued effective implementation of the reforms enacted, the FATF has adopted a monitoring mechanism to be carried out in consultation with the relevant FATF-style regional body. This mechanism would include the submission of regular implementation reports and a follow-up visit to assess progress in implementing reforms and to ensure that stated goals have, in fact, been fully achieved.

17. The monitoring process of de-listed jurisdictions will be carried out against the implementation plans already submitted by de-listed jurisdictions, specific issues raised in the 2001 progress reports and the experience of FATF members on implementation issues. In this context, subjects addressed may include, as appropriate: the issuance of secondary legislation and regulatory guidance; inspections of financial institutions planned and conducted; STRs systems; process for money laundering investigations and prosecutions conducted; regulatory, FIU and judicial co-operation; adequacy of resources; and assessment of compliance culture in the relevant sectors.

II. FOLLOW-UP ON JURISDICTIONS IDENTIFIED AS NON-COOPERATIVE IN JUNE 2000

18. This section constitutes an overview of progress made by these jurisdictions. Jurisdictions marked with an asterisk are still regarded as being non-cooperative by the FATF. (References to "meeting the criteria" means that the concerned jurisdictions were found to have detrimental rules and practices in place.) For each of the following jurisdictions, the situation which prevailed in June 2000 is summarised (criteria met, main deficiencies) and is followed by an overview of the actions taken by jurisdictions since that time.

(i) Jurisdictions which have addressed the deficiencies identified by the FATF through the enactment of legal reforms and concrete steps taken to implement them, and are not considered as non-cooperative

Bahamas

19. The Commonwealth of the Bahamas previously met criteria 12-16, 18, 21, 22, 23 and 25. It partially met criteria 5, 10, 11 and 20. Serious deficiencies were found in its anti-money laundering system. In particular, the lack of information about beneficial ownership as to trusts and International Business Companies (IBCs), which were allowed to issue bearer shares. There was also a serious breach in identification rules, since certain intermediaries could invoke their professional code of conduct to avoid revealing the identity of their clients. International co-operation was marked by long delays and restricted responses to requests for assistance and there was no scope for co-operation outside of judicial channels.

20. Since June 2000, the Bahamas enacted the Money Laundering (Proceeds of Crime) (Amendment) Act, 2000 on 27 June 2000, and the Evidence (Proceedings in other Jurisdictions) Act, 2000 and the Evidence (Proceedings in other Jurisdictions) (Amendment) Act, 2000 on 17 August 2000. On 29 December 2000, it also enacted the Central Bank of the Bahamas Act, 2000; the Bank and Trust Companies Regulation Act, 2000; the Financial Intelligence Unit Act, 2000; the Financial and Corporate Service Providers Act, 2000; the Criminal Justice (international co-operation) Act, 2000; the International Business Companies Act, 2000; the Dangerous Drug Act, 2000; the Financial Transaction Reporting Act, 2000; and the Proceeds of Crime Act, 2000. These laws address banking supervision, customer identification, information about ownership of IBCs and channels for providing

international co-operation at the judicial level as well as the administrative level through the new FIU (financial intelligence unit).

21. The Bahamas have made important progress in terms of implementation of its new counter-money laundering regime. It has established a financial intelligence unit and has dedicated significant human and financial resources to make it operational. The Central Bank has established and begun to implement an ambitious inspection programme. It has required banks to establish a physical presence in the jurisdiction, has already revoked 19 licences of banks not intending to comply, and has required all pre-existing accounts to be identified by 31 December 2002. The Bahamas is eliminating bearer shares, has imposed new requirements on IBCs, and has established an inspection programme to ensure compliance. In the area of international co-operation, the Attorney General's Office has established an international co-operation unit and the financial intelligence unit has joined the Egmont Group.

22. In the future, FATF will pay particular attention to the level of resources devoted to the newly-created institutions, the ability of the Bahamian regulators to access STR information and co-operate with foreign counterparts, the continued practice of co-operating with judicial authorities, the progress made in applying customer identification requirements to pre-existing accounts, and further efforts to enhance compliance by the financial sector with the new anti-money laundering requirements.

Cayman Islands

23. The Cayman Islands previously met criteria 1, 5, 6, 8, 10, 11, 13, 14, 15, 16, 17, 18 and 23. It partially met criteria 2, 3, 7 and 12. The Cayman Islands did not have any legal requirements for customer identification and record keeping. Even if in the absence of a mandatory requirement, financial institutions were to identify their customers, supervisory authorities could not, as a matter of law, readily access information regarding the identity of customers. Moreover, the supervisory authority placed too much reliance on the home country supervisors' assessment of the management of bank branches. The Cayman Islands lacked a *mandatory* regime for the reporting of suspicious transactions. Moreover, a wide range of management companies – including those providing nominee shareholders for the purpose of formation of a company or holding the issued capital of a company -- was unregulated.

24. Since June 2000, the Cayman Islands has enacted the following laws: Building Societies (Amendment) (Regulation by Monetary Authority) Law, 2000; Cooperative Societies (Amendment) (Credit Unions) Law, 2000; Monetary Authority (Amendment) (Regulation of Non-Bank Financial; Institutions) Law, 2000; Proceeds of Criminal Conduct (Amendment)(Financial Intelligence Unit) Law, 2001; Proceeds of Criminal Conduct Law (2000 Revision) Money Laundering (Amendment) (Client Identification) Regulations, 2001. Additionally, the following laws were enacted in April 2001: Banks and Trust Companies (Amendment) (Prudent Management) Law 2001; Insurance (Amendment) (Prudent Management) Law 2001; Mutual Funds (Amendment) (Prudent Administration) Law 2001; Companies Management (Amendment) Law 2001. The Regulations address customer identification and record-keeping for a wide range of financial services. Amendments to certain laws deal with the power of the financial supervisory authority to monitor compliance with the Regulations. Other amendments to the Proceeds of Criminal Conduct Law concern the sanction for failure to report a suspicious transaction.

25. The Cayman Islands have made important progress in terms of implementation of its new counter-money laundering regime. It has significantly increased the human and financial resources dedicated to financial supervision and to its financial intelligence unit. It has initiated an ambitious financial inspection programme, required the identification of pre-existing accounts by 31 December 2002, and required all banks licensed in the Cayman Islands to maintain a physical presence in the jurisdiction.

26. In the future, FATF will pay particular attention to the continued ability of the Cayman FIU and other Caymanian authorities to co-operate with foreign counterparts, the ability of the financial regulators to meet their ambitious inspection goals, the identification of the beneficiaries of trusts and the progress made in applying customer identification requirements to pre-existing accounts, and further efforts to enhance compliance by the financial sector with the new anti-money laundering requirements.

Liechtenstein

27. Liechtenstein previously met criteria 1, 5 (partially), 10, 13 (partially), 15, 16, 17, 18, 20, 21 and 23. The system for reporting suspicious transactions was still inadequate; there were no proper laws in place for exchanging information about money laundering investigations and co-operating with foreign authorities in prosecuting cases, and the resources devoted to tackling money laundering were inadequate.

28. Since June 2000, Liechtenstein amended its Due Diligence Act and enacted a new law on Mutual Legal Assistance in Criminal Matters, on 15 September 2000. It also enacted the Ordinance to Due Diligence Act and the Ordinance to establish a Financial Intelligence Unit and revised the Criminal Code, Criminal Procedure Code and Narcotics Act 1993. Finally, Liechtenstein enacted an Executive Order setting out the roles and responsibilities of the FSA (Financial Supervisory Authority). These texts address obligations on regulated financial institutions to identify customers and the financial regulators' powers to obtain and exchange information about client accounts, regulations about know-your-customer procedures, the extension of money laundering offences, mutual legal assistance procedures and the establishment of an FIU.

29. Liechtenstein has made important progress in terms of the implementation of this new legal framework, by creating the FIU, strengthening the resources (both financial and human) allocated to the fight against money laundering and by significantly improving its international co-operation provisions, both in administrative and judicial matters. These efforts must continue to develop. The Liechtenstein FIU has joined the Egmont Group. Liechtenstein has also taken clear commitments as to the identification for accounts whose owners were not previously identified.

30. In the future, FATF will pay particular attention to the real progress and results in fostering compliance by the financial sector with the new anti-money laundering requirements, in particular for the identification and suspicious reporting requirements, and analysis of STRs. In this context, the FATF welcomes the proposal from Liechtenstein's authorities to put in place, in conjunction with the FATF, a monitoring mechanism, focusing in particular on the roles of the FSA and FIU to further enhance its compliance mechanisms, and on further efforts to enhance compliance by the financial sector with the new anti-money laundering requirements. The FATF will continue to monitor, among other things, the progress made in applying customer identification requirements to pre-existing accounts, and international co-operation.

Panama

31. Panama previously met criteria 7, 8, 13, 15, 16, 17, 18 and 19, and partially met criterion 10. Panama had not yet criminalised money laundering for crimes other than drug trafficking. It had an unusual and arguably inefficient mechanism for transmitting suspicious transaction reports to competent authorities. Panama's FIU was not able to exchange information with other FIUs. In addition, certain outdated civil law provisions impeded the identification of the true beneficial owners of trusts.

32. Since June 2000, Panama enacted laws Nos. 41 and 42 on 2 October 2000, issued Executive Decrees Nos. 163 and 213 on 3 October 2000, and issued Agreement No. 9-2000 of October 23, 2000. Laws nos. 41 and 42 deal with the scope of predicate offences for money laundering and they contain various anti-money laundering measures. The Executive Orders address the process for reporting

money laundering activity, the ability of the FIU to co-operate at the international level, and the dissemination of information relating to trusts. Agreement No. 9-2000 reinforces customer identification procedures and provides greater precision on due diligence for banks.

33. Panama has made important progress in terms of the implementation of its new anti-money laundering regime. It has a well-developed anti-money laundering supervision programme and has significantly increased the human and financial resources dedicated to its Bank Superintendency and financial intelligence unit. It has enhanced its ability to co-operate internationally, and has actively sought to enter into written agreements with FATF members and other countries to provide for international FIU co-operation. Several such written agreements have been signed.

34. In the future, FATF will pay attention to Panama's continued efforts to enter into written agreements for FIU co-operation, its continued practice of international co-operation and its focus on potential money laundering threats in the Colon Free Zone, the ability of Panamanian prosecutors to effectively pursue money laundering cases and further efforts to enhance compliance by the financial sector with the new anti-money laundering requirements. Additionally, Panama should consider adding additional predicates with its money laundering law.

(ii) Jurisdictions which have made progress in enacting legislation to address deficiencies

Cook Islands *

35. In June 2000, the Cook Islands met criteria 1, 4, 5, 6, 10, 11, 12, 14, 18, 19, 21, 22, 23 and 25. In particular, the Government had no relevant information on approximately 1,200 international companies that it had registered. The country also licensed seven offshore banks that could take deposits from the public but were not required to identify customers or keep their records. Its excessive secrecy provisions guarded against the disclosure of relevant information on those international companies as well as bank records.

36. Since June 2000, the Cook Islands enacted the Money Laundering Prevention Act on 18 August 2000 and has drafted the Money Laundering Prevention Regulations 2000. The Act addresses the following areas: anti-money laundering measures in the financial sector, the money laundering criminal offence and international co-operation in money laundering investigations. The Cook Islands also issued Guidance Notes on Money Laundering Prevention in April 2001.

Dominica *

37. In June 2000, Dominica met criteria 4, 5, 7, 10-17, 19, 23 and 25. Dominica had outdated proceeds of crime legislation, which lacked many features now expected, and very mixed financial services legislation currently on the books. In addition, company law provisions created additional obstacles to identification of ownership. The offshore sector in Dominica appeared to be largely unregulated although it was understood that responsibility for its regulation was to be transferred to the Eastern Caribbean Central Bank.

38. Since June 2000, Dominica has enacted amendments to several laws, and brought into force the Money Laundering (Prevention) Act in January 2001. Regulations under this Act were introduced in May 2001. The enacted legislation and regulations address issues relating to the criminalisation of money laundering, the establishment of a Money Laundering Supervisory Authority (MLSA) and of a financial intelligence unit, and requirements on financial institutions concerning record-keeping and reporting of suspicious transactions. However, there remain several issues to be resolved, including customer identification procedures, the retention of records, and the ability of the administrative authorities to access and to share specific information.

Israel *

39. In June 2000, Israel met criteria 10, 11, 19, 22 and 25. It also partially met criterion 6. The absence of anti-money laundering legislation caused Israel to fall short of FATF standards in the areas of mandatory suspicious transaction reporting, criminalisation of money laundering arising from serious crimes and the establishment of a financial intelligence unit. Israel was partially deficient in the area of record keeping, since this requirement did not apply to all transactions.

40. Since June 2000, Israel enacted the Prohibition on Money Laundering Law [5760-2000] on 2 August 2000 which addresses the money laundering criminal offence, as well as customer identification, record-keeping and reporting requirements. It promulgated two of the required regulations to implement the law: the Prohibition on Money Laundering (Reporting to Police) Regulation and the Prohibition on Money Laundering (The Banking Corporations' Requirement Regarding Identification, Reporting and Record-Keeping) Order.

Lebanon *

41. In June 2000, Lebanon met criteria 1, 2, 7, 8, 9, 10, 11, 14, 15, 16, 18, 19, 20, 24 and 25. In particular, it maintained a strict banking secrecy regime which affected access to the relevant information both by administrative and investigative authorities. International co-operation was compromised as well. Anomalies in the identification procedures for clients and doubts related to the actual identity of the clients could have constituted grounds for the bank to terminate any existing relationship, without violating the terms of the contract. No specific reporting requirement existed in such cases. Furthermore, there did not seem to be any well-structured unit tasked with FIU functions.

42. On 26 April 2001, Law no. 318 ("Fighting Money Laundering") was promulgated in Lebanon's Official Gazette. The law criminalises the laundering of the proceeds of crime specifically in relation to narcotics offences, organised crime, terrorist acts, arms trafficking, embezzlement/other specified frauds and counterfeiting of money or official documents. Moreover, Lebanon Central Bank, with the decision no. 7818 of 18 May 2001, promulgated regulations on the control of financial and banking operation for fighting money laundering which addresses issues relating to the check of the client's identity and the obligation to control suspicious operations. The new money laundering law partially addresses the FATF's major concerns with regard to bank secrecy.

Marshall Islands *

43. In June 2000, Marshall Islands met criteria 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 19, 23 and 25. It also indirectly met criteria 15, 16 and 17. It lacked a basic set of anti-money laundering regulations, including the criminalisation of money laundering, customer identification and a suspicious transaction reporting system. While the size of the financial sector in the Marshall Islands is limited with only three onshore banks and no offshore bank, the jurisdiction had registered about 3,000 IBCs. The relevant information on those international companies was guarded by the excessive secrecy provision and not accessible by financial institutions.

44. Since June 2000, the Marshall Islands passed the Banking (Amendment) Act of 2000 (P.L. 2000-20) on 31 October 2000. The Act addresses the following areas: criminalisation of money laundering, customer identification for accounts, and reporting of suspicious transactions.

St. Kitts and Nevis *

45. In June 2000, St. Kitts and Nevis met criteria 1-13, 15-19, 23 and 25. Money laundering was a crime only as it related to narcotics trafficking. There was no requirement to report suspicious transactions. Most of the other failings related to Nevis, which constituted the only significant financial centre of the federation. The Nevis offshore sector was effectively unsupervised, and there were no requirements in place to ensure financial institutions to follow procedures or practices to prevent or detect money laundering. Non-residents of Nevis were allowed under law to own and operate an offshore bank without any requirement of identification. Strong bank secrecy laws prevented access to information about offshore bank account holders apparently even in some criminal proceedings. Company law provisions outlined additional obstacles to customer identification and international co-operation: limited liability companies could be formed without registration of their owners and there was no mutual legal assistance or international judicial co-operation (notwithstanding a treaty or convention) with respect to legal action against an international trust, or a settlor, trustee, protector, or beneficiary of such trust.

46. St. Kitts and Nevis enacted, on 29 November 2000, the Financial Intelligence Unit Act, No. 15 of 2000; the Proceeds of Crime Act No. 16 of 2000; and the Financial Services Commission Act, No. 17 of 2000. The Nevis Offshore Banking (Amendment) Ordinance, No. 3 of 2000, was enacted on 14 November 2000. The latter Act addresses deficiencies in the supervision of the financial sector. Anti-Money Laundering Regulations 2001, n° 15 of 2001, were enacted on 22 May 2001. These regulations require the financial institutions to establish identification procedures in relation to new and continuing business, to maintain a record of transactions and to report suspicious transactions to the Reporting Authority. However, there remain several issues to be resolved, including the ability of the FIU and the financial regulators to co-operate internationally and the identification of the beneficial owners of legal entities.

St. Vincent and the Grenadines *

47. In June 2000, St. Vincent and the Grenadines met criteria 1-6, 10-13, 15, 16 (partially), 18, and 22-25. There were no anti-money laundering regulations or guidelines in place with respect to offshore financial institutions, and thus no customer identification or record-keeping requirements or procedures. Resources devoted to supervision were extremely limited. Licensing and registration requirements for financial institutions were rudimentary. There was no system to require reporting of suspicious transactions. IBC and trust law provisions created additional obstacles, and the Offshore Finance Authority was prohibited by law from providing international co-operation with respect to information related to an application for a license, the affairs of a licensee, or the identity or affairs of a customer of a licensee. International judicial assistance was unduly limited to situations where proceedings had been commenced against a named defendant in a foreign jurisdiction.

48. Following June 2000, St. Vincent and the Grenadines enacted the International Banks (Amendment) Act, 2000 and the Confidential Relationships Preservation (International Finance) (Amendment) Act 2000 on 28 August 2000. It also amended the International Banks Act on 17 October 2000. These Acts intend to cover deficiencies in issues related to the authorisation and registration requirements for offshore banks, and access to confidential information. However, no progress has been made since the February 2001 Plenary meeting.

Niue *

49. In June 2000, Niue met criteria 1, 2, 3, 4, 5, 10, 11, 12, 14, 15 and 25. The legislation in Niue contained a number of deficiencies, in particular in relation to customer identification requirements. While it has licensed five offshore banks and registered approximately 5,500 IBCs, there were serious concerns about the structure and effectiveness of the regulatory regime for those institutions. In addition, Niue's willingness to co-operate in money laundering investigations was not tested in practice.

50. Since June 2000, Niue enacted the Financial Transactions Reporting Act 2000, on 16 November 2000. The new Act addresses requirements dealing with customer identification, reporting of suspicious transactions and the establishment of an FIU.

(iii) Jurisdictions which have not made adequate progress in addressing the serious deficiencies identified by the FATF

Nauru *

51. Nauru meets criteria 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 19, 23, 24 and 25. It lacks a basic set of anti-money laundering regulations, including the criminalisation of money laundering, customer identification and a suspicious transaction reporting system. It has licensed approximately 400 offshore "banks", which are prohibited from taking deposits from the public but are poorly supervised. The excessive secrecy provisions guard against the disclosure of the relevant information on those offshore banks and international companies.

52. On 14 June 2001, Nauru introduced to the Parliament the draft anti-money laundering Act 2001 which would address the obligation of customer identification and record-keeping.

Philippines *

53. The Philippines meet criteria 1, 4, 5, 6, 8, 10, 11, 14, 19, 23 and 25. The country lacks a basic set of anti-money laundering regulations such as customer identification and record keeping. Bank records have been under excessive secrecy provisions. It does not have any specific legislation to criminalise money laundering per se. Furthermore, a suspicious transaction reporting system does not exist in the country.

54. Since June 2000, the Government of the Philippines has been seeking unsuccessfully for the Congress to pass an anti-money laundering Bill to criminalise money laundering, require customer identification as well as record keeping, introduce suspicious transaction reporting system and relax the bank secrecy provisions. However, on 11 May 2001, the President of the Republic of the Philippines made the commitment to certify to the newly-elected Philippine Parliament the urgency of a strong anti-money laundering Bill.

Russia *

55. Russia meets criteria 1, 4, 5, 10, 11, 17, 21, 23, 24 and 25. It also partially meets criterion 6. While Russia faces many obstacles in meeting international standards for the prevention, detection and prosecution of money laundering, currently the most critical barrier to improving its money laundering regime is the lack of a comprehensive anti-money laundering law and implementing regulations that meet international standards. In particular, Russia lacks: comprehensive customer identification requirements; a suspicious transaction reporting system; a fully operational FIU with adequate resources; and effective and timely procedures for providing evidence to assist in foreign money laundering prosecutions.

56. Russia has begun a process to adopt a comprehensive anti-money laundering system. On 16 May 2001, it enacted a federal law ratifying the 1990 Council of Europe Convention on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime. On 25 May 2001, the State Duma of the Russian Federation adopted in first reading a draft Federal Law on Counteracting the Laundering of the Proceeds from Crime. The second and third readings are expected to occur at the end of June or July (the third reading is currently scheduled for 12 July 2001). The draft law contains identification and record-keeping requirements as well as provisions for a mandatory suspicious transactions reporting regime, which will require that the reports be filed with the federal

executive agency to be designated by the Federation President, as well as international co-operation provisions.

III. EXAMINATION OF A SECOND SET OF JURISDICTIONS

57. This section contains summaries of the reviews of a second set of jurisdictions carried out by the FATF during 2000-2001. The reviews of two jurisdictions (Seychelles and Vanuatu) were completed in October 2000 and reflect the information available at that time. Jurisdictions marked with an asterisk are regarded as being non-cooperative by the FATF. (References to "meeting the criteria" means that the concerned jurisdictions were found to have detrimental rules and practices in place.)

(i) Summaries of reviews

Czech Republic

58. The recent amendments made to the anti-money laundering legislation in the Czech Republic represent an important step towards compliance with the international standards, in particular in terms of effective enforcement of the requirements in the financial sector.

59. However, the existence of bearer passbooks issued anonymously is clearly an important weakness of the current system although the recent decision to prohibit the issue of new bearer passbooks constitutes a major progress. Important steps have recently been taken to prohibit the issuance of new bearer passbooks, the existing ones being subjected to the same identification requirements (thresholds, suspicious activities reporting) as other banking products.

60. The anonymous passbooks are clearly a weakness in the Czech Republic's anti-money laundering system. The FATF raised concern on this issue with the competent authorities in the Czech Republic and requested that they respond regarding how they would address these concerns.

61. The absence of adequate criminalisation of money laundering is another major weakness in the current system, which is well identified by the authorities, who intend to address it in the short term. In addition, the requirements on identification of beneficial owners are insufficient as far as legal persons are concerned.

Egypt *

62. Egypt meets criteria 5, 10, 11, 14, 19 and 25 and it partially meets criteria 1, 6 and 8. Particular concerns identified included: a failure to adequately criminalise money laundering to internationally accepted standards; a failure to establish an effective and efficient STR system covering all financial institutions; a failure to establish an FIU or equivalent mechanism; and a failure to establish rigorous identification requirements that apply to <u>all</u> financial institutions. Further clarification is also sought on the evidential requirements necessary for access to information covered by Egypt's banking secrecy laws.

Guatemala *

63. Guatemala meets criteria 6, 8, 15, 16, 19 and 25 and partially meets criteria 1, 7 and 10. Guatemalan laws contain secrecy provisions that constitute a considerable obstacle to administrative counter-money laundering authorities and Guatemalan law provides no adequate gateways for administrative authorities to co-operate with foreign counterparts. Additionally, Guatemala has not criminalised money laundering beyond the proceeds of narcotics violations. Further, the suspicious transaction reporting system contains no provision preventing "tipping off".

64. Guatemala has recently issued Regulations for the Prevention and Detection of Money Laundering. These Regulations significantly improve Guatemala's ability to implement customer identification procedures.

Hungary *

65. Hungary meets criteria 4 and 13 and partially meets criteria 5, 7, 10, 11 and 12. Even though Hungary has a comprehensive anti-money laundering system, it still suffers major deficiencies. Though progress has been achieved in terms of supervision, identification requirements and suspicious transactions reporting, the existence of anonymous passbooks and the lack of clear plans to address this problem constitute a major deficiency of this system.

66. In contrast to other countries in which a high number of such savings books also exist, and which have already begun to take measures to restrict these passbooks, up to now the Hungarian Government has only decided that the opening of new anonymous savings books and the depositing on such savings books will be prohibited, as from the date of the accession to the European Union. From the same date, each customer will be identified in cases of withdrawing from such a savings book. The fact that, at present, any deposit on such a savings deposit book exceeding two million HUF (approximately USD 7,000) results in a requirement to identify the client, is not sufficient, since it is possible to hold an unlimited number of anonymous savings deposit books.

67. Another important deficiency is the existing lack of information about beneficial ownership in Hungary. This results from the absence of a corresponding requirement for financial institutions to identify the beneficial owners or to renew identification in cases in which it is doubtful whether the client is acting on his own account and no specific suspicious exists. This situation also reflects directly on criteria 7, and 12 to 14.

Indonesia *

68. Indonesia meets criteria 1, 7, 8, 9, 10, 11, 19, 23 and 25, and partially meets criteria 3, 4, 5 and 14. It lacks a basic set of anti-money laundering provisions. Money laundering is presently not a criminal offence in Indonesia. There is no mandatory system of reporting suspicious transactions to a FIU. Customer identification regulations have been recently introduced, but only apply to banks and not to non-bank financial institutions.

69. In order to rectify those deficiencies, the Government has drafted a Law concerning Eradication of Money Laundering Criminal Acts. The draft is being discussed in Parliament.

Myanmar *

70. Myanmar meets criteria 1, 2, 3, 4, 5, 6, 10, 11, 19, 20, 21, 22, 23, 24 and 25. It lacks a basic set of anti-money laundering provisions. It has not yet criminalised money laundering for crimes other than drug trafficking. There are no anti-money laundering provisions in the Central Bank Regulations for financial institutions. Other serious deficiencies concern the absence of a legal requirement to maintain records and to report suspicious or unusual transactions. There are also significant obstacles to international co-operation by judicial authorities.

71. In order to prevent money laundering, the Government is in the process of drafting an Illicit Proceeds and Property Control Law.

Nigeria *

72. Nigeria demonstrated an obvious unwillingness or inability to co-operate with the FATF in the review of its system. Nigeria meets criteria 5, 17 and 24. It partially meets criteria 10 and 19, and has a broad number of inconclusive criteria as a result of its general failure to co-operate in this exercise. Finally, corruption in Nigeria continues to be of concern.

73. The Nigerian system to fight against money laundering has a significant number of deficiencies which include a discretionary licensing procedure to operate a financial institution, the absence of customer identification under very high threshold (US$ 100,000) for certain transactions, the lack of the obligation to report suspicious transactions if the financial institution decides to carry out the transaction. The scope of the application of the decree on money laundering is unclear, because it generally refers to financial institutions, and it does not seem to be applied to insurance companies and stock brokerage firms.

Poland

74. The anti-money laundering system in Poland seems to be well structured and co-ordinated among the Polish authorities involved in combating money laundering, with the enactment of the Act of 16 November 2000, which criminalises the laundering of proceeds from serious crimes, in addition to other specific regulations. All financial institutions are supervised and are obliged to identify clients, to keep an updated register of transactions for a period of at least five years, and to develop a system of suspicious transactions reporting (STR) in accordance with international standards.

75. However, there is no evidence of an obligation to identify the beneficial owner, which will require measures to be implemented in this matter. Furthermore, it will be necessary to monitor the full implementation of the November 2000 Act in the near future, particularly the functioning and ability of the Polish FIU to exchange information regarding money laundering with foreign FIUs.

Seychelles (as of October 2000)

76. The Seychelles have a comprehensive anti-money laundering system and recently strengthened it with the repeal of the 1995 Economic Development Act. Some new concerns were nevertheless found in the area of commercial law requirements for the registration of business and legal entities as well as in the identification of their beneficial owners by financial institutions. In addition, obstacles to the exchange of information at the level of administrative authorities were noted. Finally, difficulties were also found in the area of mutual legal assistance in international investigations on serious crimes which also appear to be linked to tax matters.

Slovak Republic

77. The Slovak Republic has a well functioning system to combat money laundering with enacted legislation and an established financial intelligence unit. Nonetheless some deficiencies still remain. These include the lack of institutionalised co-operation between the FIU in its compliance auditing role and non-bank financial institutions supervisors as well as the absence of automatic reporting obligation for the non-banking supervisory authority/authorities; the limited resources of the financial police where they are required to assess compliance with the anti-money laundering legislation; the problems of old bearer passbooks in respect of which no identification procedures have taken place, which cause concerns for the FATF, and furthermore reflects on other criteria in the NCCTs exercise; the need for a requirement to identify the beneficial owner; and the necessity to reconsider the term of three days within which a reporting entity should inform the financial police on an unusual business activity.

78. The anonymous passbooks are clearly a weakness in the Slovak anti-money laundering system. The FATF raised concern on this issue with the competent authorities in the Slovak Republic and requested that they respond regarding how they would address these concerns.

Turks and Caicos

79. The Turks and Caicos have a comprehensive system to combat money laundering with the relevant legislative framework and an established financial intelligence unit. Nonetheless a concern remains with the horizontal issue of re-verification of ownership of accounts that existed before customer identification rules came into effect. The Turks and Caicos is working to resolve this problem by 2005. The FATF urges the Turks and Caicos to deal with this issue as soon as possible. There is a concern that the present legal basis for granting co-operation is inadequate but, in the light of a functioning FIU and a record of anti-money laundering co-operation with other jurisdictions, this is not currently causing problems.

Uruguay

80. Uruguay has a comprehensive anti-money laundering system in place. It joined the GAFISUD, the regional FATF-style regional body recently established in South America, and it has volunteered to be one of the first countries of the region to be evaluated in the mutual evaluation programme of this body. Uruguay has offered its permanent training centre for the use of the GAFISUD as well.

81. Uruguay recently established the Financial Intelligence Unit, the suspicious transaction report mechanism and enhanced customer identification rules (December 2000). The country has subscribed the United Nations Convention against Transnational Organized Crime (Palermo, 2000). Moreover, it has recently enacted legislation (Law 17,343 enacted on 25 May 2001) which extended the predicate offences of the money laundering crime beyond drug trafficking and corruption to other serious crimes. However, the absence of the laundering of funds stemming from criminal fraud as a money laundering predicate is a matter of concern.

82. Due to the recent nature of the above-mentioned progress in the fight against money laundering, Uruguay will need to ensure that the relevant newly-established institutions are provided with adequate resources and authority to co-operate internationally. Statutory improvement of the measures to guard against the management of and the acquisition in financial institutions by criminals are welcomed.

83. Finally, as Uruguayan corporations are permitted to issue bearer shares (though in certain cases ownership identification is required), the FATF may in the future need to discuss with the Uruguayan authorities the adequacy of the bearer share system in place with respect to the Forty Recommendations.

Vanuatu (as of October 2000)

84. The Government of Vanuatu has strengthened its anti-money laundering regime to follow the recommendations included in the APG[3]/OGBS[4] mutual evaluation report of June 2000. The enactment of the Financial Transactions Reporting Act 2000 was a major milestone in the fight against money laundering in Vanuatu. However, deficiencies were found in the area of the information on legal and business entities which is available to financial institutions.

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3 Asia/Pacific Group on Money Laundering.

4 Offshore Group of Banking Supervisors.

(ii) Conclusions

85. The FATF has considered the reports summarised above and confirmed that there is a wide variance in both the character of the money laundering threat posed by different jurisdictions and in the status of efforts to implement anti-money laundering controls.

86. This second round of reviews carried out by the FATF has been particularly productive. Most jurisdictions have participated actively and constructively in the reviews. As in 1999-2000, the reviews of jurisdictions against the 25 criteria have revealed – and stimulated – many ongoing efforts by governments to improve their systems. Many jurisdictions indicated that they would shortly submit anti-money laundering Bills to their legislative bodies and would conclude international arrangements to exchange information on money laundering cases among competent authorities. Some of these have already enacted anti-money laundering legislation.

87. Nevertheless, serious systemic problems have been identified in the following jurisdictions: Egypt, Guatemala, Hungary, Indonesia, Myanmar and Nigeria.

IV. OVERALL CONCLUSION AND THE WAY FORWARD

88. Following the progress made by the jurisdictions deemed to be non-cooperative in June 2000, and the conclusions of the above second set of reviews, the list of NCCTs now comprises the following jurisdictions:

Cook Islands
Dominica
Egypt
Guatemala
Hungary
Indonesia
Israel
Lebanon
Marshall Islands
Myanmar
Nauru
Nigeria
Niue
Philippines
Russia
St. Kitts and Nevis
St. Vincent and the Grenadines

89. These jurisdictions are strongly urged to adopt measures to improve their rules and practices as expeditiously as possible in order to remedy the deficiencies identified in the reviews. Pending adoption and implementation of appropriate legislative and other measures, and in accordance with Recommendation 21, the FATF recommends that financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from the "non-cooperative countries and territories" mentioned in paragraph 88 and so doing take into account issues raised in the relevant summaries in Sections II and III of this report and any progress made by these jurisdictions listed in June 2000.

90. In addition, FATF recommends to its members the application of counter-measures as of 30 September 2001, to Nauru, the Philippines and Russia, which were identified as non-cooperative in June 2000 and which have not made adequate progress, unless their governments enact significant legislation to address FATF-identified money laundering concerns.

91. Should those countries or territories newly identified as non-cooperative maintain their detrimental rules and practices despite having been encouraged to make certain reforms, FATF members would then need to consider the adoption of counter-measures, as for the NCCTs of June 2000 which have not made adequate progress. With respect to those countries listed in June 2000 whose progress addressing deficiencies has stalled, the FATF will consider the adoption of additional counter-measures as well.

92. The FATF and its members will continue the dialogue with these jurisdictions. FATF members are also prepared to provide technical assistance, where appropriate, to help jurisdictions in the design and implementation of their anti-money laundering systems.

93. All countries and territories which are part of the global financial system are urged to change any rules or practices which impede the fight against money laundering. To this end, the FATF will continue its work to improve its members' and non-members' implementation of the FATF Forty Recommendations. It will also encourage and support the regional anti-money laundering bodies in their ongoing efforts. In this context, the FATF also calls on all the jurisdictions mentioned in this report to adopt legislation and improve their rules or practices as expeditiously as possible, in order to remedy the deficiencies identified in the reviews.

94. The FATF intends to remain fully engaged with all the jurisdictions identified in paragraph 88. The FATF will continue to place on the agenda of each plenary meeting the issue of non-cooperative countries and territories, to monitor any progress which may materialise, and to revise its findings, including the removal of jurisdictions' names from the list of NCCTs, as warranted.

95. The FATF will continue to monitor weaknesses in the global financial system that could be exploited for money laundering purposes. This could lead to further jurisdictions being examined. Future reports will continue to update the FATF findings in relation to these matters.

96. The FATF expects that this exercise along with its other anti-money laundering efforts, and the activities of regional anti-money laundering bodies, will provide an ongoing stimulus for all jurisdictions to bring their regimes into compliance with the FATF Forty Recommendations, in the global fight against money laundering.

APPENDIX 1

LIST OF CRITERIA FOR DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES[5]

A. Loopholes in financial regulations

(i) No or inadequate regulations and supervision of financial institutions

1. Absence or ineffective regulations and supervision for all financial institutions in a given country or territory, onshore or offshore, on an equivalent basis with respect to international standards applicable to money laundering.

(ii) Inadequate rules for the licensing and creation of financial institutions, including assessing the backgrounds of their managers and beneficial owners

2. Possibility for individuals or legal entities to operate a financial institution without authorisation or registration or with very rudimentary requirements for authorisation or registration.

3. Absence of measures to guard against holding of management functions and control or acquisition of a significant investment in financial institutions by criminals or their confederates.

(iii) Inadequate customer identification requirements for financial institutions

4. Existence of anonymous accounts or accounts in obviously fictitious names.

5. Lack of effective laws, regulations, agreements between supervisory authorities and financial institutions or self-regulatory agreements among financial institutions on identification by the financial institution of the client and beneficial owner of an account:

- no obligation to verify the identity of the client;
- no requirement to identify the beneficial owners where there are doubts as to whether the client is acting on his own behalf;
- no obligation to renew identification of the client or the beneficial owner when doubts appear as to their identity in the course of business relationships;
- no requirement for financial institutions to develop ongoing anti-money laundering training programmes.

6. Lack of a legal or regulatory obligation for financial institutions or agreements between supervisory authorities and financial institutions or self-agreements among financial institutions to record and keep, for a reasonable and sufficient time (five years), documents connected with the identity of their clients, as well as records on national and international transactions.

7. Legal or practical obstacles to access by administrative and judicial authorities to information with respect to the identity of the holders or beneficial owners and information connected with the transactions recorded.

(iv) Excessive secrecy provisions regarding financial institutions

8. Secrecy provisions which can be invoked against, but not lifted by competent administrative authorities in the context of enquiries concerning money laundering.

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[5] This list should be read in conjunction with the attached comments and explanations.

9. Secrecy provisions which can be invoked against, but not lifted by judicial authorities in criminal investigations related to money laundering.

(v) Lack of efficient suspicious transactions reporting system

10. Absence of an efficient mandatory system for reporting suspicious or unusual transactions to a competent authority, provided that such a system aims to detect and prosecute money laundering.

11. Lack of monitoring and criminal or administrative sanctions in respect to the obligation to report suspicious or unusual transactions.

B. <u>Obstacles raised by other regulatory requirements</u>

(i) Inadequate commercial law requirements for registration of business and legal entities

12. Inadequate means for identifying, recording and making available relevant information related to legal and business entities (name, legal form, address, identity of directors, provisions regulating the power to bind the entity).

(ii) Lack of identification of the beneficial owner(s) of legal and business entities

13. Obstacles to identification by financial institutions of the beneficial owner(s) and directors/officers of a company or beneficiaries of legal or business entities.

14. Regulatory or other systems which allow financial institutions to carry out financial business where the beneficial owner(s) of transactions is unknown, or is represented by an intermediary who refuses to divulge that information, without informing the competent authorities.

C. <u>Obstacles to international co-operation</u>

(i) Obstacles to international co-operation by administrative authorities

15. Laws or regulations prohibiting international exchange of information between administrative anti-money laundering authorities or not granting clear gateways or subjecting exchange of information to unduly restrictive conditions.

16. Prohibiting relevant administrative authorities to conduct investigations or enquiries on behalf of, or for account of their foreign counterparts.

17. Obvious unwillingness to respond constructively to requests (e.g. failure to take the appropriate measures in due course, long delays in responding).

18. Restrictive practices in international co-operation against money laundering between supervisory authorities or between FIUs for the analysis and investigation of suspicious transactions, especially on the grounds that such transactions may relate to tax matters.

(ii) Obstacles to international co-operation by judicial authorities

19. Failure to criminalise laundering of the proceeds from serious crimes.

20. Laws or regulations prohibiting international exchange of information between judicial authorities (notably specific reservations to the anti-money laundering provisions of international agreements) or placing highly restrictive conditions on the exchange of information.

21. Obvious unwillingness to respond constructively to mutual legal assistance requests (e.g. failure to take the appropriate measures in due course, long delays in responding).

22. Refusal to provide judicial co-operation in cases involving offences recognised as such by the requested jurisdiction especially on the grounds that tax matters are involved.

D. Inadequate resources for preventing and detecting money laundering activities

(i) Lack of resources in public and private sectors

23. Failure to provide the administrative and judicial authorities with the necessary financial, human or technical resources to exercise their functions or to conduct their investigations.

24. Inadequate or corrupt professional staff in either governmental, judicial or supervisory authorities or among those responsible for anti-money laundering compliance in the financial services industry.

(ii) Absence of a financial intelligence unit or of an equivalent mechanism

25. Lack of a centralised unit (i.e., a financial intelligence unit) or of an equivalent mechanism for the collection, analysis and dissemination of suspicious transactions information to competent authorities.

CRITERIA DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES

1. International co-operation in the fight against money laundering not only runs into direct legal or practical impediments to co-operation but also indirect ones. The latter, which are probably more numerous, include obstacles designed to restrict the supervisory and investigative powers of the relevant administrative[6] or judicial authorities[7] or the means to exercise these powers. They deprive the State of which legal assistance is requested of the relevant information and so prevent it from responding positively to international co-operation requests.

2. This document identifies the detrimental rules and practices which obstruct international co-operation against money laundering. These naturally affect domestic prevention or detection of money laundering, government supervision and the success of investigations into money laundering. Deficiencies in existing rules and practices identified herein have potentially negative consequences for the quality of the international co-operation which countries are able to provide.

3. The detrimental rules and practices which enable criminals and money launderers to escape the effect of anti-money laundering measures can be found in the following areas:

- the financial regulations, especially those related to identification;
- other regulatory requirements;
- the rules regarding international administrative and judicial co-operation; and
- the resources for preventing, detecting and repressing money laundering.

A. Loopholes in financial regulations

(i) No or inadequate regulations and supervision of financial institutions (Recommendation 26)

4. All financial systems should be adequately regulated and supervised. Supervision of financial institutions is essential, not only with regard to purely prudential aspects of financial regulations, but also with regard to implementing anti-money laundering controls. Absence or ineffective regulations and supervision for all financial institutions in a given country or territory, offshore or onshore, on an equivalent basis with respect to international standards applicable to money laundering is a detrimental practice.[8]

(ii) Inadequate rules for the licensing and creation of financial institutions, including assessing the backgrounds of their managers and beneficial owners (Recommendation 29)

5. The conditions surrounding the creation and licensing of financial institutions in general and banks in particular create a problem upstream from the central issue of financial secrecy. In addition to the rapid increase of insufficiently regulated jurisdictions and offshore financial centres, we are witnessing a proliferation in the number of financial institutions in such jurisdictions. They are easy to set up, and the identity and background of their founders, managers and beneficial owners are frequently

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[6] The term "administrative authorities " is used in this document to cover both financial regulatory authorities and certain financial intelligence units (FIUs).

[7] The term "judicial authorities" is used in this document to cover law enforcement, judicial/prosecutorial authorities, authorities which deal with mutual legal assistance requests, as well as certain types of FIUs.

[8] For instance, those established by the Basle Committee on Banking Supervision, the International Organisation of Securities Commissions, the International Association of Insurance Supervisors, the International Accounting Standards Committee and the FATF.

not, or insufficiently, checked. This raises a potential danger of financial institutions (banks and non-bank financial institutions) being taken over by criminal organisations, whether at start-up or subsequently.

6. The following should therefore be considered as detrimental:

- possibility for individuals or legal entities to operate a financial institution[9] without authorisation or registration or with very rudimentary requirements for authorisation or registration; and,

- absence of measures to guard against the holding of management functions, the control or acquisition of a significant investment in financial institutions by criminals or their confederates (Recommendation 29).

(iii) Inadequate customer identification requirements for financial institutions

7., FATF Recommendations 10, 11 and 12 call upon financial institutions not to be satisfied with vague information about the identity of clients for whom they carry out transactions, but should attempt to determine the beneficial owner(s) of the accounts kept by them. This information should be immediately available for the administrative financial regulatory authorities and in any event for the judicial and law enforcement authorities. As with all due diligence requirements, the competent supervisory authority should be in a position to verify compliance with this essential obligation.

8. Accordingly, the following are detrimental practices:

- the existence of anonymous accounts or accounts in obviously fictitious names, i.e. accounts for which the customer and/or the beneficial owner have not been identified (Recommendation 10);

- lack of effective laws, regulations or agreements between supervisory authorities and financial institutions or self-regulatory agreements among financial institutions[10] on identification[11] by the financial institution of the client, either occasional or usual, and the beneficial owner of an account when a client does not seem to act in his own name (Recommendations 10 and 11), whether an individual or a legal entity (name and address for individuals; type of structure, name of the managers and commitment rules for legal entities...);

- lack of a legal or regulatory obligation for financial institutions to record and keep, for a reasonable and sufficient time (at least five years), documents connected with the identity of their clients (Recommendation 12), e.g. documents certifying the identity and legal structure of the legal entity, the identity of its managers, the beneficial owner and any record of changes in or transfer of ownership as well as records on domestic and international transactions (amounts, type of currency);

- legal or practical obstacles to access by the administrative and judicial authorities to information with respect to the identity of the holders or beneficiaries of an account at a financial institution and to information connected with the transactions recorded (Recommendation 12).

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[9] The Interpretative Note to bureaux de change states that the minimum requirement is for there to be "an effective system whereby the bureaux de change are known or declared to the relevant authorities".

[10] The agreements and self-regulatory agreements should be subject to strict control.

[11] No obligation to verify the identity of the account-holder; no requirement to identify the beneficial owners when the identification of the account-holder is not sufficiently established; no obligation to renew identification of the account-holder or the beneficial owner when doubts appear as to their identity in the course of business relationships; no requirement for financial institutions to develop ongoing anti-money laundering training programmes.

(iv) Excessive secrecy provisions regarding financial institutions

9. Countries and territories offering broad banking secrecy have proliferated in recent years. The rules for professional secrecy, like banking secrecy, can be based on valid grounds, i.e., the need to protect privacy and business secrets from commercial rivals and other potentially interested economic players. However, as stated in Recommendations 2 and 37, these rules should nevertheless not be permitted to pre-empt the supervisory responsibilities and investigative powers of the administrative and judicial authorities in their fight against money laundering. Countries and jurisdictions with secrecy provisions must allow for them to be lifted in order to co-operate in efforts (foreign and domestic) to combat money laundering.

10. Accordingly, the following are detrimental:

- secrecy provisions related to financial activities and professions, notably banking secrecy, which can be invoked against, but not lifted by competent administrative authorities in the context of enquiries concerning money laundering;

- secrecy provisions related to financial activities and professions, specifically banking secrecy, which can be invoked against, but not lifted by judicial authorities in criminal investigations relating to money laundering.

(v) Lack of efficient suspicious transaction reporting system

11. A basic rule of any effective anti-money laundering system is that the financial sector must help to detect suspicious transactions. The forty Recommendations clearly state that financial institutions should report their "suspicions" to the competent authorities (Recommendation 15). In the course of the mutual evaluation procedure, systems for reporting unusual transactions have been assessed as being in conformity with the Recommendations. Therefore, for the purpose of the exercise on non-cooperative jurisdictions, in the event that a country or territory has established a system for reporting unusual transactions instead of suspicious transactions (as mentioned in the forty Recommendations), it should not be treated as non-cooperative on this basis, provided that such a system requires the reporting of all suspicious transactions.

12. The absence of an efficient mandatory system for reporting suspicious or unusual transactions to a competent authority, provided that such a system aims to detect and prosecute money laundering, is a detrimental rule. The reports should not be drawn to the attention of the customers (Recommendation 17) and the reporting parties should be protected from civil or criminal liability (Recommendation 16).

13. It is also damaging if the competent authority does not monitor whether financial institutions comply with their reporting obligations, and if there is a lack of criminal or administrative sanctions for financial institutions in respect to the obligation to report suspicious or unusual transactions.

B. Impediments set by other regulatory requirements

14. Commercial laws, notably company formation and trust law, are of vital importance in the fight against money laundering. Such rules can hinder the prevention, detection and punishment of criminal activities. Shell corporations and nominees are widely used mechanisms to launder the proceeds from crime, particularly bribery (for example, to build up slush funds). The ability for competent authorities to obtain and share information regarding the identification of companies and their beneficial owner(s) is therefore essential for all the relevant authorities responsible for preventing and punishing money laundering.

(i) Inadequate commercial law requirements for registration of business and legal entities

15. Inadequate means for identifying, recording and making available relevant information related to legal and business entities (identity of directors, provisions regulating the power to bind the entity, etc.), has detrimental consequences at several levels:

- it may significantly limit the scope of information immediately available for financial institutions to identify those of their clients who are legal structures and entities, and it also limits the information available to the administrative and judicial authorities to conduct their enquiries;

- as a result, it may significantly restrict the capacity of financial institutions to exercise their vigilance (especially relating to customer identification) and may limit the information that can be provided for international co-operation.

(ii) Lack of identification of the beneficial owner(s) of legal and business entities (Recommendations 9 and 25)

16. Obstacles to identification by financial institutions of the beneficial owner(s) and directors/officers of a company or beneficiaries of legal or business entities are particularly detrimental practices: this includes all types of legal entities whose beneficial owner(s), managers cannot be identified. The information regarding the beneficiaries should be recorded and updated by financial institutions and be available for the financial regulatory bodies and for the judicial authorities.

17. Regulatory or other systems which allow financial institutions to carry out financial business where the beneficial owner(s) of transactions is unknown, or is represented by an intermediary who refuses to divulge that information, without informing the competent authorities, should be considered as detrimental practices.

C. Obstacles to international co-operation

(i) At the administrative level

18. Every country with a large and open financial centre should have established administrative authorities to oversee financial activities in each sector as well as an authority charged with receiving and analysing suspicious transaction reports. This is not only necessary for domestic anti-money laundering policy; it also provides the necessary foundations for adequate participation in international co-operation in the fight against money laundering.

19. When the aforementioned administrative authorities in a given jurisdiction have information that is officially requested by another jurisdiction, the former should be in a position to exchange such information promptly, without unduly restrictive conditions (Recommendation 32). Legitimate restrictions on transmission of information should be limited, for instance, to the following:

- the requesting authority should perform similar functions to the authority to which the request is addressed;

- the purpose and scope of information to be used should be expounded by the requesting authority, the information transmitted should be treated according to the scope of the request;

- the requesting authority should be subject to a similar obligation of professional or official secrecy as the authority to which the request is addressed;

- exchange of information should be reciprocal.

In all events, no restrictions should be applied in a bad faith manner.

20. In light of these principles, laws or regulations prohibiting international exchange of information between administrative authorities or not granting clear gateways or subjecting this exchange to highly restrictive conditions should be considered abusive. In addition, laws or regulations that prohibit the relevant administrative authorities from conducting investigations or enquiries on behalf of, or for account of their foreign counterparts when requested to do so can be a detrimental practice.

21. Obvious unwillingness to respond constructively to requests (e.g. failure to take the appropriate measures in due course, long delays in responding) is also a detrimental practice.

22. Restrictive practices in international co-operation against money laundering between supervisory authorities or between FIUs for the analysis and investigation of suspicious transactions, especially on the grounds that such transactions may relate to tax matters (fiscal excuse[12]). Refusal only on this basis is a detrimental practice for international co-operation against money laundering.

(ii) At the judicial level

23. Criminalisation of money laundering is the cornerstone of anti-money laundering policy. It is also the indispensable basis for participation in international judicial co-operation in this area. Hence, failure to criminalise laundering of the proceeds from serious crimes (Recommendation 4) is a serious obstacle to international co-operation in the international fight against money laundering and therefore a very detrimental practice. As stated in Recommendation 4, each country would determine which serious crimes would be designated as money laundering predicate offences.

24. Mutual legal assistance (Recommendations 36 to 40) should be granted as promptly and completely as possible if formally requested. Laws or regulations prohibiting international exchange of information between judicial authorities (notably specific reservations formulated to the anti-money laundering provisions of mutual legal assistance treaties or provisions by countries that have signed a multilateral agreement) or placing highly restrictive conditions on the exchange of information are detrimental rules.

25. Obvious unwillingness to respond constructively to mutual legal assistance requests (e.g. failure to take the appropriate measures in due course, long delays in responding) is also a detrimental practice.

26. The presence of tax evasion data in a money laundering case under judicial investigation should not prompt a country from which information is requested to refuse to co-operate. Refusal to provide judicial co-operation in cases involving offences recognised as such by the requested jurisdiction, especially on the grounds that tax matters are involved is a detrimental practice for international co-operation against money laundering.

D. Inadequate resources for preventing, detecting and repressing money laundering activities

(i) Lack of resources in public and private sectors

27. Another detrimental practice is failure to provide the administrative and judicial authorities with the necessary financial, human or technical resources to ensure adequate oversight and to conduct

[12] "Fiscal excuse" as referred to in the Interpretative Note to Recommendation 15.

investigations. This lack of resources will have direct and certainly damaging consequences for the ability of such authorities to provide assistance or take part in international co-operation effectively.

28. The detrimental practices related to resource constraints that result in inadequate or corrupt professional staff should not only concern governmental, judicial or supervisory authorities but also the staff responsible for anti-money laundering compliance in the financial services industry.

(ii) Absence of a financial intelligence unit or of an equivalent mechanism

29. In addition to the existence of a system for reporting suspicious transactions, a centralised governmental authority specifically dealing with anti-money laundering controls and/or the enforcement of measures in place must exist. Therefore, lack of centralised unit (i.e., a financial intelligence unit) or of an equivalent mechanism for the collection, analysis and dissemination of suspicious transactions information to competent authorities is a detrimental rule.

APPENDIX 2

FATF'S POLICY CONCERNING IMPLEMENTATION AND DE-LISTING IN RELATION TO NCCTs

The FATF has articulated the steps that need to be taken by Non-Cooperative Countries or Territories (NCCTs) in order to be removed from the NCCT list. These steps have focused on what precisely should be required by way of implementation of legislative and regulatory reforms made by NCCTs to respond to the deficiencies identified by the FATF in the NCCT reports. This policy concerning implementation and de-listing enables the FATF to achieve equal and objective treatment among NCCT jurisdictions.

In order to be removed from the NCCT list:

1. An NCCT must enact laws and promulgate regulations that comply with international standards to address the deficiencies identified by the NCCT report that formed the basis of the FATF's decision to place the jurisdiction on the NCCT list in the first instance.

2. The NCCTs that have made substantial reform in their legislation should be requested to submit to the FATF through the applicable regional review group, an implementation plan with targets, milestones, and time frames that will ensure effective implementation of the legislative and regulatory reforms. The NCCT should be asked particularly to address the following important determinants in the FATF's judgement as to whether it can be de-listed: filing of suspicious activity reports; analysis and follow-up of reports; the conduct of money laundering investigations; examinations of financial institutions (particularly with respect to customer identification); international exchange of information; and the provision of budgetary and human resources.

3. The appropriate regional review groups should examine the implementation plans submitted and prepare a response for submission to the NCCT at an appropriate time. The Chairs of the four review groups (Americas; Asia/Pacific; Europe; Africa and the Middle East) should report regularly on the progress of their work. A meeting of those Chairs, if necessary, to keep consistency among their responses to the NCCTs.

4. The FATF, on the initiative of the applicable review group chair or any member of the review group, should make an on-site visit to the NCCT at an appropriate time to confirm effective implementation of the reforms.

5. The review group chair shall report progress at subsequent meetings of the FATF. When the review groups are satisfied that the NCCT has taken sufficient steps to ensure continued effective implementation of the reforms, they shall recommend to the Plenary the removal of the jurisdiction from the NCCT list. Based on an overall assessment encompassing the determinants in paragraph 2, the FATF will rely on its collective judgement in taking the decision.

6. Any decision to remove countries from the list should be accompanied by a letter from the FATF President:

   (a) clarifying that delisting does not indicate a perfect anti-money laundering system;

   (b) setting out any outstanding concerns regarding the jurisdiction in question;

   (c) proposing a monitoring mechanism to be carried out by FATF in consultation with the relevant FATF-style regional body, which would include the submission of regular implementation reports to the relevant review group and a follow-up visit to assess progress in implementing reforms and to ensure that stated goals have, in fact, been fully achieved.

7. Any outstanding concerns and the need for monitoring the full implementation of legal reforms should also be mentioned in the NCCT public report.

OUTLINE FOR MONITORING PROGRESS OF IMPLEMENTATION

SUBSTANCE

The FATF will monitor progress of de-listed jurisdictions against the implementation plans, specific issues raised in the 2001 progress reports (*e.g.*, phasing out of unidentified accounts) and the experience of FATF members. Subjects addressed may include, as appropriate:

- the issuance of secondary legislation and regulatory guidance;
- inspections of financial institutions planned and conducted;
- STRs systems;
- process for money laundering investigations and prosecutions conducted;
- regulatory, FIU and judicial co-operation;
- adequacy of resources;
- assessment of compliance culture in the relevant sectors.

JULIA CARSON
10th District, Indiana

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Subcommittee on Housing and
Community Opportunity
Subcommittee on Domestic and
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Congresswoman Julia Carson
Financial Services Committee
Hearing: "Dismantling the Financial Infrastructure of Global Terrorism"
October 3, 2001
2128 Rayburn HOB

JULIA CARSON

Mr. Chairman, first let me thank you for convening this hearing so expeditiously, and let me thank the witnesses for taking the time out of what I'm sure are your busy schedules to be here today. I look forward to hearing your testimonies.

The events of September 11th have left this country with a lot of questions. How did this happen, why did it happen, and most importantly, how can we prevent it from ever happening again? While efforts were made to understand the logistics of how such an attack could be carried out, it became increasingly obvious that the most important factor among a number of issues was the terrorists almost unfettered access to funding.

In the months - and in some cases years - before the attacks, the terrorists spent thousands of dollars alone on flight training school. They held and used credit cards on a regular basis, and enjoyed a standard of living that gave them enough disposable income to move around the country freely, enjoy an active social life, and even have memberships at gyms.

It is estimated that Osama Bin Laden's net worth is about $300 million. A combination of inheritance money and a sizeable fortune derived from extensive business ventures allows him to finance not only his training camps, but also terrorist 'cells' that blend into society and become almost invisible to authorities.

President Bush's aggressive strategy of "starv[ing] the terrorists of funding" is a step in the right direction. However, it must not be the last step. Despite the provisions of the 1970 Bank Secrecy Act and various money laundering laws enacted since, the current money laundering regime appears to have been of little use in detecting or preventing the terrorist hijackers from operating freely in the United States.

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For example, as much as $100,000 was wired in the past year from Pakistan to Mohamed Atta, a suspected leader of the terrorist hijackings, which were sent to Atta through two banks in Florida. After receiving the transfers Atta would obtain money orders - a few thousand dollars at a time - to distribute to others involved in the plot in the months before the hijackings.

The fight against terrorism will be multi-faceted, but if we can bleed terrorists like Usama bin Laden financially dry, then we have won half the battle. Without funding, terrorists will be starved of the ability to prepare for and carry out future attacks, and rather than attacking the stems of this international weed, we can go right for the roots.

On Monday, President Bush announced that the country had frozen $6 million in bank accounts linked to terrorist activity. This is a good start. At the international level, the Administration has been working with the G-8 countries and the United Nations to tackle the financial underpinnings of terrorism. Several allies, including Britain and Switzerland, have already frozen accounts of suspected terrorists, and on September 28th, the U.N. Security Council passed unanimously a U.S.-drafted resolution directing all member nations to freeze the assets of terrorists and to prohibit all financial support to terrorist organizations.

We are making progress slowly but surely, but we have many other financial areas to investigate. While bin Laden's own funds have been helpful, his network of financial donors, international investments, legal businesses, criminal enterprises (including opium trafficking), smuggling mechanisms, Muslim charitable organizations, Islamic banks and underground money transfer businesses have been of far greater value.

These are the entities that we must investigate further, and I hope that today's hearing will provide us with opportunities to further restrict the financial assets of known terrorists. I look forward to the witnesses testimonies, and hope that they will allow us to become one step closer to ending the threat of international terrorism.

Congressman Harold Ford, Jr.
House Financial Services Committee
Hearing on "Dismantling the Financial Infrastructure of Global Terrorism"
October 3, 2001

The four terrorist hijackings of September 11 were carefully conceived, planned, calculated acts of mass murder. They were not the acts simply of four terrorist cells, or 19 cowards, or one mastermind. The murder of 6,000 innocent civilians was the work of a highly intricate and well-financed global network of terror.

It has been reported that the 19 terrorists received some $500,000 from Al Qaeda sources overseas. Their coordinated attack could not have been planned or perpetrated without substantial sources of funding for false identifications, rent, travel, flying lessons, and plane tickets, among countless unknown and unknowable expenses.

The terrorists proved that in the 21st century, our enemies do not need armies or tanks or missiles to wage war on the United States. But these terrorists did need money. By starving the Al Qaeda terrorist network and all terrorists of their funding, we can strip them of an essential tool in waging terror.

To begin with, we are here to investigate how monies that originated in the shady financial web of a terrorist living in the caves of Afghanistan could have wound up being withdrawn from ATMs in Portland, Maine. This is not an easy task.

In crossing the globe, the funds were laundered into unrecognizable forms, their original source obscured. The terrorists manipulated highly developed financial instruments such as money orders and credit cards from perfectly legitimate American banks. They also likely used premodern, informal banking networks. In between, the terrorist money was shuffled through a vast network of legitimate, illegitimate, and quasi-legitimate financial institutions.

By exploring this vast network, by following the money, we can learn how a relatively small band of cowardly terrorists were able to plan such a devastating attack on the two most powerful cities in the world. By sharpening our vigilance of suspicious financial activity, we can help guard against future attacks.

Mr. Chairman, the misguided cowards of September 11 attacked more than just New York and Washington -- more than just America. The innocent civilians who lost their lives came from more than 80 nations. They spoke dozens of languages. They represented every race, every religion, and every corner of the earth.

On September 11, terrorists declared war not only on America, but on the entire civilized world. To fight back and defeat this enemy, America must join with the rest of the world.

The financial crackdown on the Al Qaeda network and on every terrorist organization cannot be a unilateral American effort. It must involve a global coalition of governments, companies, and citizens.

Without a broad international coalition against terrorism, we can freeze Al Qaeda's U.S. assets, but they can hide their assets elsewhere. We can attempt to track financial transactions within this country, but we will not be able to follow the terrorists' activity around the globe. Every nation must either join the global network of transparent, legitimate commerce, or be excluded from it. America must not engage with nations that harbor terrorists. And we must not do business with nations that harbor terrorists' assets.

The coalition against terrorism must include the private sector as well as government, firms as well as law enforcement agencies. I commend the companies and groups who have pledged their support in the war against terrorism, including the industry groups here today.

I want to thank Secretary O'Neill and our other witnesses for appearing today, and for leading the global fight against the infrastructure of global terrorism. It is my hope that we will give law enforcement agencies the proper tools to track the flow of terrorist funds within our borders and around the globe. This Committee's most urgent priority must be the prompt passage of bipartisan financial anti-terrorism legislation.

For years, Ranking Member LaFalce has been a true leader against money laundering and other forms of illegal financial activity. I look forward to working with him and Chairman Oxley and the rest of my colleagues on the committee, Republicans and Democrats.

The terrorists succeeded in killing thousands of innocent civilians. But they failed miserably in their fundamental mission -- shaking the confidence of America and breaking our spirit. America is more united than ever before, and therefore stronger than ever before. We will eradicate the Al Qaeda network, and we will defeat global terrorism.

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Statement of Congressman Steve Israel

Dismantling the Financial Infrastructure of Global Terrorism

Committee on Financial Services, October 3, 2001

Mr. Chairman, thank you so much for holding this important hearing. In the wake of the September 11 attacks, every part of our society needs to be on the alert against terror. Perhaps the two industries that have the biggest job, however, are aviation and financial services. Today we will continue to hear how our financial service sector, regulators and law enforcement will address this issue.

What we have before us is a daunting task. Osama Bin Laden and the Al Qaeda don't only use commercial banks, but small informal networks, like the hawala banks as well. These store-front size operations are virtually impossible to regulate. But we must find a way to get at them. And we have to do so without harming the legitimate activities of people who do not have the kind of banking options available to us in the United States.

Mr. Chairman, as with many issues we have faced over the last three weeks, we must develop a plan that balances security, regulation and our freedom. We must do everything we can to fight terrorism. But we must also ensure that we protect our liberties. If our public institutions partner effectively with our private institutions, we will protect ourselves and our liberties.

Thank you Mr. Chairman. I want to show my appreciation to the Treasury Secretary for attending this hearing today and I look forward to his testimony. I know that he and his staff have been working non-stop since the 11th. And all of us here recognize that and truly appreciate it.

Statement of Congresswoman Sue Kelly House Financial Services Committee Hearing on Dismantling the Financial Infrastructure of Global Terrorism

Thank you Mr. Oxley for holding this hearing on dismantling the financial infrastructure of global terrorism. As a New Yorker and the Chairwoman of the Oversight and Investigations Subcommittee I want to do everything possible to thwart the scourge of terrorism. President Bush has stated that drying up and freezing terrorist assets is among the highest priorities of the Administration and considers this at the same level as military action against Osama Bin Laden and his Al Qaeda terrorist organization. I wholeheartedly agree with this assessment and am committed to the continual work it will entail to ensure we have the most effective law in place.

The task we have set before us is difficult and will take a great deal of effort to realize. The ancient money exchange system of "hawala" makes this effort all the more difficult since it is virtually impossible to detect. Hawala -- an Arabic word that means "word of mouth" – is an international underground economic system by which financial operators in different locations honor each others' financial obligations by making payments wherever needed. In essence, hawala continues because people continue to look for ways to avoid taxes and tariff in their efforts to send funds to people in other countries. Such activities have no apparent victim other than a government and involves people who are legitimate businessmen in every other way. Hence, everyone involved in the transaction profits. There is no movement of money between countries hence no taxes or tariffs are paid. I wonder how we can possibly detect such transactions and what we can do to stop such activity?

The Administration has sent to us their proposal on addressing the problem of money laundering. Of the many good components of this package, our goal is to greatly increase our ability to measure the effectiveness of anti-money laundering efforts. While I have read reports from the General Accounting Office and Treasury about past efforts to combat money laundering, there is currently no uniform money laundering case reporting system. Without such a system our

perception of the problem is obscured and we loose opportunities to focus our efforts on the most effective enforcement of our laws.

In the past twenty-two days I have read countless articles attempting to outline the financial history of the terrorists activities before the attack. Unfortunately, many of these reports have contained conflicting information about how much money the terrorists had in the accounts they opened and how they may have financed their activities. It is my hope that the witnesses before us today will be able to share with us the best information possible to help us understand how these terrorists conducted their financing so we can design legislation that will severely limit their ability to function.

I want to briefly thank our distinguished witnesses, who have taken time out of their incredibly busy schedules to join us here today and discuss these issues with us. The Oversight and Investigations Subcommittee will continue to diligently examine the issues that surround terrorist financing and money laundering, considering what we can do to prevent future acts of terrorism.

Sep. 20 Wall Street Journal

Terror on a Budget

Bin Laden's Network, Despite Rich Image, Runs on a Shoestring

Tracing Money Trail Is Hard, As Operatives Pay Cash And Live Off Odd Jobs

Haggling Over a Car Rental

As authorities around the world rush to freeze bank accounts and financially squeeze Osama bin Laden and his organization, a troubling fact is obscured: Terrorism can be a low-budget enterprise.

Despite repeated reports that Mr. bin Laden commands a personal fortune of $300 million or more—estimates that people who know him suggest are wildly exaggerated—his far-flung network has shown itself over the years to be a primitive and cheap force, one often self-financed by start-up businesses, petty crime or low-wage jobs.

In fact, an extensive review of court documents and interviews shows that many of his followers who carry out his orders appear to receive little if any contribution from Mr. bin Laden himself. Links between Mr. bin Laden and last week's attacks haven't been firmly established; still, the hijackers followed a similar pattern. They stayed in cheap hotels and haggled over bills, and at least one lived off money from his parents.

"This costs a lot less than people think, and the truth is, bin Laden doesn't have to have any money to be able to do things like this," says Milton Bearden, who spent 30 years with the Central Intelligence Agency.

Attempts to throttle Mr. bin Laden's finances by scouring bank records and monitoring international transfers may miss their target. Mr. bin Laden's al Qaeda group, which U.S. authorities believe was responsible for last week's attacks, has in the past often moved money by hiding $100 bills in suitcases or shuffling funds through an informal and almost entirely unregulated system of remittances, not by issuing transfer orders to big banks. He and other Islamic militants have been doing this since the 1980s, when, with arms provided in part by the U.S., they fought to drive Soviet troops from Afghanistan.

By Wall Street Journal staff reporters Jerry Markon in New York, Andrew Higgins in Moscow, Steve LeVine in Almaty, Kazakstan and Steve Stecklow in London.

Mr. bin Laden's group hasn't entirely skirted conventional channels. He or his close associates have had accounts in London, Vienna, Dubai, Malaysia, Hong Kong, the Sudanese capital of Khartoum and several other locations, according to a former financial aide. Nor does the basic infrastructure of his organization—training camps stocked with weapons—come cheap.

Before moving in 1996 to Afghanistan, where he is believed to be now, Mr. bin Laden ran his operation from Sudan and splashed out $430,000 to buy chunks of land, the first of many investments there, according to testimony in the African bombings trial in New York federal court. He sent the money to a bank in Khartoum. He spent a further $230,000 to buy a used American C-130 cargo carrier. (It later crashed into a sand dune.)

Already in Place

But the division between the high cost of setting up and running a terror organization for the long haul and the relatively modest costs of launching specific operations confronts the U.S. government with a thorny problem: Strangling Mr. bin Laden's finances could help limit the threat he and like-minded militants pose down the road, but it may be too late to stop attacks by thousands he has already helped train and imbue with an implacable hatred for the West.

Authorities have been hunting for and trying to block Mr. bin Laden's assets for years. The Treasury Department Office of Foreign Assets Control in 1998 added him and al Qaeda to a list that made it illegal for any U.S. bank or company to do business with them. The following year it did the same to the Taliban government that harbors him in Afghanistan. The U.S. government also put pressure on foreign countries whose banks were suspected of moving his funds, sending emissaries to Pakistan, Saudi Arabia and elsewhere to plead for help in the fight against terrorism.

Last week's attacks have made the financial battle a crucial front in America's "new war." America, said Treasury Secretary Paul O'Neill, is "not just waging a usual war against these people but waging a financial war and enlisting the leaders of civilized world countries and their financial institutions in helping us identify who these people are, where their money is and taking it away from them."

But Saad al-Fagih, a Saudi dissident in London, says, "The Americans just don't understand Muslim society. They don't understand the money story." He says they underestimate the dominant role of cash—nearly always U.S. dollars, despite hostility towards the U.S.—and exaggerate the cost of launching even a calamitous terrorist attack. "To accomplish an operation [like the one last week], these people don't need billions of dollars, or even millions of dollars. They need a few thousand," says Dr. al-Fagih, who runs the London-based Movement for Islamic Reform in Arabia.

Indeed, according to a prosecutor who investigated the 1993 World Trade Center bombing, the whole operation cost the terrorists less than $10,000—an amount so small it didn't pop up on law-enforcement radar screens. And last week's terror, like bomb attacks on U.S. embassies in Nairobi and Tanzania, was in many ways a low-budget affair. Consider how two of the hijackers spent their final days from Aug. 26

Please Turn to Page A6, Column 2

Bin Laden's Network Runs on Shoestring

Continued From First Page

through Sept. 9: They stayed at the budget Panther Hotel in Deerfield Beach, Fla., renting a double room for $250 a week.

Richard Surma, the motel's owner, says Marwan Alshehhi, the presumed pilot of the second World Trade Center plane, and Mohamed Atta, believed to have piloted the first plane, did their own laundry at the coin-operated machine in the motel at $1 a load. They didn't rent any pay-per-view movies, never used the phone and were seen by Mr. Surma and his wife bringing in bags of groceries for use in the room's full kitchen.

Frugal Drivers

Brad Warrick, owner of Warrick's Rent-A-Car in Pompano Beach, says Mr. Alshehhi and Mr. Atta rented cars on three occasions between Aug. 6 and Sept. 9 and usually picked the cheapest car on the lot. "They weren't blowing money like they had unlimited resources, like you see on TV," Mr. Warrick says.

During the second rental, Mr. Atta exceeded the mileage limits and protested when Mr. Warrick charged him an extra $61.80. "He just didn't want to do it," Mr. Warrick says, adding that Mr. Atta eventually agreed to pay without incident.

Both men previously had lived at a $550-a-month house in Nokomis, Fla., while they attended flight school nearby. "This house is nothing extravagant at all—a real plain-Jane, small, older home," says owner Steve Kona, who noted they drove a 10-year-old car. "It's not like they were living in a $3,000-a-month rental home and driving a Mercedes."

Probably their biggest expense was flying lessons. Mr. Alshehhi and Mr. Atta both paid tuition at Huffman Aviation in Venice, Fla., from July 3, 2000, to Jan. 3, 2001. School officials said Mr. Alshehhi paid a total of $20,000 for lessons on a Cessna 152 and Piper Seneca, while Mr. Atta paid a total of $18,000. (Mr. Atta paid less because he already had a private pilot's license.)

The two men paid $1,000 a week each, using checks drawn from a Suntrust Bank branch in downtown Venice. "When they arrived here, all they had was cash," says Charles Voss, the school's former bookkeeper, who briefly rented the two men a room in his home, for which they paid about $250 in cash. "Then they went down to the bank and opened up an account. I probably recommended that bank to them; it was the same bank the company used."

Both men apparently came to the U.S. from Hamburg, Germany. Mr. Atta was a student—tuition was free—but also held a variety of odd jobs, including work as a used-car dealer in an open-air car market. How many other people supported them and what resources they had are questions now at the focus of mammoth investigation involving the Treasury and thousands of FBI and intelligence officers. But the example of past terrorist attacks also widely blamed on Mr. bin Laden, particularly the 1998 bombing of U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, gives a clear picture of the way al Qaeda prepares, funds and executes its assaults.

In operations in Sudan, Nairobi, Britain and the U.S., Mr. bin Laden's followers often have been scrappy hustlers, opening businesses ranging from hide tanning to gem trading to sesame growing, much of it complementing their ultimate aim of attacking American targets. In Sudan, a peanut and corn farm doubled as a weapons-training site. A plane carrying sugar to Afghanistan returned with weapons. A Nairobi charity provided cover so that Mr. bin Laden's group could obtain visas.

When Mr. bin Laden agreed to furnish Kalashnikov rifles to a brother radical group in Egypt called Islamic Jihad, he didn't hire a plane, a boat or even a car to deliver them. Instead, he bought two 50-camel caravans for the several hundred mile journey from next-door Sudan, according to testimony in the African bombings trial.

Jamal Ahmed al Fadl, a member of al Qaeda who worked in Mr. bin Laden's finance department in Sudan, told a New York court earlier this year how he helped move bundles of cash to supporters in the early- to mid-1990s. Testifying at the trial of four men convicted of involvement in the African bombings, he described how he had carried $10,000 to al Qaeda activists in Kenya and a further $100,000 to a militant Palestinian group based in Jordan. He hid the money under his clothes in a bag and, with help from Sudanese security officials, skirted airport checks.

Mr. al Fadl and other al Qaeda couriers rarely aroused suspicion: Their trips often combined legitimate business with their secret role as emissaries from Mr. bin Laden. Mr. al Fadl traveled to Slovakia to buy spare parts for tractors, and to Cyprus to sell peanuts on behalf of Taba Investments, Laden International and other arms of a sprawling business network set up by Mr. bin Laden and his supporters. Charities, a string of which were closed down by Kenyan authorities after the 1998 bombings, provided added camouflage.

Legitimate business, genuine charity work and political violence coexisted. Another member of al Qaeda, Wadi El Hage, who was convicted in New York earlier this year for his role in the embassy bombings, was sent to Baku, Azerbaijan, to open a charity that would serve as a cover for support to rebels fighting in Chechnya. While there, he decided to try to earn some money, too: He bought bicycles. He later explained to baffled colleagues that they were "cheap over there [and] if we buy a lot, we make money from that," according to court testimony.

Though favoring personal delivery of cash, al Qaeda did open some bank accounts under the cover of business. Mr. al Fadl told the New York court that the group had an account in Khartoum at the Al Shamal Islamic Bank. His lieutenants had accounts in London, at Barclay's Bank, and in Malaysia, Hong Kong and Dubai. Mr. al Fadl said he had an account at Girocredit in Vienna and another one at Girobank in Kenya. Barclays Bank PLC said yesterday it had frozen a London account that had been inactive "for years" and possibly connected to Mr. bin Laden's organization.

Al Qaeda also used informal financial networks known as hawalas. At the trial in New York, prosecutors presented the ledger from a small money-moving firm called Dihab Shill. It recorded $1,000 transfers from Kuwait and Yemen to a suspected al Qaeda supporter in Nairobi. But the evidence highlighted the problems of tracking such money: The hand-written ledger had been doctored, and the transfer company said it had discarded a fax it received giving details of who had transfered the money.

Financial Squeeze

Business provided good camouflage for Mr. bin Laden in Sudan and elsewhere, but it didn't earn him or his confederates much money, according to court testimony. Many of the ventures floundered. A Nairobi car company run by Mr. El Hage went belly up, for example, when he couldn't resell relatively expensive cars he intended to import from Dubai. Money was so tight at one point that Mr. El Hage told a partner in Black Giant, an al Qaeda gems business, that he was having financial problems and would have to take a side job to raise cash to support his family.

By the mid-1990s, according to court testimony by l'Houssaine Kherchtou, another erstwhile al Qaeda supporter and trainee pilot, business was so bad in Sudan that Mr. bin Laden called a meeting to discuss the crisis. He cut salaries and scaled back some ventures. Mr. Kherchtou later asked the organization for money to pay for his pregnant wife's $500 hospital bill. He was told to put her in a free Islamic clinic. He declined, he told the court, saying he knew "she would die on the first day."

Mr. bin Laden's financial problems deepened with the defection of his chief accountant, Abu Fadhl al Makkee Madani al Tayyab, a close associate who had lost part of his leg during the Afghan war against the Soviet Union. Mr. al Tayyab began giving information to Saudi authorities, say people who knew him. Despite such travail, al Qaeda succeeded in bombing two American embassies nearly simultaneously, killing 224 people and injuring several thousand.

Money was also tight in London, where Mr. bin Laden sent Khalid al-Fawwaz to set up an office in 1994 and act as his spokesman. A London-based Saudi dissident, Muhammad al-Massari, says he helped Mr. al-Fawwaz, including installing telephone lines that were secure from the Saudi secret police, by routing the calls through the U.S. He says the office was small and often short of cash. "Everything was tightening the belt," Mr. al-Massari says. He says Mr. bin Laden's envoy once had to borrow money to pay his phone bill and rejected a plea to donate money to his own group, the Committee for the Defense of Legitimate Rights.

Even the £150-a-month rental cost of the office--a relative pittance in London, equivalent to about $220--apparently became too much. Mr. al-Massari says Mr. al-Fawwaz later moved the office to the living room of his home in the Neasden area, a rental property that he estimates cost £700 to £800 pounds a month. The operation shut down in 1998 with Mr. al-Fawwaz's arrest in Britain. He remains in custody, fighting extradition efforts by the U.S. in the embassy bombings case.

Whether Mr. bin Laden at the time was stingy, overstretched or less wealthy than many believe is unclear. Mr. al-Massari, the Saudi dissident, estimates his personal fortune—inherited more than 20 years after the death of his father, a prominent businessman in Saudi Arabia who died in 1968—is closer to $30 million to $40 million, a fraction of usual estimates. He had a raft of companies in Sudan, but most of their value lay in things like bulldozers and land. "He got involved with activities that consume money, that don't produce much money," says Mr. al-Massari.

—Marcus Walker, Glenn R. Simpson and Laurie Cohen contributed to this article.

COMMITTEE ON FINANCIAL SERVICES
Statement of
John J. LaFalce
Ranking Member
Hearing on
Dismantling the Financial Infrastructure of Global Terrorism
October 3, 2001

The campaign to prevent future terrorist acts against our Nation will not be successful unless we cut off the funds that fuel terrorism. The horrendous attacks of September 11th could not have taken place without the movement of the terrorists' assets through the global financial system. According to experts, international terrorist organizations, including bin Laden and al Queda, rely on many of the same methods as criminal money launderers to move funds around the world.

We know that bin Laden uses mainstream financial institutions, in addition to underground money exchanges, to put money in his cohorts' hands. According to press accounts, the Al Queda terrorists who carried out the September 11th attack used bank accounts, credit cards, debit and ATM cards and wire transfers involving U.S. financial institutions. At the embassy bombing trials, it was revealed that bin Laden transferred $250,000 from the Al Shamal Bank in the Sudan, a bank which he allegedly founded, to an associate in Texas to buy an airplane that was ultimately delivered to bin Laden. The al Shamal Bank at one time had correspondent accounts in three U.S. banks, and may currently have correspondent relations with mainstream financial institutions in other countries despite the relationship to bin Laden and despite the weak to non-existent bank regulatory regime in the Sudan.

More recently, we have learned that one of the lead terrorist in the September 11th attack was wired $100,000 from an account in Pakistan to an account in a Florida bank. This evidence illustrates how vulnerable the financial mainstream is to exploitation by terrorists as well as by criminals.

Money laundering represents a threat to global political and economic security. The IMF estimates that the amount of money laundered annually to be between $600 billion and $1.5 trillion, or two to five percent of the world's annual gross domestic product.

Since the 1970s, I have been concerned with the ability of drug lords and other criminals to exploit U.S. financial systems to further their criminal enterprises, and I have supported legislation to modernize our anti-money laundering laws throughout that time.

The events of three weeks ago demonstrate that the very safety of our fellow citizens depends on effective national and international anti-money laundering policies. There is an urgent need for a new, concerted anti-money laundering offensive, both internationally and domestically.

The President action's to freeze assets of persons and organizations associated with bin Laden, Al Qaeda and other terrorist organizations was an important first step in cutting off bin

Laden and other terrorists from the funds that sustain them. However, if we are to lead the world in this fight against terrorism, we must insure that our own anti-money laundering laws are up to the difficult task at hand. Yesterday, Chairman Oxley and I agreed to work on a bipartisan basis to enact legislation that will give the United States the tools it needs to combat international money laundering and to disrupt the funding of international terrorist organizations. I look forward to working with the Chairman and other members of the Committee to develop, most expeditiously, sound anti-money laundering legislation.

I am pleased to see that the initial draft of the bipartisan legislation includes the International Counter-Money Laundering and Foreign Anti-Corruption Act. Last year, I worked with former Chairman Leach and members of the Clinton Administration, including Ambassador Eizenstat, to develop that legislation, which was adopted in the Banking Committee on a bipartisan vote of 33 to 1.

The International Counter-Money Laundering and Foreign Anticorruption Act would greatly enhance the tools available to combat money laundering in the US and raise anti-money laundering standards globally. While most of the debate at that time was focused on the importance of the bill in the context of combating drug trafficker and organized crime, the Clinton Administration also designed the bill to be useful in disrupting terrorist funding.

The International Counter-Money Laundering Act fills in a gap in the authority of the Secretary of the Treasury to respond to money laundering threats from financial institutions in foreign jurisdictions with an inadequate or non-existent anti-money laundering enforcement regime. Right now, we have only two limited options. At one end of the scale, the Treasury Secretary can issue informational advisories to U.S. financial institutions about specific offshore jurisdictions. But, these orders do not impose specific requirements, and they are often inadequate to address the complexity of money laundering.

At the other end of the scale, the President can issue blocking orders under the International Emergency Economic Powers Act, following a Presidential finding of a national security emergency, which operate to suspend financial and trade relations with the offending targets. The President appropriately invoked this authority on September 24th when he blocked transactions with foreign banks that did not cooperate with his order to freeze the assets of bin Laden, his associates and related entities. But, invocation of IEEPA is not always appropriate because the U.S. might not want to block all transactions with an offending target, such as a country, or because our concern centers around the inadequacy of anti-money laundering regime in a foreign country.

The International Counter-Money Laundering Act , which I have re-introduced in this Congress with Representative Velazquez, and which is cosponsored by Representative Roukema, would provide the Treasury Secretary the ability to fashion measured, precise, and cost-effective ways to address particular money laundering threats. The special measures would range from enhanced record keeping requirements to the blocking of accounts with a foreign financial institution or all financial institutions in an offending jurisdiction.

This legislation would provide the U.S. an important strategic tool in combating international money laundering and the funding of international terrorism. The legislation would

allow the U.S. to bar accounts with a foreign financial institution on a showing of a lax anti-money laundering regime within the bank or its country of domicile. These facts would be much easier to prove openly, and therefore give the U.S. important additional leverage in its dealing with that institution or the government in the country of domicile.

It is unfortunate that neither the full House nor the Senate adopted this legislation in the 106th Congress, even after our Committee had approved it almost unanimously. I hope that our new efforts to craft effective bipartisan legislation will be enacted into law before the end of this month.

I am not saying that this legislation would have prevented the terrorist attacks of September 11th. However, it would have provided the Executive Branch enhanced tools to combat global money laundering that should be a part of the sustained, multi-faceted approach that we must take in the war against terrorism.

There are other proposals that are worthy of inclusion in a comprehensive legislative package . Congresswoman Roukema has put forward very good legislation, which I have cosponsored, that addresses the inadequacies of our bulk cash smuggling laws. Her legislation should be a part of a comprehensive anti-money laundering bill. National due diligence standards to help prevent the use of fraudulent identification in the opening of bank accounts should also be considered. I believe the package should provide for better coordination of anti-money laundering efforts within the Federal government and for enhancing the ability of law enforcement agencies to obtain important investigative information from financial institutions.

I hope that the Administration will support our efforts to modernize the government's arsenal in the fight against terrorism and money laundering. I am encouraged that Under Secretary Gurule indicated last week that the Administration was amenable to legislation based on the bill that I have introduced. I want to thank the Secretary and the other witnesses for their appearances here today and look forward to their testimony.

STATEMENT OF PAUL H. O'NEILL
Secretary of the Treasury
Before
The House Committee on Financial Service
October 3, 2001

Thank you chairman Oxley, Congressman LaFalce and members of the Committee. I'm sorry I have such a short time available here today with you. Unfortunately, I have a commitment before the Senate Finance Committee at 11:00 a.m.

Currency can be as lethal as a bullet. If we are to deter and prevent future calamities, and if we are to root out terrorist cells that threaten to do violence to our people and our communities, we have to hunt the financial benefactors and the willfully blind financial intermediaries that underwrite murder and mayhem.

We have already made an excellent start with the President's Executive Order and in securing passage of a United Nations Security Council resolution calling on countries to support the battle against the financial underpinnings of terrorism. This U.N. Resolution represents a confirmation by the global community that an aggressive hunt for terrorist funds is underway and merits the cooperation of all countries. The importance of this global campaign cannot be overstated. Building a coalition for the financial campaign against terrorism is as important as a military campaign.

We have set a deliberate course at Treasury to prosecute that campaign. First, we are engaged in an effort to identify the potential financial intermediaries of suspected terrorists and their associates. We chair an interagency task force from the CIA, Departments of State and Justice, the FBI, and the NSC dedicated to the task. Second, we act on that intelligence with the issuance of domestic blocking orders that freeze accounts and bar all trade with terrorist

associates. Third, we are engaged with the FBI in the current investigation of the financing of the September 11th attacks and are making significant contributions in ferreting out those who financed those horrendous attacks. Fourth, we are engaged in an outreach to secure the endorsement of our blocking orders by allies in the G7, the EU and throughout the world. Fifth, we have begun to link disparate databases and to analyze carefully the patterns of terrorist financing that such intelligence linkages promise at the newly organized Foreign Terrorist Asset Tracking Center at Treasury.

Here at home, you can help arm us with additional legislative tools to enhance Treasury's capability to track, block and seize those assets; to secure our borders; and to freely share information about terrorist activity between law enforcement and U.S. intelligence services. Our intent is straight forward – to remove structural limitations that handicap government efforts to eliminate the violence of terrorism.

To date, the President's program has produced real and meaningful results. As this Committee is aware, we have taken decisive action domestically and, just as importantly, scores of countries have followed suit with bank freezes and pledges to take measures to heighten scrutiny of suspicious transactions.

Treasury is uniquely well-suited to wage this campaign against the financing of terrorist activity. Our cadre of highly professional staff – which includes our enforcement division, our customs staff, our many tax and accounting experts, as well as our bank supervisory bureaus and financial regulatory policy staff – have combined their talents to aggressively attack terrorist funding sources. In this effort, we have partnered with the private U.S. banking industry, which has provided us with crucial assistance in interpreting and analyzing reams of financial data. Finally, international financial regulators have made clear their willingness and commitment to

provide us with whatever assistance we may need to track down the assets of international terrorists.

Other countries have invited letters (rogatory) and requests for legal assistance under treaties intended to provide Treasury and the Justice Department with evidence in the current probe and leads for the pursuit of new names. In addition, numerous international banks have made plain that they will assist us in any manner lawfully permitted under their respective domestic laws.

Additionally, we have just started the Foreign Terrorist Asset Tracking Center intended to help identify patterns and terrorist financing practices discoverable only through inter-agency coordination and sophisticated analysis. In particular, the Center joins for the first time disparate databases from law enforcement, the intelligence community, banking regulators and open access data libraries. The data is then linked to build a mosaic of terrorist financing activity. This operation allows us a unique opportunity to be proactive -- to take a different tack by sustaining a targeted effort at terrorist financing. This approach is not limited to the episodic, targeted and staccato like pace of a case-specific criminal probe. Instead, we are using intelligence and law enforcement resources to find patterns that will allow us to address the global problem of terrorist financing.

Now, that is admittedly ambitious, but it is at the core of our declared end. **This hunt is not about money. It is about money that kills**. Our approach is proactive and preventative. Our goal is to drain the financial lifeblood that allows terrorist to finance and accomplish their deadly goals, and in doing do we aim to shackle their ability to strike again.

Every resource of the Treasury Department is committed to the purpose. But as vast as our powers, they may not alone be sufficient to the task. It is for that reason that we strongly

endorse the Administration's Anti-Terrorism bill. In particular, the IEEPA provisions that protect classified data from disclosure permit blocking prior to formal designation and provide for eventual forfeiture of terrorist assets will remove barriers to the successful prosecution of our cause. While I understand these provisions are not currently a part of the House Anti-Terrorism package, we are hopeful that they will ultimately be included. In addition, I look forward to working with this Committee on some issues not addressed in the anti-terrorism package, in particular, additional provision to ensure more effective sharing of information between law enforcement and intelligence.

Government should not be handcuffed in this endeavor. More can profitably be done, and Under Secretary Gurulé is prepared to outline potential additional measures.

But my pledge to you is simple. However you choose to arm us, the Treasury Department will use every tool we have at our disposal to shut down terrorist fundraising and dismantle their organizations one dollar at a time. Their moral bankruptcy will be matched by an empty wallet.

Testimony of

Under Secretary Jimmy Gurulé

Under Secretary (Enforcement)

U.S. Department of the Treasury

Committee on Financial Services

10:00 A.M. October 3,2001

The United States House of Representatives

2128 Rayburn House Office Building

Chairman Oxley; distinguished members of the House Committee on Financial Services:

Permit me to begin by thanking you for inviting me to testify before the Committee on the Administration's policies and proposals for dealing with the threats posed to the U.S. and global financial systems by international terrorists and terrorist groups. It is an honor to meet with you this morning as we assess the Treasury Department's strategy to cut off the financial lifeblood of the individuals and organizations responsible for the September 11 attacks.

In so far as possible, my testimony is structured along the lines requested by Chairman Oxley in his September 27, 2001 letter to Secretary O'Neill. Let me begin with an overview of what the Treasury Department hopes to accomplish.

First, the Treasury Department is committed to bringing the perpetrators of the cowardly acts of September 11th to justice. Second, we are taking steps to identify the financial infrastructure of these terrorist organizations so that we are able to disrupt and dismantle their fundraising abilities and ensure that they do not have access to the international banking system.

To attain these goals, we must improve coordination and information sharing among our own government agencies and deepen

and broaden the already strong cooperation of friendly governments throughout the world. As the President has so decisively stated, in the war against terrorism there is no middle ground: ultimately, you either stand with us -- or against us.

The Financial Networks and Operations of Terrorist Groups

To cut the lifeblood of Osama Bin Ladin and his terrorist group Al-Qaida, we must identify and take action against individuals and Islamic charitable organizations who contribute money to this organization. We will also target businesses, front companies, banks and underground money transfer systems that participate in the financial schemes of the terrorists. There can be no doubt that the dismantling of Bin Laden's financial network is one of the most critical elements of our policy to deter and prevent future terrorist attacks.

Unfortunately, available information indicates that some Islamic charitable organizations have been penetrated, exploited and are now controlled by terrorists involved with Al-Qaida. Islamic charitable organizations which have elements associated with Al-Qaida include multinational Gulf-based organizations operating worldwide with multi-million dollar budgets at one end of the spectrum and small, tightly organized front cells at the other. Islamic charitable organizations serving as cover for terrorist groups adopt innocuous names and co-opt legitimate causes. Often, well-intentioned individuals seeking to make contributions to provide relief for refugees from disaster are defrauded -- and their funds end up diverted to finance terrorism. Shutting down or re-configuring these corrupt charities is a critical component of the war against Bin Ladin's financial empire -- and one which will require intense international coordination and cooperation.

In addition to fund-raising, Al-Qaida uses banks, legal businesses, front companies and underground financial systems to finance its activities. Some Al-Qaida operatives engage in petty theft to support their cells. Other Al-Qaida elements profit from the drug trade. For instance, Taliban-controlled Afghanistan produces at least three-quarters of poppy in the world.

Al-Qaida operatives use checks, credit cards, ATM cards, and wire-transfer systems and brokerage accounts throughout the world, including the US. Often, accounts are maintained in names unknown to us.

One underground system of moving funds is called "Hawala" which operates outside traditional regulation with virtually no paper trail, relying on trust and guaranteed anonymity. Operators engaged in this system deliver money across borders without physically moving it -- assured the account will be settled by money or material goods returned in a future reverse transaction. Used widely in the Middle East and South Asia for centuries, all indications are that the system is exploited by Al-Qaida and other terrorist organizations. FinCEN and other Treasury law enforcement components are currently making efforts to determine if non-traditional money remittance systems, such as Hawala, are being used within the U.S. in furtherance of terrorist activity. Additionally, FinCEN has begun analyzing law enforcement case information and other data to build a strategic profile of methodologies used to collect, move and disburse funds that could support terrorist activities in the U.S.

Tools for Stopping Terrorist Financing

Detecting and disrupting the financing of terrorist groups is a complex process involving many steps and the input of many dedicated analysts and law enforcement personnel. At its core, the process involves six primary steps. First, the investigation and identification of targets. Second, identification of assets for potential blocking or seizure. Third, identification of methodologies used to move the funds for operational support. Fourth, identification of gaps in law enforcement and regulatory processes that make the movement of terrorist funds possible. Fifth, the sharing of information with appropriate law enforcement personnel and other appropriate organizations around the world. And sixth, application of an array of authorities, regulatory tools and law enforcement initiatives to deprive terrorists of access to their funds within the U.S. The Department of Treasury is currently utilizing the following tools in the fight against the funding of terrorism.

IEEPA

Central to this process is the ability to obtain information and make effective use of it. The International Emergency Economic Powers Act ("IEEPA"), is the principal tool used to stop terrorism financing. It provides broad authority to impose comprehensive trade and financial sanctions against foreign terrorists. Essentially, IEEPA authorizes the President to act against foreign threats to the national security, foreign policy, or economy of the United States by declaring a national

emergency with respect to an identified threat. The President is thus empowered to impose trade and financial sanctions to deal with that threat. The Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC") administers the economic sanctions programs against the specific countries, groups or individuals posing that threat. Since IEEPA applies specifically to foreign threats, the country or entities/ individuals targeted in the Executive Order are not subject to U.S. jurisdiction. OFAC instead asserts jurisdiction over U.S. persons, reaching the property of targets by acting against their property and property interests in the United States or in the possession or control of U.S. persons.

IEEPA provides the President and his designees with the authority to seek information regarding transactions subject to Presidential Executive Orders. OFAC may require US persons to provide information regarding transactions that involve or are reasonably believed to involve blocked property. The Secretary of the Treasury or the Secretary of State, depending on the circumstances, may identify additional individuals or entities targeted by the Executive Order. IEEPA also provides broad authority to block the property of foreign terrorists and their agents and to prevent U.S. persons from engaging in any type of financial transaction with targeted terrorists.

By way of background, on January 23, 1995, President Clinton signed Executive Order ("E.O.") 12947, which declared a national emergency with respect to acts of violence by foreign terrorists that threaten to disrupt the Middle East peace process. E.O. 12947 blocks all property and property interests that are in the United States or in the possession or control of a U.S. person belonging to entities named in the Annex to the order. The blocking provisions also apply to certain foreign persons designated by the Secretary of State and persons designated by the Secretary of the Treasury.

Executive Order 12947 also prohibits U.S. persons from engaging in transactions with or making charitable donations to any entity named in the Annex or designated under the Order. On August 20, 1998, President Clinton signed E.O. 13099, which added Osama bin Ladin, several of his close advisers, and Al-Qaida (also known as the Islamic Army) to the Annex of E.O. 12947. This subjects the assets of these individuals and groups to blocking and prohibits transactions with them by U.S. persons.

Executive Order 13129, issued on July 4, 1999, deals expressly with the threat posed by the actions and policies of the Taliban in Afghanistan, including the Taliban's policy of allowing territory under its control in Afghanistan to be used as a safe haven for Osama bin Ladin and Al-Qaida. The E.O. blocks all property and interests in property of the Taliban that are in the United States or in the control of U.S. persons, as well as interests in property of persons designated by the Secretary of the Treasury.

In response to the events of September 11, 2001, President Bush issued E.O. 13224 on September 23, 2001, declaring a national emergency with respect to acts of terrorism and threats of terrorism committed by foreign terrorists against the United States. E.O. 13224 blocks all property and interests in property of the individuals and entities named in the E.O.'s Annex or as designated by the Secretary of the Treasury or the Secretary of State under the order. It also prohibits transactions, including charitable donations, by U.S. persons with any individual or entity named in the Annex to E.O. 13224 or designated pursuant to that E.O. The Annex to Executive Order 13224 named 27 entities and individuals associated with Osama bin Laden and additional entities and individuals will be added in the days and months to come.

The Antiterrorism Act

The Antiterrorism Act provides authority for two additional sanctions programs targeting terrorism. First, prohibiting material support, such as funds, false identifications and safe houses, to designated foreign terrorist organizations. Second prohibiting financial transactions with state sponsors of terrorism.

First, Section 302 of the Act authorizes the Secretary of State, in consultation with the Secretary of Treasury and the Attorney General, to designate organizations meeting stated requirements as Foreign Terrorist Organizations ("FTOs"). Section 303 of the act makes it a crime for a person within the United States or subject to U.S. jurisdiction to provide material support to a designated FTO. Financial institutions in possession or control of funds in which an FTO or its agent has an interest are required to retain such funds and file reports with the Treasury Department.

The second tool, established in Section 321 of the Anti-terrorism Act, prohibits all financial transactions by U.S. persons with governments designated by the Department of State as terrorism-supporting nations, except as provided in regulations issued by the Secretary of the Treasury. Regulations implementing Section 321 were issued by OFAC to impose prohibitions with respect to governments not already covered by comprehensive OFAC-administered sanctions. At the time regulations were issued, those governments were Syria and Sudan. Currently, all state sponsors of terrorism except Syria and North Korea are subject to comprehensive financial and trade sanctions.

United Nations Participation Act

The United Nations Participation Act ("UNPA") gives the President the authority to impose economic sanctions to implement mandatory provisions of UN Security Council Resolutions.

Bank Secrecy Act

The reporting and record keeping rules contained in the Bank Secrecy Act ("BSA"), administered by the Financial Crimes Enforcement Network ("FinCEN"), create a paper trail to trace funds through the financial system. Information reported under existing suspicious transaction-reporting rules for banks is currently being forwarded to law enforcement on an expedited basis through the establishment of a toll-free hotline operated by FinCEN. Under its BSA authority, Treasury has also issued rules that would apply to the non-bank financial sector that may be used by terrorists. For example, final rules would require informal funds transfer businesses like Hawalas to register with the Department of the Treasury by the end of the year. Treasury is also preparing to issue suspicious activity reporting rules to other non-bank financial institutions such as brokers and dealers in securities and casinos.

Treasury Enforcement Bureau Participation

In addition, three of the Treasury law enforcement components, the U.S. Customs Service, IRS-C.I. and the Secret Service are active participants in the quest to investigate terrorist money laundering leads. They have been working closely with the Joint Terrorism Task Forces and at FBI headquarters to provide their considerable technical expertise with respect to the terrorist money trail.

How the President's September 23 Executive Order Differs from Previous OFAC-related Orders

President Bush's Executive Order 13224 blocks all property and interests in property, in the United States or within the possession or control of a U.S. person, of 27 foreign individuals and entities determined by the President to have engaged in, threatened or supported grave acts of terrorism against the United States or U.S. nationals. The Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, may designate foreign persons who have committed or pose a risk of committing such acts of terrorism. The Secretary of the Treasury, also in consultation with others (including in certain cases, foreign authorities) may designate persons who are owned or controlled by or act for or on behalf of foreign terrorists subject to E.O. 13224. Executive Order 13224 also prohibits any transaction or dealing in the blocked property of any person designated by the President or the Secretaries of Treasury or State, including the making or receiving of any donation to or for these persons.

E.O. 13224 greatly expands the geographic scope of previous orders intended to disrupt terrorist financing. As noted, previous programs targeted specific governments or Middle East terrorists. Although the Antiterrorism Act program targeting FTOs is broad geographically, it limits the jurisdiction of the Secretary to financial institutions rather than all U.S. persons, and does not provide the full blocking authority granted under E.O. 13224. By focusing more broadly on acts and threatened acts of terrorism against the United States or U.S. nationals, the President has brought to bear the full blocking authority of IEEPA to disrupt the financing of international terrorism.

In addition, E.O. 13224 expands the President's authority to designate persons subject to asset blocking and other sanctions by permitting the designation of "..persons determined ..to be otherwise associated with.." terrorists designated by the President or the Secretaries of Treasury or State. The Treasury Department has not previously had the authority to block assets on the basis of an association with a designated terrorist.

The Foreign Terrorist Asset Tracking Center

The complex nature of terrorist fundraising demands a creative and unconventional response from the US government. The interagency Foreign Terrorist Assets Tracking Center (FTAT), to be permanently housed in OFAC, is now up and running. FTAT is an important tool in our quest to dismantle the terrorist's financial bases and shut down their fundraising capabilities.

FinCEN and its network partners assembled on-site directly support the FTAT.

The center is dedicated to identifying the financial infrastructure of terrorist organizations worldwide and curtailing their ability to move money through the international banking system. It represents a preventative, proactive and strategic approach to using financial data to target and curb terrorist funding worldwide.

The FTAT differs from traditional law enforcement's use of financial tracking in two critical aspects.

First, the FBI and other law enforcement entities look at financial data as it relates to a specific case -- in this instance the horrific attacks of September 11. By contrast, FTAT will be looking at all global terrorist organizations implicated in several different attacks -- we seek to create a "big picture" profile of the financial infrastructure of these groups.

Second, we are collecting and analyzing this information for the express purpose of identifying and disrupting the various sources of funding that these groups are receiving.

The FTAT will focus on foreign terrorist groups that threaten U.S. national security by assessing their sources and methods of fundraising and movement of funds. This information will be used to conceptualize, coordinate and implement strategies within the U.S. government to achieve four goals: deny these target groups access to the international financial system; impair their fund-raising abilities; expose, isolate, and incapacitate their financial holdings; and to cooperate with other governments to take similar measures.

This strategy brings to bear the full weight and influence of the federal government relating to financial matters -- drawing upon the defense, diplomatic, enforcement, intelligence, and regulatory communities -- and involves foreign and domestic actions.

What Additional Legislation is Needed

As the Secretary discussed earlier, the Treasury Department is committed to dismantling terrorist fundraising mechanisms with every tool we have at our disposal. To do this effectively, I am here today to reiterate the Secretary's request that we remove the handcuffs that are hindering law enforcement and intelligence agencies from doing their job.

We are currently evaluating proposals that would equip the Treasury law enforcement components with the necessary tools for the task at hand. For instance, we believe more needs to be done to permit the sharing of information between relevant law enforcement and intelligence agencies for purposes of terrorism investigations. We are also examining certain limitations currently imposed by IEEPA, and evaluating whether the Customs Service would benefit from enhanced jurisdictions and powers. We anticipate putting together proposed legislation to address these important concerns and look forward to working with Congress on this matter in the near future.

The Extent of International Cooperation

Because terrorism is global in nature, international cooperation is an essential component of any enforcement strategy. I am pleased to report that in addition to the domestic measures we have taken, we have also received substantial cooperation internationally as well. To date, at least 27 countries have taken steps to implement President Bush's September 23rd Executive Order. Another 27 are acting on UN Security Council Resolution 1333. Still others have expressed support and are working on taking specific actions. We now stand shoulder to shoulder with those in the civilized world who are committed to ensuring that terrorists' access to financial resources is significantly impeded.

The Department of Treasury is working closely with other G-7 Finance Ministers in the fight against the financing of terrorism. Last week, Secretary O'Neill organized a lengthy G-7 Finance Ministers' phone conference call to discuss the economic and financial situation in our countries since the attack. As

part of this discussion, all participating countries shared our national action plans to block the assets of terrorists and their associates and reviewed progress to date.

On Saturday, Secretary O'Neill will meet with his G-7 colleagues in Washington to discuss these issues in more detail. They will also be discussing the role that the Financial Action Task Force can play in the fight against the financing of terrorism. They will also review the issue of offshore financial centers and their role in financing terrorism. In addition, I anticipate that Secretary O'Neill will address the important subjects of information sharing arrangements amongst financial crimes experts, and the possible establishment of terrorist asset-tracking centers in the other G-7 countries similar to the one created by the United States after the September 11 attacks.

In addition to numerous contacts with the G7 countries, senior Treasury officials have contacted finance officials in China, Russia, India, Saudi Arabia, Pakistan, Indonesia, Egypt, the Netherlands, the Philippines, Spain, Argentina, Brazil, Bahrain, and Kuwait. In these calls we have informed them that President Bush's September 23rd Order is only the first step in a multiphase U.S. action plan to combat terrorist financing. We have emphasized the importance we have attached to strong action in support of the global effort against terrorist financing. We have asked that they cooperate with OFAC in tracking terrorist money movements and move rapidly to remove any legal or other barriers that might hinder our joint efforts.

Second, OFAC will lead bilateral missions to several key countries to press for immediate effective actions to block terrorist assets, cut off terrorist fund flows, and more closely regulate the fund-raising activities of various organizations and groups. Technical assistance will be offered where it is useful. These bilateral efforts will be an extension of two previous missions undertaken by OFAC in the past couple of years.

Third, we have been working very hard to improve existing international sanctions and anti-money laundering coordination mechanisms. Prominent among these are a multilateral sanctions administrators coordinating group which meets regularly with OFAC on UN and EU sanctions issues and the G7 Financial Crimes Experts Group. Both of these groups are meeting in Europe this week to strengthen coordination and information-sharing arrangements.

Mr. Chairman, this concludes my formal testimony. I would be pleased to answer any questions that you, or members of the Committee, may have regarding the Administration's goals and policies.

Department of Justice

STATEMENT

OF

MICHAEL CHERTOFF
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

THE MONEY LAUNDERING ACT OF 2001

PRESENTED ON

OCTOBER 3, 2001

Testimony of Michael Chertoff
Assistant Attorney General, Criminal Division
United States Department of Justice
on October 3, 2001

Before the Committee on Financial Services

United States House of Representatives

Chairman Oxley, Congressman LaFalce, and distinguished members of the Committee, I am pleased to appear before the Committee today to discuss the Administration's strategy to attack the system that provided the financial support for the individuals and organizations responsible for the reprehensible terrorist attacks of September 11th. I appreciate the interest of this Committee in looking at the obstacles in the financial sector that impede law enforcement action and looking for ways to overcome these obstacles. On September 25th, Attorney General Ashcroft sent the Department's Money Laundering Act of 2001 to Congress. In my testimony today, I would like to discuss some of the provisions in our bill and explain how they will improve and update our money laundering laws to address the threats we face from terrorism and transnational organized crime.

September 11th marked a turning point in this country's fight against terrorism. President Bush has announced that we will meet that unspeakable attack on democracy with a full commitment of resources and with a firm resolve to rid the world of terrorism. We in law enforcement must do everything within our powers to apprehend those persons who have committed and seek to commit terrorist acts, and we must eradicate the forces of terrorism in our country and around the world. As the President so eloquently stated, "Whether we bring our enemies to justice or bring justice to our enemies, justice will be done."

As an initial step toward accomplishing this national mission against terrorism, the Attorney General has directed the creation of an Anti-Terrorism Task Force within each judicial district to be made up of prosecutors from the U.S. Attorney's Office, members of the federal law enforcement agencies, including the FBI, INS, DEA, Customs Service, Marshals Service, Secret Service, IRS, and the ATF, as well as the primary state and local police forces in that district. These task forces will be arms of the national effort to coordinate the collection, analysis and dissemination of information and to develop the investigative and prosecutive strategy for the country. As an integral part of this national effort, the Department of Justice and the FBI have established an interagency Financial Review Group to coordinate the investigation of the financial aspects surrounding the terrorist events of September 11th and beyond. This new Group has already made significant contributions to our efforts to unravel the plot leading up to the September 11th attacks.

All members of this Committee recognize the importance of understanding the financial components of terrorist and criminal organizations. These financial links will be critical to the larger criminal investigation, while also providing a trail to the sources of funding for these heinous crimes. The importance of "following the money," in this instance, as well as in the investigation of all criminal enterprises, cannot be overstated.

The Need for New Legislation

You have asked me to address today several issues relating to the need for and potential impact of new legislation to fight the battle against the financing of terrorist operations and other forms of money laundering, and I am very happy that you have chosen to focus on this issue

because it is an area of critical importance. As Attorney General Ashcroft has recently stated, and as I and other representatives of the Department of Justice have stated on several occasions in testimony in the House and Senate, we are fighting with outdated weapons in the money laundering arena today. When the money laundering laws were first enacted in 1986, they were designed to address what was primarily a domestic problem. Since 1986, money laundering increasingly has become a global problem, involving international financial transactions, the smuggling of currency across borders, and the laundering in one country of the proceeds of crimes committed in another country. Currency, monetary instruments and electronic funds flow easily across international borders, allowing criminals in foreign countries to hide their money in the United States, and allowing criminals in this country to conceal their illicit funds in any one of hundreds of countries around the world with scant concern that their activities will be detected by law enforcement.

International organized criminal groups based in Asia, Africa, Europe and this hemisphere have seized upon these opportunities for laundering of their assets. These criminals look upon globalization as an invitation to vastly expand the size and scope of their criminal activities – whether these organized criminal groups engage in narcotics trafficking, securities fraud, bank fraud and other white collar crimes, trafficking in persons, or terrorism. With their expanded power and reach, international organized criminals seek to corrupt police and public officials in countries around the world to protect their criminal enterprises and enhance their money-making opportunities. Foreign organized crime groups today threaten Americans, their businesses, and their property, as these groups work to expand their influence into this country.

In this environment, law enforcement is challenged, and the criminals often hold the advantage. Criminals are able to adapt to changing circumstances quickly. They pay no heed to the requirements of laws and regulations and recognize no sovereign's borders. Further, these criminal groups have learned to be adaptable and innovative, and as we succeed in a new enforcement effort or implement a new regulatory regime, they quickly alter their methods and modes of operation to adapt to the new circumstances.

The reality of international money laundering in this new century has caused countries from Northern Europe to South Africa, and from here in the West to the financial centers of the Far East, to look for ways to update their domestic laws to address this threat to our security. Equally important, countries around the globe are searching for ways to work together to address this problem jointly, irrespective of our different legal systems, customs and traditions. Criminal proceeds can be moved from country-to-country in an instant. It is thus critical that our laws are brought up to date, so that we may act effectively and cooperate fully with our partners in law enforcement abroad. The United States should be the leader in this process, but sadly we are falling behind. While our laws have remained mostly static for 14 years, other countries are moving ahead to criminalize international money laundering and to take other steps to separate criminals from their criminal proceeds.

Legislative Initiatives

The events of September 11th dramatically illustrate the horrendous consequences that can flow from allowing criminals the unfettered ability to move cash freely around the country and across our borders to finance their atrocities. That is why the Attorney General sent to Congress

the Money Laundering Act of 2001. But this legislation was not hastily put together, nor does it deal only with terrorism. This legislation has been in development for a substantial period of time and sets out a core group of statutory tools that are necessary to meet the domestic and transnational organized crime threats of the 21st Century.

I am pleased to have the opportunity to discuss today some of the obstacles we face in the financial sector that impede necessary law enforcement action and also to discuss how our bill seeks to overcome those obstacles.

First, while our money laundering laws make it a crime for foreign drug dealers, terrorists or those who have committed bank fraud to send their profits to the United States, the great majority of other foreign crimes - crimes that routinely generate money that criminals need to hide or invest somewhere else - are not on the list. The result is that U.S. prosecutors are routinely forced to turn down cases involving money sent into the United States by corrupt foreign public officials, swindlers and organized crime groups. This gap in U.S. law makes it extraordinarily difficult for federal law enforcement to keep the proceeds of foreign crimes out of U.S. financial institutions. Section 6 of our bill makes it a crime to launder the proceeds of most foreign crimes in the United States.

A second major money laundering problem we have is bulk cash smuggling. As recent press reports have made very clear, the terrorists we are pursuing used bulk cash smuggling as one of their means of financing their activities without creating a paper trail. In addition, hundreds of millions of dollars in U.S. currency representing drug proceeds, as well as proceeds of other criminal offenses, are transported out of the United States each year in shipments of bulk

cash. The only law enforcement weapon currently available to combat this activity is a requirement that shipments of more than $10,000 in cash be accompanied by a report to the United States Customs Service. Complicating matters further, the Supreme Court has ruled that the failure to file such a report is not a serious enough offense to warrant the confiscation of bulk cash when it is discovered – even if the smuggler took elaborate steps to conceal the currency. The result is that the effective penalty for smuggling dirty cash into or out of the country is a relatively short prison sentence for the courier – a virtually meaningless penalty for a drug trafficking organization or a money laundering ring. In short, the existing laws against bulk cash smuggling are wholly inadequate. Sections 19 and 20 of our draft bill address this problem.

A third major obstacle we face in financial investigations is the difficulty in obtaining records from foreign banks, even when they have correspondent accounts in U.S. banks. Just as it is offensive that citizens of foreign nations take advantage of the freedom we offer in our country to carry out their plots and crimes against our citizens, I find it deeply troubling that foreign banks and their customers are able to utilize our financial system without being subject to the rules that govern domestic banks and their customers.

Sections 36 and 37 of the Department's bill would eliminate these disparities so that U.S. law enforcement will not have to chase around the globe to obtain bank records and forfeit funds from those who are availing themselves to U.S. banking services. Section 37 would require foreign banks that maintain correspondent accounts at U.S. banks to designate a person in the United States to receive subpoenas for records and would authorize the Attorney General to issue administrative subpoenas for relevant bank records. Section 36 would amend the civil forfeiture

statutes to permit the Government to forfeit funds deposited into a dollar-denominated account overseas, if the foreign bank maintains its dollar deposits in a correspondent account at a bank in the United States.

The Committee has asked me to address the degree to which the Department is receiving full cooperation from foreign law enforcement agencies during this investigation. The Department has been gratified for the enormous cooperation we have received from our foreign counterparts in tracking down all of the persons and organizations that had a role in the September 11th attack. And, in that regard, I would like to focus on another aspect of our legislation. With respect to our ability to freeze, seize and forfeit criminal proceeds or assets intended to be used for criminal purposes, the ability of our foreign counterparts to cooperate with our investigations is often limited by deficiencies in our own laws. In some cases, the laws of foreign countries prohibit cooperation with the United States because of shortcomings in U.S. law. In other cases, we can cooperate with a foreign government to a limited extent but not provide full and effective cooperation. For example, present law now allows our federal court to enforce the orders of foreign courts relating to drug proceeds in the United States, but not for proceeds of other types of crimes. As we speak, foreign countries are working to determine what assets of terrorist groups working within their borders may have involved funds in the United States. If foreign courts issue orders to confiscate that money, we need to be able to enforce them. Moreover, present law does not allow a federal court to restrain the proceeds subject to the foreign court order during the pendency of the enforcement proceeding. Section 39 of the Department's bill would address both of these issues.

There are numerous other provisions in the Department's anti-money laundering bill that would help us enormously in tracking the assets of terrorists. I mention these few as among the most critical, but a comprehensive revamping of these laws is necessary if we are to make meaningful headway against terrorism and other forms of international organized crime. The Department's Money Laundering Act of 2001 sets out a core group of statutory tools that are necessary in order to meet the domestic and transnational organized crime threats of the 21st Century. Attorney General Ashcroft considers passage of this legislation essential to any success in disrupting and dismantling the business of organized crime and the cruel reality of terrorism.

Conclusion

I believe that the extraordinary events of September 11th should provide the impetus to jump-start consideration of money laundering legislation that will allow us to address the threats presented to us by international terrorists and criminals. The Department stands ready to provide any assistance it can to facilitate prompt consideration of its legislative proposals.

I would like to conclude by expressing the gratitude of the Department of Justice to the Committee for holding these hearings today. We in the Department of Justice look forward to working alongside our Treasury colleagues, with this Committee, with your other colleagues in the House and your counterparts in the Senate to strengthen the U.S. anti-money laundering regime at this critical hour.

Thank you, Mr. Chairman. I would welcome any questions you may have at this time.

OCTOBER 3, 2001

STATEMENT FOR THE RECORD
DENNIS M. LORMEL, CHIEF, FINANCIAL CRIMES SECTION
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE
HOUSE COMMITTEE ON FINANCIAL SERVICES
WASHINGTON, D.C.

Good morning Mr. Chairman and members of the Committee on Financial Services. While I am pleased to appear today on behalf of the Federal Bureau of Investigation (FBI), I am deeply saddened by the tragic circumstances that have brought us together for this hearing. The terrorist acts of September 11 were among the most horrific crimes ever committed against the citizens of this Country. Of course it was not only the citizens of the United States that were victims of these unprecedented terrorist attacks, it has profoundly impacted people throughout the world.

As a preliminary matter, the FBI strongly supports the Money Laundering Act of 2001, which the Justice Department submitted to Congress on September 25th. Assistant Attorney General Chertoff's testimony discusses this legislation in detail. I will simply say that enactment of these proposals would greatly assist our efforts to fight terrorism, as well as a wide variety of financial crimes.

As you well know, the FBI , in conjunction with law enforcement and intelligence agencies throughout the U.S. and the world, is in the midst of the largest, most complex and perhaps the most critical criminal and terrorism investigation in our history. The FBI has dedicated all available resources to this investigation including over 4,000 Special agents and 3,000 support personnel. Nothing has a higher priority than determining the full scope of these terrorist acts, identifying all those involved in planning, executing and/or assisting in any manner the commission of these acts, and bringing those responsible to justice. First and foremost in our priorities is doing everything in our power to prevent the occurrence of any additional terrorist acts.

So while I wish none of us needed to be here today, circumstances sadly have made this hearing all too necessary. Therefore, I welcome the opportunity to work with this Committee and all members of Congress in our efforts to cut off the financial lifeblood of the individuals and organizations responsible for these terrorist attacks. Identifying, tracking and dismantling the financial structure supporting terrorist groups is critical to successfully dismantling the organizations and preventing future terrorist attacks. I thank this Committee for realizing the importance of the financial structure of terrorist organizations to their activities, and for calling this hearing to focus attention on cutting off the financial lifeblood to

these organizations.

Given that the FBI is currently engaged in a highly complex and sensitive pending criminal investigation, I am limited in what I can discuss in an open hearing concerning aspects of the investigation, and in regards to specific strategies for identifying and taking action against those involved in financing the individuals and organizations involved in these terrorist attacks. I will of course make every attempt to accommodate any requests the Committee might have in these regards in a closed hearing/briefing or through written questions and responses. For purposes of today's hearing, I will speak in general as to the FBI's strategy to identify and take action against the financial structure of terrorist organizations, and vulnerabilities or high risk areas in the financial services sector that should be addressed.

In general, the FBI's strategy in the investigation of terrorist organizations emphasizes identifying and tracing funds used to finance and fund these organizations. As is the case in so many types of criminal investigations, identifying and "following the money" plays a key role in identifying those involved in criminal activity, establishing links among them, and developing evidence of their involvement in the activity. Locating, seizing and/or freezing assets tied to terrorist organizations plays a key role in cutting off the financial lifeblood of these organizations and in not only dismantling the organization, but in preventing future

terrorist acts. Due to the international nature of terrorist organizations, these investigations require considerable coordination with foreign authorities as well as the CIA and the intelligence community to ensure that the criminal investigation does not jeopardize or adversely impact sensitive national security matters. This requires careful adherence to restrictions separating criminal investigations from those involving national security and classified intelligence matters.

VULNERABILITIES OR HIGH RISK AREAS IN THE FINANCIAL SERVICES SECTOR

There are a number of vulnerabilities or high risk areas in the financial services sector that can be exploited by terrorist and other criminal organizations. These organizations rely heavily upon wire transfers to provide funds for terrorist cells. Tracing these transfers in a timely manner is critical in an investigation. Most often, law enforcement must subpoena information from each institution having a role in the wire transfer before the details of the complete transfer can be determined. This can cause significant delays in tracking the funds. Modifications to existing wire transfer rules have previously been proposed which would provide law enforcement with complete information about a wire transfer at any stage of the transfer upon receipt of a subpoena. Decreasing the time necessary to obtain this information would greatly enhance law enforcement's ability to track the funds and identify those

involved in the transactions.

Correspondent banking is another potential vunerability in the financial services sector that can offer terrorist organizations a gateway into U.S. banks just as it does for money launderers. As this Committee well knows, the problem stems from the relationships many U.S. Banks have with high risk foreign banks. These foreign banks may be shell banks with no physical presence in any country, offshore banks with licenses limited to transacting business with persons outside the licensing jurisdiction, or banks licensed and regulated by jurisdictions with weak regulatory controls that invite banking abuses and criminal misconduct. Attempts to trace funds through these banks are met with overwhelming obstacles. The problem is exacerbated by the fact that once a correspondent account is opened in a U.S. Bank, not only the foreign bank but its clients can transact business through the U.S. bank. As Congress has noted in the past, requiring U.S. banks to more thoroughly screen and monitor foreign banks as clients could help prevent much of the abuse in correspondent bank relationships.

Another vulnerability in the financial services sector involves Money Service Businesses (MSB). These nonbank financial institutions are frequently employed by criminals engaged in sophisticated money laundering schemes. Terrorist organizations are also able to exploit this weakness in the financial system due to

the previous lack of adequate regulation in this area. Proposed regulation for MSBs would require registration of these businesses, establish cash reporting requirements for certain threshold transactions, and require some of these businesses to file Suspicious Activity Reports (SARs). They would also have to provide FinCEN with information as to their ownership, geographic location, and operational details.

Finally, terrorist cells often resort to traditional fraud schemes to fund their terrorist activities. Prevalent among these are credit card fraud, identity theft, insurance fraud and credit card bust-out schemes. The ease with which these individuals can obtain false identification or assume the identity of someone else, and then open bank accounts and obtain credit cards, make these attractive ways to generate funds. The growing use of the Internet and the relative anonymity it provides make it even easier to open bank accounts and obtain credit cards on-line using an alias.

OBSTACLES THE FBI IS ENCOUNTERING IN OUR EFFORTS TO OBTAIN THE COOPERATION OF U.S. FINANCIAL INSTITUTIONS

The FBI has encountered no obstacles from U.S. financial institutions in our efforts to obtain their cooperation. The level of cooperation by U.S. financial institutions has been outstanding and nothing short of extraordinary. In all respects, the financial institutions have gone to considerable efforts to provide subpoenaed

information as expeditiously as possible, and have done everything possible within the legal framework to provide any cooperation requested. The response we have received from the financial services sector as well as other private sector entities has exemplified the patriotism and sense of duty America was built upon. From a law enforcement perspective as well as from the perspective of an ordinary citizen, it has been heartening to witness the unwavering support law enforcement has received from American companies and citizens.

THE DEGREE TO WHICH THE FBI AND OTHER LAW ENFORCEMENT AGENCIES ARE WORKING COLLABORATIVELY TO END TERRORIST FUNDING

The acts of terrorism on September 11 highlighted the need for a comprehensive law enforcement response to international terrorism. With the help of Congress, the FBI had previously established joint terrorism task forces in key areas of the country which brought together the combined expertise and resources of other local, state and federal law enforcement agencies. In the early stages of this investigation, it was financial evidence that quickly established direct links among the hijackers of the four flights and helped to identify a web of co-conspirators. In order to provide a comprehensive analysis of the financial evidence, the FBI has established a Financial Review Group to conduct this analysis and determine the source and

movement of funds both within and outside the United States that supported these acts of terrorism. The Financial Working Group will strive to coordinate the financial investigative effort; organize, catalog and review personal and business records; develop linkage and time lines concerning the cells and groups responsible; facilitate Mutual Legal Assistance Treaty (MLATs) requests and Letters Rogatory; develop financial and investigative leads in support of this investigation as well as future terrorism investigations; and identify criminally-related fund-raising activities by terrorist organizations. Contributions from other law enforcment agencies are critical to the success of such a group. Accordingly, the group is comprised of representatives from the Department of Justice (DOJ), FBI Financial Crimes Section, FBI Counterterrorism Division, Internal Revenue Service (IRS) - Criminal Investigative Division (CID), United States Customs Service (USCS), FinCEN, United States Postal Inspection Service (USPIS), Office of Foreign Asset and Control (OFAC), the United States Secret Service (USSS), and the Inspector General community. Each of the participating agencies has unique skills and resources. Each agency immediately responded to the FBI's request for participation by detailing some of their best qualified personnel along with the pledge of whatever resources were needed. Combined, the Group is capable of focusing a powerful array of resources at the financial structure of terrorist

organizations. The FBI considers this Financial Review Group to be an integral part not only of the response to the acts of terrorism of September 11, but of future terrorism investigations as well.

THE NATURE AND EXTENT OF INTERNATIONAL COLLABORATION ON LAW ENFORCEMENT

Terrorism is a global problem. No country is immune from its reach and terrorist groups are scattered throughout the world. By their nature, Terrorism investigations require significant collaboration on an international level. In order to subpoena records, utilize electronic surveillance, execute search warrants, seize evidence and examine it in foreign countries, the FBI must rely upon local authorities for assistance. The level of assistance and the timeliness of such assistance often varies from country to country. The FBI's Legal Attache Program provides critical contributions in these matters. The DOJ also plays a key role through its foreign liaison and participation in various international forums. The FBI and the DOJ must rely heavily upon the MLAT process and the use of Letters Rogatory to obtain information from foreign countries such as bank records. While the MLAT process works well for the most part with those countries that are participants in the Treaty process, it can at times be a slow and cumbersome method in which to obtain information. In this case, however, many of our treaty partners are speeding up the

process and cutting through red tape. Our Legal Attaches have been working closely with their law enforcement counterparts in foreign countries to coordinate investigations involving the terrorist groups responsible for these acts of terrorism. The level of cooperation by foreign law enforcement agencies has been unparrelled both in terms of its breadth and timeliness. We will work to maintain this level of cooperation as a model for future terrorism investigations.

CONCLUSION

Cutting off the financial lifeblood of the individuals and organizations responsible for the September 11 acts of terrorism is a vital step in dismantling the organization and preventing future terrorist acts. The FBI has placed a high priority on this aspect of the investigation and welcomes the opportunity to work with this Committee to ensure that law enforcement efforts can be most effective. With the assistance of Congress, the combined resources of the law enforcement community, and law-abiding people throughout the world, we are confident we can succeed in our mission. Thank you.

October 3, 2001

Testimony of

Edward L. Yingling

On Behalf of the

AMERICAN **BANKERS** ASSOCIATION

Before the

Committee on Financial Services

United States House of Representatives

Testimony of Edward L. Yingling
On Behalf of the American Bankers Association
Before the
Committee on Financial Services
United States House of Representatives

October 3, 2001

Mr. Chairman and members of the Committee, I am Edward L. Yingling, Deputy Executive Vice President and Executive Director of Government Relations of the American Bankers Association (ABA), Washington, D.C. I am pleased to be here today to present the views of ABA on the important issue of making our country's money laundering and tracking laws more effective, particularly with respect to terrorists and their supporters. The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest bank trade association in the country.

Accompanying me today is John Byrne, Senior Counsel and Compliance Manager with ABA. Mr. Byrne is responsible for ABA's regulatory and educational efforts on money laundering, asset forfeiture, and computer security issues. He has been a member of the Treasury Department's Bank Secrecy Act Advisory Group since its inception; co-chairs the Suspicious Activity Report (SAR) Review project; and co-chairs the American Bar Association/American Bankers Association Annual Money Laundering Enforcement Seminar that is now in its 13th year.

We were all shocked and saddened by the horrific events of September 11, and we mourn the loss of our friends and colleagues and all others who lost their lives in New York City, Pennsylvania, and the Pentagon. As you know, the financial community was particularly hard hit by the attack. However, if one of the goals of the attack on New York was an attempt to seriously disrupt the banking system, that goal was not met. While there were a few short-term problems caused by the destruction, the banking system continued to run smoothly. Both the banking industry and other financial providers have extensive back-up systems to deal with

business disruptions, be they acts of nature or acts of terrorism. With $2 trillion dollars of transactions moving through the banking system each day, protection of computer systems and emergency back-up plans are essential. The Federal Reserve did an outstanding job, working closely with the banking industry, to assure that the necessary liquidity was available to complete financial transactions that were already in the pipeline and to assure the overall integrity of the payments system. I'm also pleased to say that the confidence of customers in the U.S. banking system held steadfast throughout this period. The banking system continues to operate smoothly, deposits are protected, and customers worldwide have access to their funds.

Since September 11, our attention has also focused on assisting law enforcement agencies in tracking the money trail of terrorists and those suspected of supporting terrorist activities. Since the attack, as is quite clear from press reports, the banking industry has been providing information to law enforcement officials that has been instrumental in tracking the activities of the terrorists prior to September 11 and in developing leads to suspects, material witnesses, and others that should be questioned. We know from talking to bankers that a large number of Suspicious Activity Reports (SARs) have been filed. And the industry moved immediately to institute the account freeze announced by President Bush.

Today, we reaffirm our pledge to support fully efforts to find and prosecute the perpetrators of these heinous acts and their supporters, and work with Congress and this Committee to enact new tools in the campaign against terrorism. We commend you, Mr. Chairman, for holding this hearing and moving so expeditiously to address this issue.

As you know, the banking industry has a long history of support for government efforts to stop the flow both of financial resources used to finance illegal operations and of the laundered proceeds of criminal activities. The task ahead of us is daunting and should not be underestimated. Enhancing money laundering laws, including all financial service providers in the process of identifying suspicious money flows, and working with foreign governments to

adopt or improve money laundering laws will certainly make it more difficult to move funds to support terrorism or other illegal activities. However, some financial flows – clearly a considerable volume – take place outside the traditional system. Dealing with these flows in an effective way is critical and difficult. Moreover, the money flows that support terrorist activities are in some ways quite different from those that money laundering laws were originally primarily designed to prevent. Money laundering laws initially targeted the channeling of funds arising from illegal activities (such as drug trafficking) into the traditional banking system. Terrorists may not care whether the money is "cleaned." They are interested in how to collect money and move it to where they want it. We believe that by forging an aggressive public-private partnership, we will make significant progress in the fight against terrorism.

In my statement today, I would like to make three key points:

- The banking industry strongly supports efforts to track the flow of money that finances terrorist activities and to shut it down. We will do everything in our power to aid in this effort.

- A strong base already exists in current law and regulation to prevent money laundering through the U.S. banking system. This base should be extended to include all financial services providers, and the efficiency with which information is collected and analyzed should be improved.

- We are committed to work with the Administration, Congress, and the bank regulators to strengthen and extend current law where needed. We are confident that working together, we can craft provisions that both are effective and protect the due process and privacy concerns of Americans.

ABA strongly supports efforts to stop money that finances terrorist activities

Financial institutions are often the first line of defense against money launderers – they see criminal activity first and up close. The ABA and the banking industry pledge support for law enforcement and the Administration's efforts, and for enacting and implementing appropriate new laws to prevent money laundering and to fight terrorism. Since the tragedy, banks have worked closely with law enforcement agencies to track financial flows of the known terrorists and others who have been detained and questioned. The industry announced full support for the President's plan of September 24 and immediately took steps to implement the Executive Order to freeze accounts. At ABA, we also expanded our group of bank experts to advise the Administration and Congress on money laundering and related issues in light of the events of September 11.

The task ahead is a difficult one, but one we are committed to fulfill. Banks facilitate hundreds of thousands of transactions daily. In total, $2 trillion dollars flows through the banking system in the U.S. each day. As large as this seems, it does not reflect the money that flows outside the traditional banking channels – such as through the Hawala system that has been widely reported on in recent days.

Banks are able to track what is in the traditional system, but it takes cooperation and close coordination with the government and law enforcement agencies to identify individuals and groups suspected of illegal activities. Once this is done, monitoring and tracking of money flows can be undertaken and, where appropriate, assets can be frozen. As mentioned above, banks have had a long history of assisting law enforcement in tracking money flows, and have frozen assets when asked to by the appropriate government agencies. One of those mechanisms is the filing of Suspicious Activity Reports (SARs), which banks have been doing since 1996.[1] Since that time, banks have filed over 600,000 SARs. In 1996, the reporting process was greatly streamlined and simplified through the combination of six separate reporting requirements into a

[1] Prior to 1992, banks filed criminal referral forms.

new SAR that could be sent electronically (although only in disk form) to Treasury's FinCEN bureau.

The task is also made more difficult by inconsistent, weak, or non-existent laws in other countries to prevent money laundering. This makes it difficult for the U.S. government and U.S. financial institutions to track flows. Moreover, without close cooperation with U.S. government agencies, foreign governments, and foreign institutions it becomes very difficult to identify who may control, in reality, a given entity and whether the transactions indeed may violate law. We are pleased that foreign governments are, according to a *Washington Post* article of October 2, 2001, aggressively moving to tighten money laundering laws in their countries and to work closely with U.S. authorities. We urge the entire international community to work in the same direction.

A key to the success is a public-private partnership. Fortunately, there has been a long history of this kind of relationship with respect to money laundering. For example, in 1994, the Treasury began working in partnership with banks and others to establish policies and regulations to prevent and detect money laundering. This partnership approach is illustrated by the work of the Bank Secrecy Act (BSA) Advisory Group, a special panel of experts (authorized by the Annunzio-Wylie Anti-Money Laundering Act of 1992) who offer advice to Treasury on increasing the utility of anti-money laundering programs to law enforcement and eliminating unnecessary or overly costly regulatory measures. The Advisory Group consists of thirty individuals drawn from the financial community – including bankers, securities broker-dealers and other non-bank financial institutions – as well as from federal and state regulatory and law enforcement agencies. Chaired by the Treasury Department's Under Secretary for Enforcement, the group has helped to increase the effectiveness of money laundering laws, eliminated some unnecessary reporting requirements, simplified reporting forms, and refined the funds transfer record keeping rules, among other things.

A strong base on which to build exists in current law and regulation

It is important to re-examine all our tools to fight terrorism in light of the September 11 attack and move with all due speed to enact legislation that would enhance or supplement those tools. Fortunately, we have a strong base to build on in the form of laws currently applicable to banks.

Mr. Chairman, the American Bankers Association has participated in every congressional debate regarding the subject of money laundering since 1985. In fact, the ABA was privileged to work with senior members of the House Banking Committee when the original crime of money laundering was created in 1986.[2] Since that time, the banking industry has made money laundering awareness and prevention a key element in employee training and education for all banks, and we are proud of the fact that bankers have assisted law enforcement in many successful prosecutions of money laundering violations.

Since 1986, Congress has passed two additional laws covering money laundering; the Annunzio-Wylie Anti-Money Laundering Act (1992) and the Money Laundering Suppression Act of 1994. In addition to the criminal statutes covering money laundering, the banking industry complies with the Bank Secrecy Act (BSA). This law, enacted in 1970 (PL 91-508), was created "to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." The BSA is a reporting and record keeping mandate that, in general, requires the filing of currency transaction reports (CTRs) for cash transactions over $10,000. Banks file over 12 million CTRs each year.

Other key elements of the federal money laundering laws and regulations covering financial institutions are summarized below:

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[2] Pub. L. 99-570, Title I, Subtitle H, Sections 1351-67, 100 Stat. 3207-18 through 3207-39 (1986).

- Since 1984, banks have been required to file reports on possible violations of law on "Suspicious Activity Reports" or SARs. As previously noted, banks have filed approximately 600,000 SARs since 1996.

- It is a crime to conduct or attempt to conduct a financial transaction that involves the proceeds of unlawful activity. There are approximately 175 federal crimes that can be part of a money laundering count. Penalties include potential twenty-year prison terms. As noted below, we recommend this list be expanded.

- It is also a crime to intentionally structure ("break down") cash transactions under $10,000 to avoid reporting requirements.

- The Treasury has the authority to promulgate regulations for anti-money laundering programs. For example, the Treasury can require the development of additional internal policies, procedures, and controls, and can extend compliance to other financial service providers.

- The banking agencies can revoke an institution's charter following the conviction of the institution for money laundering, following appropriate hearings on the matter.

- Banks are examined by federal regulators for compliance under the Bank Secrecy Act – a process that started in 1987. These exams include reviews of correspondent banking, private banking and payable through accounts.

- The Office of the Comptroller of the Currency (OCC) issued an Advisory Letter last year to national banks (2000-3), which requires increased attention on high-risk accounts. Such special attention is also built into the new OCC examination procedures.

ABA supports strengthening and extending existing efforts

The ABA supports strengthening and extending existing efforts. The list of recommendations below is not meant to be all encompassing. There may be other important concepts that should be considered. The banking industry wants to work with the Administration, the bank regulators, and Congress to stop whenever possible the financial flows to terrorists and their supporters. We will support legislation to do that, and we will vigorously do our part to implement it.

A. The ABA strongly supports full implementation of the President's initiatives announced on September 24 and will work to implement these as more names are added to the freeze list and as international efforts are extended.

B. The ABA strongly supports the recently announced national strategy by the Treasury, in consultation with the Justice Department, entitled *The 2001 National Money Laundering Strategy*. It has numerous improvements and enhancements to the current system that should be implemented. We also commend the report for its emphasis on effectiveness. Some aspects of the way current law is implemented have made the system less effective. In the words of Treasury Undersecretary Gurulé before the Senate Banking Committee last week, current implementation diverts attention from "major money laundering enterprises." Certainly now more than ever, focus is needed, and we will be quickly forwarding to the Committee suggestions to accomplish this and, therefore, improve the effectiveness of current reporting.

C. The ABA recommends that there be an emphasis on advanced training for law enforcement agents in techniques for combating money laundering and investigating financial transactions of criminals and terrorists. We note that this is taken up in *The 2001 National Money Laundering Strategy.*

D. The ABA strongly supports the expansion of current laws and the drafting of new laws to ensure they cover other providers of financial services. This should be a high

priority. To be effective, money laundering laws and reporting requirements should apply to a broad range of financial service providers, including those in the non-traditional money-flow channels. We strongly support the Treasury's proposal that all financial institutions report suspicious transactions. Moving up the time for all money services businesses (MSBs) to register with FinCEN to December 31, 2001 is also an appropriate and necessary step. It is now widely known that terrorist networks use non-traditional methods for a significant part of their money transfers. A unified approach covering all financial services participants and money transmitters is the best defense against criminals that move money to finance their activities.

E. The ABA strongly supports the expansion of money laundering laws recommended in recent days by the Attorney General. We have reviewed the language sent to Congress by the Attorney General and recommend that it be enacted as quickly as possible.

F. The ABA strongly supports provisions that would make currency smuggling a criminal offense. There are numerous reports, and it comes as no surprise, that terrorists often smuggled cash. This issue should be addressed directly.

G. The ABA strongly recommends that Congress authorize insured depository institutions to include suspicions of illegal activities in written employment references. This is an important safety and soundness issue – to combat fraud – but also could prevent the criminals or terrorists from "planting" members of their groups inside financial institutions.

H. The ABA strongly supports giving the Secretary of the Treasury more flexible authority to designate that a specific foreign jurisdiction, financial institution, or class of international transaction, raises money laundering concerns and therefore should be subject to special treatment relating to record keeping, conditions, or even prohibitions. Provisions to accomplish this were part of legislation reported out of the House Banking Committee on a bi-partisan basis last year. We believe those

provisions provide a workable framework for discussion. Ambassador Eizenstat, who helped develop proposals in this area for the Clinton Administration, testified last week before the Senate Banking Committee that those provisions were "carefully tailored to help banks deal with identifiable situations in high-risk accounts." As discussed in the next section of my testimony, and as is the case in several issues in this area, there is a balance that needs to be achieved with respect to this potentially broad grant of authority. Targeting identifiable situations is key to that balance.

The ABA does have two recommendations to help strengthen these provisions. First, we believe banks' primary regulators should be included in the process. For example, once a high-risk situation has been identified, we believe the bank's primary regulator should be brought into the process to design the "special treatment." Treasury officials in this context are primarily enforcement specialists. Banking specialists can help design the most workable approach.

Second, the bill last year provided that the Secretary of the Treasury defines the implementation of the provisions by "regulation, order, or otherwise as permitted by law." We believe that a regulation should be written and a comment process should be required in order to obtain input on the implementation from industry experts and others. For example, uniform procedures will be needed for financial firms to comply effectively with orders for enhanced due diligence. Without uniform procedures, financial firms will not be able to be as effective and timely in complying with an order. We recognize that individual cases must be decided quickly, and therefore, we are only talking about the methodology for compliance. We recognize that in this current emergency quick action is called for. An interim final rule could be used to implement the provisions quickly, while comments are sought. In the long-run, such a process will only strengthen the effectiveness and balance of this new authority.

I. The ABA strongly supports the amendments to the Bank Secrecy Act's "safe harbor" provisions contained in last year's bill. These amendments will improve the effectiveness of the Suspicious Activities Reports (SARs) process.

J. The ABA strongly recommends that improved methodologies be developed for identifying individual account holders, particularly for non-U.S. citizens. For example, one difficulty that has come to light in the past few weeks is the problem of translating Arabic names. Also, some names used on lists are apparently incomplete. Both problems are slowing down identification and also leading to false-positive identifications. Government officials should work with our industry experts in developing more specific identification methods, particularly for non-U.S. citizens, who may not have identification numbers that are routinely used with respect to others to track their accounts. The Bank Secrecy Act Advisory Group, which brings industry experts together with government officials, is an ideal group to work on this issue. That group has a regularly scheduled meeting coming up, and we recommend this issue be on the agenda.

Striking the Right Balance

In a number of areas, as Congress develops legislation to address the terrorist threat, a debate is occurring on how to strike the right balance between aggressive law enforcement and prevention and the traditional values and rights for which our country stands. Some of those issues arise with respect to the subject of this hearing.

It is important to our citizens that our country achieves the right balance. It is also very important to banks, as they have a long history of trust with their customers. Working together, we are confident we can achieve the right balance.

This is not a new debate with respect to money laundering. Only two years ago, Congress and the regulators heard a great deal of concern from thousands of bank customers about the "Know Your Customer" proposals. Customers were very concerned about banks being

asked, they thought, to "investigate" them. The proposal was opposed by many Members of Congress and ultimately withdrawn. We believe that expanded money laundering legislation can be crafted to be both targeted and effective. At the same time, this legislation can be drafted in a manner that minimizes the concerns caused by the Know-Your-Customer proposals. We will work with the Committee to develop whatever due process and other protections may be necessary to accomplish that.

There is also a need to strike the right balance between the role of government agencies and the role of banks. Banks, and other financial institutions, can and should play an important role in helping stop illegal money flows. However, there is a practical limit on the amount of information about their customers banks have or can get.

There are a number of areas where banks can be very effective. They can, upon the appropriate request from law enforcement, track financial activities – providing trails for investigation and evidence. Second, banks can, and do, block and freeze assets and accounts as requested by government. Third, they can and do file regular reports on certain activities – for example, the over 12 million Currency Transaction Reports were filed last year. And fourth, banks can and do identify activities that may violate laws and report them, through SARs or otherwise.

However, banks have limited abilities, as a practical matter, to know what their customers are doing beyond the information provided in the process for setting up the customer relationship and the financial transactions that flow through the bank. The great, great majority of the latter are, of course, done by computer. A large bank may have tens of thousands of such transactions each day. This limitation on information is compounded when dealing with transactions or entities from foreign countries. For example, while banks can request information on who is the "beneficial owner" of an account or the ultimate recipient of a transfer, banks most often have no way to investigate or confirm this information. The House Banking Committee recognized this last year in H.R. 3886 when it inserted the language "reasonable and practicable" with respect to requirements to determine or report beneficial ownership. The Committee Report stated that the Committee was sensitive to concerns that requirements in this area could "result in some

circumstances in clearly excessive and unjustifiable burdens." While banks can and should report activities that raise suspicions of violations of law, government agencies must often take the lead in identifying problem countries, groups, individuals, and transactions and then asking banks to act upon that information. It must be a true public-private partnership, working together.

Conclusion

The American Bankers Association appreciates the opportunity to testify today. We pledge to work with you, Mr. Chairman, this Committee, Congress and the Administration to strengthen the laws and regulations to prevent money laundering and to stop the flow of funds that support terrorist activities.

TESTIMONY OF
MARC LACKRITZ, PRESIDENT
THE SECURITIES INDUSTRY ASSOCIATION

"DISMANTLING THE FINANCIAL INFRASTRUCTURE OF GLOBAL TERRORISM"

BEFORE THE COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES
October 3, 2001

Chairman Oxley, Ranking Member LaFalce and Members of the Committee:

I am Marc E. Lackritz, the President of Securities Industry Association.[1] I am pleased to appear before you on behalf of SIA to testify about strengthening the means to cut off the financial activities of potential terrorists.

At the outset, I wish to strongly commend the Committee for holding hearings on steps that can be taken to detect and disrupt the financial activities around the globe that support and advance terrorism. We strongly support this effort. We stand ready to work with Congress and the regulators to fashion a response to address how our system was abused.

I also want to take this opportunity to express the very deep appreciation of everyone in the U.S. securities industry for the heroic firemen, policemen and other rescue workers who have made unimaginable sacrifices, including their lives in far too many instances, trying to save the lives of others. At this dark moment in America's history, these valiant men and women have been an inspiration and a model of valor that no American should ever forget. The atrocities of September 11 also inflicted a terrible toll on the securities industry. We will always try to honor

[1] SIA represents the shared interests of nearly 700 securities firms. SIA member-firms (including investment banks, broker-dealers and mutual fund companies) are active in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 80 million investors directly and indirectly through corporate, thrift, and pension plans. In the year 2000, the industry generated $314 billion of revenue directly in the U.S. economy. Securities firms employ over 700,000 individuals in the U.S.

the memories of the many innocent people in our industry, husbands and wives, fathers and mothers, friends and colleagues, whom we lost on that awful day.

While that day was a grievous one for our nation and our business, the securities industry has shown remarkable resilience, reopening the bond markets two days after the attacks and the equity markets the following Monday. We handled record trading volumes on both the New York Stock Exchange and the NASDAQ in the first trading session after the attacks. Many of the firms that were devastated by the attacks have rapidly moved to find alternate office space and resume business. Many unaffected firms have been extremely generous, offering office space, systems support and back office resources to the impacted firms. We have pulled together magnificently in this difficult time, and I have never been prouder to represent this industry.

But we react to this primarily as Americans. We now face a grave challenge to secure the safety of our families, our peace of mind, the productivity of our economy, and our values as a free people in the face of a barbaric and ruthless enemy. As President Bush has stated, we must meet that challenge on many levels and in many ways, from military action and diplomacy to tracking and disabling financial networks that support terrorism. While the struggle ahead will require patience, dedication and courage, I have no doubt that our nation will prevail, and will emerge from our war on terrorism victorious and stronger than ever. Likewise, our economy and our markets will overcome the blows that were inflicted on September 11, and will continue to be engines of opportunity and growth for the United States and the rest of the world.

SIA and our member-firms have long been strong supporters of the government's anti-money laundering efforts. Securities firms presently are subject to a number of statutory and regulatory requirements that enable the federal government to better identify and combat money laundering. Since public trust and confidence in our industry and marketplace is our most

important asset, we are fully committed to completely eliminating any possible money laundering from the securities industry. Many of the existing practices presently employed within the industry demonstrate the industry's commitment. For example, the widespread practice at brokerage firms of not accepting cash or severely limiting the deposit of cash and cash-like monetary instruments sets the securities industry apart from other financial institutions. Further, many firms—including those presently under no legal obligation to do so—report suspicious or potentially suspicious transactions relevant to possible violations of law or regulation.

In order to provide the Committee with an understanding of the anti-money laundering obligations of the securities industry, let me first address the statutes and regulations that apply to broker-dealers.

A. The Anti-Money Laundering Statutes and Regulations Applicable to the Securities Industry

Since 1970, broker-dealers have been subject to certain federal anti-money laundering laws imposing reporting and record keeping requirements. The principal anti-money laundering rules for a broker-dealer are found in the Bank Secrecy Act ("BSA"). Like banks, securities firms, since 1970, have been required to report currency transactions in excess of $10,000 on a Currency Transaction Report ("CTR"). Similarly, they have been required to file reports relating to the physical transportation of currency or bearer instruments in amounts over $10,000 into or outside of the United States on a Currency or Monetary Instrument Transportation Report ("CMIR").

Over time, the U.S. Treasury Department ("Treasury") has also adopted other record keeping rules, which have varying degrees of relevance to the securities industry. For example,

in 1994, the BSA was amended to prohibit financial institutions from selling money orders, or bank, cashier's or traveler's checks for more than $3,000 in currency unless the institution first verifies and records the identity of the purchaser. Even though most broker-dealers do not engage in cash transactions and do not sell these types of instruments, these responsibilities are still applicable to the securities industry. In 1995, Treasury promulgated a "Joint Rule" and a related "Travel Rule" requiring all financial institutions to maintain certain information regarding funds transfers of $3,000 or more, *see* 31 C.F.R. § 103.33(e) & (f) (2000), and to include the required information in the transmittal of funds. *See* 31 C.F.R. §§ 103.33(e)(f) and (g) (2000).

Since 1986, broker dealers, like other financial institutions, have been subject to the criminal provisions of the Money Laundering Control Act of 1986, P.L. 99-570 ("MLCA"). Among other things, the MLCA established two anti-money laundering criminal statutes that for the first time, made money laundering a crime in and of itself. *See* 18 U.S.C. §§ 1956 and 1957 (2000). The MLCA also added certain provisions to the BSA, which were also applicable to brokerage firms, including adding a specific prohibition against "structuring" transactions to avoid the impact of the BSA's reporting thresholds.

In April 1996, the Treasury Department promulgated a Suspicious Activity Report ("SAR") filing requirement for banks to report suspicious activities relative to possible money laundering. At that time, Treasury indicated that it would be adopting SAR reports for broker-dealers in the future. To advance this regulation, the securities industry worked with Treasury at that time to provide input so that any SAR reporting obligation for broker-dealers took into account the differences between the securities business and the banking industry, as well as the various differences within securities firms. Concurrently with Treasury's adoption of this SAR

regulation for banks, the bank regulatory agencies adopted a parallel requirement requiring banks to file SARs for both money laundering and all suspected federal criminal violations.

Although Treasury had not yet proposed SAR reporting requirements for broker-dealers, in 1996, the federal bank regulatory agencies adopted regulations extending their own rules to the subsidiaries of bank holding companies, including broker-dealers, and requiring these broker-dealers to file reports of suspicious activity. Since that time, all broker-dealers that are subsidiaries of bank holding companies have been required to file SARs. It should be noted that since the adoption of the SAR requirement, the number of firms that are now subsidiaries of bank holding companies has dramatically increased. Thus, only those broker-dealers that are not subsidiaries of a bank holding company are not currently under any legal requirement to file SARs. However, many of these firms, and in particular the larger firms, file voluntarily, even though they are under no legal obligation to do so.

The SEC and the self-regulatory organizations also have various existing regulations requiring the reporting of securities violations in order to ensure the safety and soundness of securities firms. These include the uniform forms for registration and termination ("U-4s" and "U-5s"), and forms for reporting violations of securities rules ("RE-3s), as well as other forms relating to net capital violations. All broker-dealers, whether a part of a bank holding company or not, are required to file these forms.

In sum, the conduct of broker-dealers, like that of all financial institutions, has since 1970 been governed by the record keeping and reporting requirements of the BSA, and since 1986 by the general prohibitions against money laundering found in sections 1956 and 1957. Broker-dealers that account for the vast majority of client assets within the securities industry have been

filing SARs – because they have been required to as subsidiaries of bank holding companies or filing voluntarily.

Further, securities firms, like banks, are subject to the provisions of the various sanctions programs administered by the Office of Foreign Assets Control ("OFAC"). These include prohibitions against trading with certain identified enemies of the United States, as set forth in various lists prepared by OFAC and other agencies of the government. These also include certain money launderers identified by the government, including members of the Cali cartel and other individuals identified under the Foreign Narcotics Kingpin Designation Act.

B. Industry Practices Relating To Anti-Money Laundering Initiatives

While the securities industry has been subject to the specific rules described above, in an effort to be responsive to concerns about money laundering and to protect their reputations and integrity, many firms have gone beyond these requirements and developed their own anti-money laundering programs. In fact, building upon traditional Know Your Customer practices in the securities industry, and their own regulatory requirements, members of the securities industry have attempted to design for themselves anti-money laundering programs that best suit their businesses and that are consistent with their own regulatory scheme.

Given the variety and complexity of the securities industry today, and the considerable differences among securities firms, it is widely recognized that no one standard or model program is appropriate for all firms industry wide. As Lori Richards, Director of the SEC's Office of Compliance Inspections and Examinations has observed, in describing an appropriate money laundering program for the securities industry, there is no "one-size-fits-all" template. The securities industry is comprised of introducing brokers (historically, smaller firms), clearing

firms (generally, larger, well-capitalized firms), firms that offer customers discount brokerage and prime brokerage services, and firms that provide clients the ability to transact business via the Internet. Some firms service retail customers, others deal primarily with an institutional client base, and others handle both types of customer accounts. Moreover, while large firms are able to facilitate customer trades and transactions involving millions of dollars, other organizations, may operate in a local community and offer limited services with limited capital. A firm's anti-money laundering program must therefore be adjusted to reflect the type of firm involved, the breadth and scope of its customer base, its business and its resources.

Consistent with this approach, most firms on their own initiative have developed a policy of prohibiting or restricting the receipt of currency at the firm. The significance of this policy cannot be overstated. Many of the suspicious transactions reported by banks involve attempts to or actual engaging in transactions in currency. Restricting the acceptability of these cash deposits limits the exposure of broker-dealers to the placement stage of money laundering, *i.e.*, the initial placement of currency into the financial institution. Similarly, broker-dealers have for many years on their own initiative limited the receipt of cash equivalents, such as money orders and traveler's checks. This voluntary procedure was initiated in order to deter individuals who purchase these instruments in exchange for currency at banks, thereby potentially structuring the transaction below the $10,000 reporting threshold, from depositing these instruments at broker-dealers as part of their structuring scheme.

Securities firms also have procedures to know their customer ("KYC"). The concept of KYC in the securities industry has developed largely from existing rules of self-regulatory organizations ("SROs") designed to ensure that a recommended securities transaction is suitable for a particular customer. Since at least the early 1960's, New York Stock Exchange Rule 405

has provided that "each member organization is required ... to ... [u] se due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization and every person holding power of attorney over any account accepted or carried by such organization." The NASD's Conduct Rules, as well as NYSE's Rule 405, generally require that securities firms obtain basic information pertaining to the prospective customer at the time the account is opened, including the customer's name and residence and whether the customer is of legal age. Additionally, for certain types of accounts, securities firms must make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, "the customer's tax identification or Social Security number, occupation of the customer and name and address of employer, and whether the customer is an associated person of another member."

Moreover, if the customer is a corporation, partnership or other legal entity, the suitability rules generally require that the firm obtain the names of any persons authorized to transact business on behalf of the entity. In addition, under these rules, the account opening documents must be signed by both the registered representative who introduces the account and the member or partner, officer or manager who accepts the account.

As a matter of good business practice, many securities firms go beyond the suitability rules, and seek to obtain additional information, such as the customer's date of birth, telephone number, investment experience and objectives, familial information, and information related to the customer's nationality. Further, at the new account opening stage, most firms use vendor databases to check for background information on their customers in order to assure themselves that there is nothing untoward in the customer's past.

The process of "knowing one's customer" is not concluded once the initial account opening information has been obtained. Even after the account is established, firms, in the normal course of the relationship, continue to build upon the information initially provided by the customer and update their records accordingly.

The efforts of the securities industry do not stop there. Continuing with their voluntary efforts, many firms have adopted procedures for monitoring transactions to prevent and detect money laundering and potential structuring transactions. For example, many firms monitor for the receipt of cashier's checks, in amounts of less than $10,000, since they may evidence potential structuring in violation of the Currency Transaction Reporting Requirements.

Moreover, many firms have gone beyond the attempt to identify structuring of transactions and attempted to design and implement their own software programs to identify more sophisticated patterns of money laundering. In this context, it is important to recognize that because securities firms do not routinely accept cash or cash-equivalents, they are generally only able to identify these types of transactions at the more difficult stage in the money laundering process, that is, the layering or integration stages of money laundering. There is no simple formula for the detection of these types of transactions at this stage in the process and even regulators are unable to provide significant guidance in this area, thus making the process extremely difficult. Nevertheless, many firms, particularly large firms, have developed or are in the process of developing monitoring procedures for wire transfers, again, all on their own initiative.

Increasingly, there has been an overlap developing between the entities or names identified by the various sanctions programs administered by OFAC and various anti-money laundering concerns. Indeed OFAC provides the industry with names of certain terrorists and

drug dealers who represent a threat to our country. Accordingly, members of the industry have incorporated the OFAC rules into these monitoring programs to ensure compliance with both sets of regulations.

Finally, although the broker-dealer SAR rule has not been proposed as yet, many firms on their own have been filing suspicious activity reports on a voluntary basis since the rule was adopted for banks. To do this they have relied on the above-described monitoring procedures, but also on their traditional obligations to know their customers.

In general, securities firms with global operations apply the same procedures in foreign countries consistent with the money laundering statutes in those countries.

C. Securities Industry Anti-Money Laundering Initiatives

Historically, the securities industry has been supportive of our government's efforts to combat money laundering. SIA and many securities firms have worked closely with Treasury, the SEC, the federal bank regulatory agencies and members of Congress to assist in these efforts.

Among our most significant efforts has been our work with the Treasury and SEC since 1995 to develop regulations extending the requirement to file Suspicious Activity Reports to broker-dealers, which is one of the items called for by the National Money Laundering Strategy for 2001. Industry representatives have spent hundreds of hours sharing our views on how to implement an effective system for broker-dealers to identify and report suspicious activity. We have given suggestions on the proposed rule, the guidance to accompany the rule, and the SAR form, which we believe should be markedly different from the bank SAR because of the different types of businesses engaged in by the securities industry. During the past, industry

representatives as part of the Bank Secrecy Act Advisory Group have also provided input to Treasury on other rules, such as the Funds Transfer Rules.

At the beginning of this year, we met the new administration's Treasury Department officials to share our views on anti-money laundering compliance in the securities industry. At those meetings, we again emphasized the benefits to be gained from a broker-dealer SAR rule and our support for such a rule. In short, we have long supported the issuance of SARs for broker-dealers, and look forward to working with Treasury and the SEC to help finalize a rule.

We applauded the SEC's announcement earlier this year that it was going to step up its examination of broker-dealers for anti-money laundering compliance. Following that announcement, we shared our views with the SEC and SROs, which will also conduct the examinations, on how these examinations could be most effective. We also met with SEC and SRO examiners on several occasions to help them understand the kinds of anti-money laundering programs that broker-dealers have implemented. We think the SEC's examinations will help the entire industry enhance its compliance efforts, and will continue to work to make these examinations effective.

SIA also worked closely with the staff of Treasury and other agencies to develop the *Guidance on Enhanced Scrutiny for Transactions That May Involve the Proceeds of Foreign Official Corruption* (the "Guidance"), which was issued in January of this year. SIA is supportive of the goals of the Guidance to aid in the identification of transactions by senior foreign political officials that may involve the proceeds of foreign official corruption. We believe industry and government should continue cooperating in this area and focus efforts on compiling a list of "senior foreign political officials" that would be accessible to industry.

SIA has also worked with the Treasury Department's Office of Foreign Assets Control to aid their understanding of the securities industry. In coordination with OFAC, we have implemented certain initiatives to help our member firms be aware of the trading restrictions and asset freezes imposed by OFAC. For instance, we immediately email to our firms and post to our Website any OFAC bulletin or announcement sent to us by OFAC. SIA's Website contains an OFAC page listing OFAC updates, and also includes a link to OFAC's Website.

At the end of last year, SIA met with and submitted comments to the Judicial Review Commission on Foreign Asset Control on the Foreign Narcotics Kingpin Designation Act. The Act prohibits U.S. persons, including U.S. financial institutions, from conducting financial or business transactions with those individuals or entities designated as "Significant Foreign Narcotics Traffickers." Our comments indicated our support of the Kingpin Act and our belief that the application of the sanctions authorized by the legislation will aid government efforts to continue the fight against the international distribution of drugs and other related criminal activity. We also provided the Judicial Review Commission with certain recommendations to improve the current asset blocking scheme under the International Emergency Powers Act.

One other area that SIA has cooperated with government has been on the General Accounting Office's survey of the anti-money laundering compliance in the securities industry. During the past year, in addition to submitting written surveys to GAO, many of our firms have spent much time meeting with GAO staff to aid their understanding of securities industry practice. We understand that GAO's report is due in a few weeks.

Lastly, industry members have long been involved in industry-wide training on anti-money laundering issues. One such effort was the preparation of an anti-money laundering videotape. SIA has implemented many initiatives to educate the industry on money laundering

and OFAC issues. We recently held an anti-money laundering conference at which representatives from the SEC, FinCEN, the Federal Reserve Board, the NASD and OFAC spoke, and an entire session was devoted to OFAC issues. In addition, we send Legal Alerts to our members advising them of current anti-money laundering issues, such as the OFAC requirements, foreign transaction advisories from FinCEN, and the SEC's recently announced examination of anti-money laundering compliance. As previously mentioned, our Website contains a page devoted not only to OFAC but to FinCen issues as well. The website lists OFAC bulletins, FinCEN advisories and other information to help firms comply.

D. Industry's Response to The Terrorist Activity and Suggestions For Improved Public-Private Coordination

I would like to now turn to what our industry is doing in response to the President's September 24th order freezing U.S. assets of and blocking transactions with 27 individuals and organizations. Consistent with our practice and in coordination with OFAC and the SEC, we promptly sent notice of the order to our member-firms, and posted the notice on our Website. We have asked firms to check their records for any relationships or transactions with individuals or organizations named in the order. We have also distributed the list of names identified by the Federal Bureau of Investigations. Many of our firms have received requests from SROs for information on certain trading in securities that occurred before September 11, and they are responding to those requests. Firms are going beyond those requests and examining and looking for unusual trading patterns in equities, fixed income, options and futures in certain industries.

In addition, two days ago many of our firms met in New York to coordinate what they are doing in response to the Executive Order and the other requests from regulators. We have also arranged a meeting tomorrow between our member firms and several regulatory and law

enforcement representatives. The purpose of these meetings is to convey to these agencies what we as an industry are doing, to learn if we can respond more effectively, and to offer additional assistance to the government. As a starting point, we intend to designate individuals from our firms as point persons and to have the agencies designate such persons as well. This will greatly improve communication.

Turning to legislation, SIA is supportive of the need to have anti-money laundering legislation and would welcome any legislative tools, which will enable our members to combat money laundering.

To the extent that any legislation imposes additional due diligence obligations on financial institutions, including securities firms, we believe it is very important to provide flexibility with respect to those requirements. Thus we are supportive of legislation which delegates authority to the Secretary of the Treasury to propose such procedures, through regulation, after consultation with both the SEC and members of the industry.

We also think legislation should help to facilitate communication between broker-dealers and between banks and broker-dealers when they are investigating suspicious activity. Presently, brokerage firms are constrained from sharing with each other or with banks, information they have received which they believe may be suspicious. Since a customer may have accounts at multiple firms, and since money laundering often involves movement of monies between firms, it would facilitate and expedite the fact gathering and analysis leading to the identification of suspicious transactions, if firms could communicate openly between themselves for this limited purpose.

As to suggestions for improved cooperation between government and industry, we support the expansion of the Bank Secrecy Act Advisory Group's mandate to include terrorism

and other issues related to the security of our financial system. Alternatively, we would suggest the creation of a joint industry/government task force to address these issues. We think these issues need to be addressed at all times, not just in times of crises.

One area we would like to highlight where there could be improved coordination between industry and government is in industry's efforts to monitor accounts of senior foreign political officials. Our efforts in this area would be aided greatly if the government provided a list of all such individuals to financial institutions. It is well within the ability of the government to identify these individuals and such a list would also permit industry to focus more of its resources on monitoring accounts, rather than trying to prepare its own list of such persons. Such a list would be similar to those lists issued by OFAC.

On behalf of the Securities Industry Association, I appreciate the opportunity to submit our views on the proposed legislation and hope that they are of assistance to the Committee in reaching its very important goal of improving the government's tools against money laundering and terrorism. We will be available to provide additional comments to the Committee as it considers legislation addressing these critical issues. I am happy to try to respond to any questions the Committee may have.

Testimony of
Ambassador Stuart E. Eizenstat,
before the
U.S. House of Representatives
Financial Services Committee
Washington, D.C.
on the Problem of Money Laundering[1]

October 3, 2001

Chairman Oxley, Mr. LaFalce, and members of the Committee, good morning. This is my first appearance before this Committee since my return to private life, and I am glad to see you again. But more important, I am honored to have this opportunity to contribute to your examination of money laundering and the problems it raises for the United States. Stopping money laundering, and the syndicates it finances, is critical to the fight against narcotics trafficking, organized crime, foreign corruption, and software counterfeiting and other intellectual property crimes, as well as to preserving the health of the global financial system. After the events of September 11, it is clear that stopping money laundering is also critical to the personal safety of our citizens.

The Committee's decision to put these issues on its agenda is thus highly appropriate and, sadly, very timely. In the past two decades, in Republican and Democratic Administrations, the groundwork has been laid for effective action against the criminal financial system. But we are now at a crucial point in deciding what that

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[1] Stuart E. Eizenstat heads the International Trade and Finance Group at Covington & Burling. I would like to thank Debra R. Volland of Covington & Burling and Stephen Kroll, formerly Chief Counsel of the Treasury's Financial Crimes Enforcement Network and now in private practice, for their assistance in preparing this testimony. Mr. Kroll's public service in combating money laundering was a singular contribution to the United States.

action should be and how to take it. Answering those questions is not easy, as today's hearings will confirm, but our commitment to robust, effective, and balanced action against domestic and international money laundering must remain focused and firmly in place.

My experience during the last eight years makes that plain to me. At the Department of Commerce, I could see how difficult it was for our companies honestly to bid against competitors who could draw on hidden sources of funds. At the Department of State, I came more fully to understand how money laundering fuels the kleptocracy that can undermine even the most well-thought-through economic development efforts or policies to build civil society. And at the Treasury Department I was confronted with the role money laundering plays in driving the narcotics trade and the other crimes I have already mentioned, the way it infects the vitality of our trade in goods — through the operation of the black market peso exchange — and the degree to which it can undermine the credibility and safety of the global financial system upon which our prosperity depends.

Now we are brought face to face with another aspect of the criminal financial system – its use by the merchants of terror. Last Monday's issuance by President Bush of a new Executive Order aimed squarely at terrorist financing and expanding the blocking of terrorist assets forcefully pinpoints an essential target. Terrorists must have money, to pay for weapons, travel, training, and even benefits for the family members of suicide bombers. The September 11 terrorists spent tens, if not hundreds, of thousands of dollars on U.S. flight training, and their U.S. living expenses were likely even higher. They

often paid cash, flashing rolls of bills. Estimates of the total cost of the September 11 attacks exceed $1 million.

The capital that terrorists require comes from several sources. The first is pure criminal activity, harking back to the daring daylight robbery of a Tzarist banking van in 1907 by a gang led by a young Bolshevik named Josef Stalin. Terrorists engage in credit-card fraud, kidnapping, robbery, and extortion. Their paymasters can include covert state sponsors, who can also conveniently look the other way at strategic partnerships between terrorists and organized criminal groups, especially narcotics traffickers.

Large sums come from old fashioned fund raising through "charitable" organizations here and abroad; a recent World Bank study indicates that the globe's civil wars are primarily funded by contributions from diaspora populations. In some cases donations are understood to be destined for use by terrorists, even when raised for ostensibly humanitarian purposes. There are "charities," for example, in various Gulf States that may serve as conduits for Osama bin Laden and his al-Qaeda movement.

Wealthy individuals may make large contributions. Bin Laden, whose private fortune is often estimated as having at least once amounted to $300 million, is likely a special case, providing seed capital to nascent terrorist groups and operations around the world. Evidence produced at the trial of defendants in the 1998 embassy bombings in Kenya and Tanzania indicated that bin Laden's web included various trading and investment companies, with accounts in several world financial centers. Reports that bin Laden's operatives sold the shares of leading international reinsurers short on Monday

September 10 are simply speculative at this point. But his funds are somewhere earning a return as part of the very system he has vowed to destroy.

However obtained, terrorist funds need to be transmitted across borders, marshaled, and spent – with application of a new layer of camouflage at each step. This is the money launderer's domain and brings us directly back to the broader subject.

The sheer size of the criminal financial system provides a rough measure of the problem at hand. The IMF has estimated the amount of money laundered annually at between $600 billion and $1.5 trillion, or two - five per cent of the world's annual gross domestic product. At least a third of that amount, up to half a trillion dollars annually, is thought to pass through U.S. financial institutions at least once on its clandestine journey. While these are estimates, they are as likely as not to be on the conservative side. Whatever the precise number, it is far too high in real terms and reminds us that the risks money laundering creates simply are not going away.

Money laundering is the financial side of crime. If the so-called "smurfs" can seem merely odd as they dribble drug-tainted dollars into our financial institutions to stay under the $10,000 threshold for reporting currency transactions, the sophisticated cartel bankers who operate behind the shield of bank secrecy, off-shore havens, or suborned officialdom, with millions of dollars at their disposal, are anything but quaint. And that is why, as I mentioned earlier, the fight to curtail money laundering has been in the past the product of a bipartisan consensus.

- The landmark legislation making money laundering a distinct and very serious felony in the United States was the product of the Reagan Administration.

- The Bush Administration led the way in creating the Financial Action Task Force, at the G-7 Summit in 1989, and establishing the Financial Crimes Enforcement Network at the Treasury a year later, and President Bush signed the Annunzio-Wylie Anti-Money Laundering Act in 1992; that landmark legislation authorized suspicious transaction reporting and uniform funds transfer recordkeeping rules, among other pillars of today's counter-money laundering programs in the United States and around the world.
- President Clinton used the occasion of his nationally-televised address on the occasion of the United Nations' 50th Anniversary to call for an all-out effort against international organized crime and money laundering, kicking off a coordinated five year effort to bring the world's mafias and cartels to heel and finally to close the gaps in our laws and regulatory systems that had permitted those criminal groups to thrive.

President Clinton issued an Executive Order on August 22, 1998 adding Al Quaida and bin Laden to the terrorist list, which permitted their assets to be frozen. In July 1999 and January 2000, a delegation from Treasury's Office of Foreign Assets Control (OFAC) went to Saudi Arabia, Kuwait, Bahrain and the UAE to gain their cooperation in regulating the activities of certain so-called "charitable groups" and banks involved with them -- with mixed results. In July 1999, $250 million of Taliban funds were frozen in the U.S.

The unhappy experience of the Bank of New York highlights the vulnerability of our financial institutions. The Bank was involved in an alleged money laundering scheme in which more than $7 billion was transmitted from Russia into the Bank through

various offshore secrecy jurisdictions. At least one relatively senior official of the Bank was suborned, and she suborned others. We do not know to this day how much of the money came from the accounts of the Russian "Mafiya," how much represented assets stolen in the course of the privatization of state industries — undermining the hopes of Russian reformers — and how much was money hidden to escape legitimate taxation, destroying the fiscal projections on which the reformers depended to lower taxes for ordinary citizens. We do know that the money came out of Russia through accounts in shell banks chartered in places such as the South Pacific island of Nauru. The Deputy Chairman of Russia's Central Bank has estimated that, in 1998 alone, $70 billion was transferred from Russian banks to accounts in banks chartered in Nauru; not all of that money went to Bank of New York, of course, but none of it was ever intended to stay in Nauru.

At the same time, everyone should understand that the growth of money laundering is the dark side of globalization. It is an unfortunate by-product of the persistent leveling of barriers to trade and capital flows since the end of World War II, most importantly, of course, the end of capital controls around the world. As Secretary Rubin famously pointed out in his address to the Summit of the Americas in 1995 — when that Summit produced a hemispheric declaration against money laundering — few of the acts that the money launderer takes are, in themselves, illegal. All of our national policies are designed to stimulate saving, the free movement of funds, and the operation of efficient payment systems.

What makes money laundering illegal is knowledge of the criminal origin of the funds involved, the criminal purpose to which the funds will be put, or both, and

deliberate efforts to fog the transparency of the financial system for criminal ends. The task confronting both government and the financial sector is to shape cost-effective policies to filter out that tainted conduct, to find the one person in the bank line who is a money launderer in the clothing of an honest bank customer. We devoted immense time and effort in the last eight years to striking the necessary balance.

Our policy had a number of major components.

We continued the drive for creative criminal and civil enforcement of our counter-money laundering laws.

We greatly expanded the information resources available to state and local officials who were building their own money laundering efforts, through programs such as FinCEN's Project Gateway.

We sought to level the playing field by closing gaps in coverage of previously inadequately regulated money transmitters and other non-traditional financial service providers, following our enforcement successes in the New York area against the flow of funds to Colombia and the Dominican Republic in 1996-1998.

We issued guidance to help U.S. financial institutions build their own defenses — to protect their business reputations and avoid entanglement with crime — and give appropriate scrutiny to private banking and similar high dollar-value accounts, especially for transactions that could involve transfer of the proceeds of corruption by senior foreign officials. Unlike more general "know-your-customer" ideas that attracted a great deal of criticism two years before, our guidance was carefully tailored to help banks deal with identifiable situations in high-risk accounts.

We recognized the absolutely crucial importance of international cooperation to disrupt the global flow of illicit money.

We supported the work of the Financial Action Task Force in its revision of its landmark Forty Recommendations, under the FATF Presidency of Treasury Under Secretary Ron Noble in 1996.

We led the way in building the Egmont Group of Financial Intelligence Units, which now has over 50 member agencies that cooperate in sharing information to fight money laundering around the world.

Even more important, we pushed forward the FATF's non-cooperative countries and territories ("NCCT") project in the Clinton Administration's last two years. Fifteen nations were cited as being non-cooperative in the international fight against money laundering in 2000,[2] and the Treasury followed up the FATF's action and its own analysis by issuing hard-hitting advisories to our financial institutions recommending enhanced scrutiny against potential money laundering transactions involving those nations. I am especially proud that we did not play favorites. Russia was on the list, but so was Israel. Liechtenstein was on the list, but so were the Philippines. We cited Nauru, but we also cited Panama and the Bahamas. And the reaction has been very positive. While I was Deputy Secretary of the Treasury I met with senior officials of Panama and with Israel's then-Minister of Justice, and I learned of the steps those countries were

[2] The list of NCCTs in 2000 was: the Bahamas, the Cayman Islands, the Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, the Philippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines. As indicated below, the Bahamas, the Cayman Islands, Liechtenstein, and Panama were removed from the list in June 2001 after curing most or all of the deficiencies FATF cited, and eight new countries — Egypt, Grenada, Guatemala, Hungary, Indonesia, Myanmar, Nigeria, and Ukraine — were added to the list in June and September 2001.

taking to be removed from the NCCT list. My Treasury, Justice, and State Department colleagues met with officials of the governments on the list at various levels to help get the necessary work done — with clear results! Israel, and now Russia, have for the first time enacted laws to criminalize money laundering and are working to put serious anti-money laundering programs into place. Liechtenstein has broken down its time-honored bank secrecy traditions. Panama is now prepared to share information to assist law enforcement investigations around the world.

Finally, we issued the nation's first two National Money Laundering Strategies, to present a balanced strategic view of our efforts and point the way forward, year-by-year, as Congress asked us to do.

I would like to speak in more detail about several aspects of our work.

International Counter-Money Laundering Act of 2000 – now H.R. 1114. The International Counter-Money Laundering Act of 2000 (H.R. 3886), introduced on March 9, 2000, was an important part of our approach, because it would have given the Executive Branch the tools necessary to deal in a measured, precise, and cost-effective way with particular money laundering threats. Under the legislation, which had very strong support from senior federal law enforcement professionals, the Secretary of the Treasury — acting in concert with other senior government officials and with prompt notice to the Congress — would have had the authority to designate a specific foreign jurisdiction, financial institution, or a class of international transaction as being of "primary money laundering concern" to the United States. Although the legislation had strong bipartisan support, and was approved by this Committee by a 33-1 vote on June 8, 2000, the legislation did not make it further in the 106th Congress.

Congressman LaFalce is to be applauded for his leadership in introducing H.R. 1114, similar to the Leach-LaFalce bill that passed this Committee last year overwhelmingly. A similar bill in the Senate, S. 398, has been co-sponsored by Senators Kerry and Grassley.

Succinctly, we have few tools to protect the financial system from international money laundering. On one end of the spectrum, the Secretary can issue Treasury Advisories, as we did in the summer of 2000; those warnings encourage U.S. financial institutions to pay special attention to transactions involving certain jurisdictions. But they do not impose specific requirements, and they are not sufficient to address the complexity of money laundering.

On the other end of the spectrum, the International Emergency Economic Powers Act ("IEEPA") provides authority, following a Presidential finding of a national security emergency, for full-scale sanctions and blocking orders that operate to suspend financial and trade relations with the offending targets. President Clinton issued a number of such orders, including two, in 1995 and 1998, directed at designated terrorist organizations that led to accelerated efforts to locate funds of those organizations in the United States.

Of course, President Bush invoked IEEPA, among a number of other authorities, a week ago Monday. I applaud President George W. Bush's aggressive action in going after specific phony charitable groups and for his aggressive use of IEPPA to encourage international financial cooperation.

The President's Order was obviously appropriate under the circumstances, and it sent a blunt and forceful message. There are, however, many other situations in which we will not want to block all transactions, or in which our concern centers around under-

regulated foreign financial institutions or holes in foreign counter-money laundering efforts. In those cases a more flexible tool is necessary, but we do not have one available, because under present law there is nothing between the two ends of the spectrum - a Treasury Advisory on the one hand, and full-blown IEEPA sanctions on the other.

H.R. 1114 would provide a greater array of tools to fight terrorism, drug trafficking and organized crime.

As I noted, the key to the proposed statute's operation is the determination by the Secretary of the Treasury that a specific foreign jurisdiction, a financial institution operating outside the United States, or a class of international transactions is of "primary money laundering concern" to the United States. The determination would trigger the authority of the Secretary to take several actions in response.

After consultation with the Chairman of the Federal Reserve System, the Secretary could:

1. Require financial institutions operating in the United States to keep records or file reports concerning specified types of transactions, in the aggregate or by individual transaction, and to make the records available to law enforcement officials and financial regulators upon request. Requiring such record retention could prove invaluable to law enforcement and help the government better to understand the specific money laundering mechanisms at work. As a corollary benefit, a requirement that U.S. institutions increase the level of scrutiny they apply to transactions involving targeted jurisdictions or institutions could result in pressure on the offending jurisdictions to improve their laws.

2. Require financial institutions to ascertain the foreign beneficial owners of any account opened or maintained in the United States. Requiring financial institutions to ascertain foreign beneficial ownership would help cut through layers of obfuscation that are one of the money launderers' primary tools.
3. Require identification of those who are allowed to use a bank's correspondent accounts (as well as so-called "payable-through" accounts), which allow customers of a foreign bank to conduct banking operations through a U.S. bank just as if they were the U.S. bank's own customers. Requiring identification of those who are allowed to use a bank's correspondent accounts and payable-through accounts would prevent abuse of these technical financial mechanisms by foreign money launderers who seek to clean their dirty money through U.S. financial institutions. The U.S. needs to be able to find out who really benefits from these accounts, and, by application of transparency, discourage abusive practices.
4. Where necessary in extreme cases, the Secretary would have the authority to impose conditions upon, or prohibit outright, the opening or maintaining of correspondent or payable-through accounts. Having that authority in reserve gives credibility to the rest of the statute's measures, and may, in cases of documented, continuing abuse of the financial system by known criminals, be a necessary last resort.

The legislation would also have made necessary corrections in existing law. It would have codified and strengthened the safe harbor from civil liability for financial institutions that report suspicious activity. It would have toughened the geographic

targeting order ("GTO") mechanism that was used so effectively in New York, New Jersey, and Puerto Rico, against Colombian and Dominican narcotics traffickers. It would have made it clear — as Congress intended — that the "structuring" penalties of the Bank Secrecy Act apply both to attempts to evade GTOs and to attempts to circumvent the funds transfer recordkeeping and identification rules that Congress specifically authorized in 1992. In addition, the legislation would have made it clear that banks could under certain circumstances include suspicions of illegal activity by former bank employees in written employment references sought by subsequent potential bank employers.

The legislation was designed to permit carefully tailored, almost surgical, action against real abuse; that action was to be graduated, targeted, and discretionary — graduated so that the Secretary could act in a manner proportional to the threat presented; targeted, so the Treasury could focus its response to particular facts and circumstances; and discretionary, so the Treasury could integrate any possible action into bilateral and multilateral diplomatic efforts to persuade offending jurisdictions to change their practices so that invocation of the authority would be unnecessary. There will be situations, unfortunately, in which the U.S. may have to lead the way alone, and if so the statute would have given it the capacity to do so.

Importantly, the legislation would not jeopardize the privacy of the American public. The focus of the recommended legislation is not on American citizens. The recommended legislation focuses on foreign jurisdictions, foreign financial institutions, or classes of transactions with or involving a jurisdiction outside the U.S., that involve the abuse of United States banks facing a specifically-identified "primary money

laundering concern." For this reason, the recommended legislation is different from the so-called "know-your-customer" rules proposed two years ago. And finally, it should be noted that the proposed legislation is narrowly drawn, so as not to add burdens to financial institutions. The approach targets major money laundering threats while minimizing any collateral burden on domestic financial institutions or interference with legitimate financial activities.

Changes to the Definition of Money Laundering Offenses in Title 18. We had also hoped to see through the passage of legislation, long sought by the Department of Justice, to widen the range of money laundering offenses. As you know, money laundering under our criminal laws must involve the proceeds of "specified unlawful activities." Unless a particular set of transactions involves the proceeds of such a predicate crime, it cannot serve as the basis for a money laundering investigation. But there are important gaps in the definition, especially for crimes against foreign governments, such as misappropriation of public funds, fraud, official bribery, arms trafficking, and certain crimes of violence. Unless such crimes are made "specified unlawful activities," a rapacious foreign dictator can bring his funds to the U.S. and hide them without fear of detection or prosecution in many cases; this we should not, indeed we cannot, continue to allow. I am pleased that S. 1371, introduced this session in the Senate by Senator Levin and co-sponsored by Senator Grassley, Chairman Sarbanes, Senator Kyl, Senator Nelson and Senator DeWine, includes the necessary change and important related changes to the nation's forfeiture laws. I hope the House will consider similar legislation.

FATF. We must continue to support the FATF and other multilateral counter-money laundering efforts. FATF's work is ongoing; in June it designated six additional nations — Indonesia, Nigeria, Egypt, Hungary, and Guatemala, and Myanmar — as non-cooperative, and it completed the most recent round of reviews in early September by adding Grenada and Ukraine to the list. But it has also signaled the progress made in the Cayman Islands, Liechtenstein, the Bahamas, and Panama, by removing those countries from the list, and it is working with other designated countries to ameliorate the problems identified in the NCCT process. In particular, I hope that Israel, which has already initiated at least one significant money laundering prosecution, can be removed from the list shortly.

This is multilateral cooperation at its best. The efforts of our government, at the Departments of Treasury, Justice, and State, must continue to view the problem of money laundering "holistically," as part of the broader issue of global financial standards — for banking supervision, tax administration, and counter-money laundering control — that are necessary to foster international prosperity and faith in civil society, underlying the growth of democratic governance around the world. Before September 11, Treasury had yet to issue advisories concerning the countries added to the FATF list this year; that may have been an accident of the calendar, since the FATF had a supplementary meeting, at which it named Grenada and Ukraine as non-cooperative, in the first week in September. But I hope that the sort of guidance that was issued in the past will continue to be the norm, rather than a scaling back of the perceived consequences of the FATF designations.

I suspect that you would like me to compare the work in which we were engaged more broadly with the approach of the new Administration to money laundering. It is too early to make any firm comparisons. The Bush Administration's first National Money Laundering Strategy emphasizes strong enforcement and intensified use of criminal and civil asset forfeiture laws and continues a number of specific enforcement initiatives — the High Intensity Financial Crime or HIFCA program, expanded state and local involvement in money laundering investigations, and efforts to dismantle the "black market peso exchange" — that we began. And I was glad to see Attorney General Ashcroft announce in a recent speech that he will be seeking legislation like that sought by the sponsors of S. 1371, to expand the money laundering laws in Title 18 to deal with the proceeds of foreign corruption, as I discussed earlier in my statement. I understand that the Administration's anti-terrorism legislation also includes a necessary amendment to the money laundering laws to add support for designated terrorist organizations to the statute's list of specified unlawful activities; I support this change.

I hope, however, that the program outlined in the National Money Laundering Strategy for 2001 does not shortchange appropriate legislative and regulatory efforts to shore up the weaknesses in our financial mechanisms that money launderers can exploit. There is no substitute for creative and aggressive enforcement of our laws; but enforcement itself is not enough. A targeted approach to strengthening our anti-money laundering rules is necessary to close loopholes through which criminal proceeds flow, and to reduce risks that later take countless resources to investigate and prosecute, after the damage is done. We can never know who exploits the weaknesses in our network of

transparent financial arrangements and anti-money laundering defenses, and a program that relies only on enforcement is unlikely to be as effective as we would want.

I would also like to mention several recommendations relating specifically to the financing of terrorism. The Administration moved forcefully on Monday to cut off terrorists' financial oxygen; as the President recognized, that is a critical part of the effort on which the nation is now embarked, and rules already in place can be applied forcefully and quickly to financial support for terrorism. Necessary steps include:

- Adequate staffing, funding, and authority for the Foreign Terrorist Asset Tracking Center first sought by National Security Council officials 18 months ago and initially brought together last week at the Treasury.
- Intensified analysis and matching for terrorist links of information reported under the counter-money laundering rules. We must also obtain information reported in other countries, using the multilateral "Egmont Group" of anti-money laundering agencies that now has more than 50 members.
- Investigation and blocking of underground banking practices such as the "hawala," through which a potentially significant portion of terrorist funds is thought to pass into or out of the U.S without ever touching the formal banking system.
- Greater scrutiny of phony charitable organizations by our government and our allies abroad, a move that was begun in the last five years and is, again, brought forcefully forward by Monday's Executive Order. That scrutiny must not be limited to the United States, because much of the

money involved is simply not here, and we should ask Saudi Arabia, Kuwait, Qatar, and the UAE to apply similar scrutiny to ostensible charitable organizations operating in those nations.

- Pressure by the FATF for quick improvement in the anti-money laundering and financial transparency rules of countries such as the UAE and Pakistan.
- Issuance of guidance about terrorist money laundering to U.S. financial institutions, with special emphasis on identification of beneficial account ownership.
- Continued careful coordination with the U.S. economic sanctions program aimed at terrorists' assets.

Of course, we cannot overestimate our chances of success; financial data alone, no matter how good it is, rarely provides the archetypal "smoking gun" in investigations. Moreover, our adversaries are very good at hiding funds, using traditional systems outside sophisticated financial channels to transfer funds, and, simply, making do on a meager budget. And the amounts of money terrorism requires – even for organized, purposeful, continuing terrorist organizations such as those that produced the September 11 tragedy - is never large enough even to cause a blip in the daily stream of international cross-border payments. But the fact that the clues are not easy to find cannot and should not deter us. Information is rarely determinative; even the fabled naval code breakers of World War II at Bletchley Park and at the Naval Intelligence Station in Washington could only track U-Boats, on good days, to ocean "sectors" many hundreds of square miles in area.

The acid test for me of the Administration's anti-money laundering strategy is whether the Administration will support H.R. 1114, working with this Committee, which I hope will mark up the legislation and move it forward expeditiously. Indeed the legislation was designed to give the Secretary of the Treasury the sort of flexible targeted authority that can now be used to advantage in the fight against financial aspects of terrorism, as well as against money laundering generally. I want to emphasize again the bipartisan support for last year's version of the legislation, as indicated by the 33-1 vote by which the House Banking Committee — led by Jim Leach of Iowa — sought to move that legislation, conscious of its obligation to protect the expectations of our citizens about the credibility of our federally insured financial institutions.

To sum up: the rapid growth of international commerce, along with advances in technology, are making it easier for criminals in foreign jurisdictions to launder money through foreign institutions into the United States, and hence to finance the expansion of the global criminal economy and the growth of organized criminal groups and international terrorists as sub-state threats to our security. Money laundering debilitates the integrity and stability of financial and government institutions worldwide, as a parasite that feeds on the very advances in global finance and free economies that make successful money laundering possible. That is why we have had a strong history of support on both sides of the aisle for designing investigative, regulatory, and legislative steps to fight money laundering around the world, and why it is both fitting and essential that this Committee monitor the work of the Administration in this critical area and act where necessary to shore up our national defenses against this criminal contagion.

Thank you very much. Again, it is a pleasure to be here and contribute to the Committee's work. I would be happy to answer your questions.

TESTIMONY
OF
JOHN F. MOYNIHAN
BEFORE THE
HOUSE COMMITTEE ON FINANCIAL SERVICES
HEARING ON
"DISMANTLING THE FINANCIAL INFRASTRUCTURE OF GLOBAL TERRORISM"
OCTOBER 3, 2001

Mr. Chairman and members of the committee I want to thank you for inviting me to be with you today at this very important hearing. Like all patriotic Americans I share in the pain of the tragic events of September 11th and I hope that in some small way through my expertise and testimony here today, I can contribute to the national dialog and help find solutions on how we can defeat this treacherous enemy by attacking his financial infrastructure.

For the record, my name is John Moynihan and I am a founding member and owner of the consulting firm BERG Associates LLC. Among other things, BERG offers our clients services that assist them in the prevention and detection of money laundering and other related forms of financial crime. My experience in this area of investigative expertise derives from my professional background, both in the public and private sector, which I will briefly summarize for the committee.

Upon completing my MBA in international finance, I began my professional career as a plant manager with treasury and operations management responsibilities in a large US based industrial supply company with a vendor and client base throughout the Americas. I was later recruited by the Drug Enforcement Administration (DEA) and was assigned to the New York Division, where I participated in and coordinated Sensitive Undercover Operations, which focused on international drug money laundering. After 4 years at DEA I joined an international accounting and consulting firm, where I was charged with developing a forensic accounting section, designed to offer clients products and services related to money laundering prevention and detection. After three years with the accounting firm, I decided to go out on my own and started this company, BERG Associates with my partners, Robert Nieves, a former DEA Executive and Larry Johnson, a former CIA and State Department counter-terrorism analyst.

Mr. Chairman, as you can no doubt tell, I am not a professional witness, consequently I am unaccustomed to testifying in these venues. In fact, I have never done this before. My expertise generally does not bring me into Congressional chambers as a witness or in front of TV cameras; frankly I have always chosen to leave that to others. Rather, my work brings me into the backroom operations of DEA offices, Federal courthouses, banks, brokerages and trade companies. Although I have never testified in these hallowed chambers before, the product of my work has been recognized by numerous committees both in the House and Senate. I am the man behind the scenes, the forensic technician whose work product has led to important arrests, multi-million dollar seizures and the

dismantling of the financial infrastructure of numerous transnational criminal organizations. It is in that capacity that I am here with you today, to share with this committee my experiences with and understanding of the numerous informal financial systems that operate around the globe.

Let me begin by stating that the Achilles heel of any criminal organization is its financial infrastructure. If you can break the link between a terrorist like Osama bin Laden or Pablo Escobar and his money, you have greatly impacted on his ability to succeed in realizing his stated objectives. Clearly, money is the lifeblood of their criminal organizations. People like bin Laden and Escobar manage their criminal enterprises by remote control, training and sending instructions to surrogates across the globe, from the relative comfort and security of their safe havens abroad.

Mr. Chairman, today there is much that we do not know about the financial dealings of Osama bin Laden and his surrogates across the globe. However, we do understand how informal money markets work. The exact details about how bin Laden's terrorist cells were financed, or exactly how they moved their money, is now the focus of an intense, comprehensive federal investigation. I have no doubt that federal agents will piece together the evidence and understand how these particular individuals moved their money, they will know who conspired with them and they will charge all those involved and bring them to justice.

Today, I have been asked to address "parallel money markets" and to describe, how money moves in these underground financial systems. I hope to be able to shed light on these areas of interest to the committee, as you seek to find ways to implement programs to stem the flow of illicit dollars within these criminal terrorist groups.

UNREGISTERED/UNLICENSED MONEY REMITTANCE BUSINESSES

In the United States there exist many individuals and International Business Corporations (IBC's) that have opened bank accounts at U.S. banks for the purpose of engaging in the exchange of monies and/or for the remittance of monies to recipients. The accounts, which are used by these remittance businesses, are opened as mainstream retail accounts or through the private banking department. These accounts can generate millions and sometimes billions of dollars in transactions within a given year. The owners of these accounts use the accounts in accordance with the centuries old profession of underground or black market banking. Persons from every nationality and geographical reference are involved in this practice.

Some of the persons involved in this underground banking system are from the Middle East. These persons call their system of payments and receipts, Hawala. Others are from the America's, both North and South. We call this underground banking system the Black Market Peso Exchange. Placing a name on a particular system is a rather parochial effort. The system is universal in its practice and regardless of what you call it, the system is based upon trust and most importantly, relationships.

The relationships exist amongst members of the ethnic, social or religious group involved. These relationships form the links between the initiator of a payment and the recipient of a payment. Much the same as a chain on a bicycle, if one link is broken the overall system fails. But also like a bicycle, when the chain is working properly, many persons can come along for the ride. It is the number of persons willing to ride or engage in the system, that gives the system value. As the numbers have grown so has the trust involved with the transactions. High consumer confidence, that their orders regarding payments and receipts will be performed satisfactorily, has evolved over the years.

So, what exactly is being accomplished by these underground-banking systems?

The underground-banking system provides the following services:

1) **A source of money**. Regardless of differences in culture, ethnicity, or religion all people need a system for capturing the value inherent in exchanging goods and services and want access to cash.
2) **A system for avoiding taxes**. Persons who engage in underground banking are attempting to avoid being identified in formal banking channels, so as to avoid taxation. Much of the black market exists for the sole purpose of avoiding taxation.
3) **A system for moving wealth anonymously**. Persons who earn money and wish to remain anonymous seek to transfer that wealth without creating an audit trail which would be available for review to authorities.
4) **A system to move money to support or sustain criminal activity.** These criminals seek out black market money exchangers and purchase monies through these channels for delivery to their desired destination.

To further complicate matters, much of the money transacted in the informal market was earned by legitimate means. Criminals seeking to transact monies anonymously often turn to the black market. Therefore, it can be seen that there exists a synergy between the seemingly legitimate and criminal interests. It is this synergy or commingling of interests that creates confusion as to who is responsible for the financing of criminal acts, when the funds were derived from a legitimate business that exchanged its money in the black market.

So why isn't the US Government moving to shut down these illegal operations?

I can answer that question by referring to a particular recent investigation. Presently I am involved in a case with the United States Drug Enforcement Administration in Newark, New Jersey. My involvement is that of an expert contractor aiding in the money laundering aspects of the case. Special Agent Christopher Roberts performed an incredibly well orchestrated street level investigation that lead to the identification of a large-scale money-laundering cell. Assistant United States Attorney Peter Gaeta has been the lead prosecutor in the case. The case involves the seizure of approximately 8 million dollars and several million dollars in gold. The petitioner of the funds is an

individual who is a licensed money exchanger from a South American country. Here in the United States he has facilitated the movement of billions of dollars through our banking system. Neither he nor his business is licensed in the United States to engage in money exchange or remittance. Personnel involved in the case have identified numerous black market money exchangers who clear their payments through these New York accounts. A substantial amount of narcotics proceeds were used in this black market money exchange operation. Warrants were served on accounts and monies were seized. A complaint has been filed for forfeiture of the funds.

What then is the issue?

The issue is that AUSA Gaeta and S/A Roberts are not able to use a statute, 18 USC 1960 to prosecute the owners of the accounts. The statute says, if there is a state requirement to be licensed to engage in money remittance and you knowing violate it, then you can be federally prosecuted. Currently, there is no federal statute that requires money exchangers to be licensed; that section of the law has not been promulgated. Further, if it cannot be affirmatively shown that the account owner knew there was a requirement to be licensed, he cannot be prosecuted.

Most persons involved in the underground banking networks around the world are not traveling across borders everyday; in fact, most rarely travel. What travels are the system participant's orders regarding receipts and disbursements of funds. Developing evidence in these complex international cases is extremely difficult. Under present civil forfeiture laws, the heightened level of proof requires establishing proof by a preponderance of the evidence. This is in sharp contrast to earlier requirements of establishing probable cause for a seizure of assets and using hearsay evidence as proof which then shifted the burden to the claimants who are in the best position to show the source of the funds. The realities of our global world are that we are never going to meet the evidentiary requirement to bring such cases, because most of the countries where the proof lies are in remote areas, inaccessible to travel and investigation, and within borders hostile to Americans. We cannot be naive and think everyone in the world loves Americans and will want to help us. The reality is that a case such as the one I have cited above, would be more easily adjudicated by indicting the owners of the accounts thereby foregoing any civil forfeiture. In fact, since the new Civil Asset Forfeiture Reform Act of 2000 (CAFRA) was adopted, far fewer civil forfeiture cases have been initiated. It used to be that civil forfeiture cases significantly outnumbered criminal. Now that is not the case. Rather, there tends to be a more equal split amongst civil and criminal forfeiture cases, which is undercutting the law enforcement purpose of civil forfeitures. I'm sure it was not the intention of Congress to get everyone indicted when it comes to forfeiture. Yet, this is the direction that forfeiture cases are moving and of course we all realize that you can't indict all suspects.

RECOMMENDATIONS

1. The issue of underground banking and payments systems must be immediately addressed by the Legislature. **The federal law criminalizing the act of engaging in money exchanging without a license should be promulgated.** Althought 18 U.S.C.

1960 (b) (1) (B) provides for violations for people who fail to comply with the money transmitting registration requirement, the regulations have not been promulgated and therefore law enforcement has had rely on 18 U.S.C. 982 for criminal forfeitures. It is recommended that ss1960 be included in the civil forfeiture statute 18U.S.C. 981. Semantics involving the definition of "exchange" should be limited. Persons who either use their bank accounts, businesses etc… for the purpose of making money or delivering money on the money being exchanged, paid or delivered, in whatever form must be subject to federal licensing and oversight. The elimination of the "I didn't know" defense must be included. As well, such underground banking should be identified as a "specified unlawful activity" so as to be able to seize and forfeit real property and funds that facilitated the activity.

This will significantly hinder persons who are engaging in underground banking from delivering monies to persons as a "favor", for those persons will fear criminal sanctions. Persons seeking to send relatives money home can and should use the various options available to them. The options are formal banking channels, wire transfer stores, etc… All these channels are subject to regulatory oversight from various federal, state and local agencies.

2. **If it is the intent of the Congress to add to existing forfeiture laws a component addressing terrorism, the assets associated with the terrorist groups that are identified should be forfeited using guidelines prior to CAFRA 2000.** There exists a "carve out" section to the existing civil forfeiture statute. That exception is noted in 18 USC 983 (i). The new law applies to all civil forfeitures under any provision of federal law, unless explicitly exempted by Section 983 (i). The only forfeitures to which 18 USC 983 does not apply are the ones listed in the section which include all title 19 Offenses (Customs) and other statues such as:

1. The Tariff Act of 1930 or any other provision of law codified in title 19;
2. The Internal Revenue Code of 1986:
3. The Federal Food, Drug and Cosmetic Act (21 U.S.C. 301) et seq;
4. The Trading with the Enemy Act (50 U.S.C. App. 1 et seq) or:
5. Section 1 of the title VI of the Act of June, 1917 (40 Stat. 233; 22 U.S.C. 401)

Under present conditions, the reality is, that it is going to be incredibly difficult to investigate and develop the kind of evidence required to meet the burden of proof with regard to identified terrorist's assets. No doubt, persons in several different countries, where the sharing of information and acquisition of evidence will probably never happen, committed many of the overt acts. Without the use of hearsay evidence, barred under the new law, there is a very high probability that there won't be much more evidence. The truth is, if we believe differently, then we are fooling ourselves and being somewhat naive.

3. Ensure that the United States Drug Enforcement Administration plays a vital role in the investigation of these terrorists. The people who appear to be responsible for these acts are not religious. They are thugs and criminals who have distorted religion

and hijacked a country. Osama bin Laden and his accomplices are clearly protected by the Taliban, a group of fanatics who have distorted the Islam faith and want us to think that they are religious and acting as a governing body over Afghanistan. The reality is, that Afghanistan is a major producer of Heroin and the verdict is out on what role the Taliban plays in this heroin scheme. The DEA has the best international informant and intelligence gathering capability on transnational drug crime; they are expert on the collection and presentation of conspiracy evidence. This comment should not be construed as a criticism of our other law enforcement agencies. When it comes to drugs, informants and intelligence gathering, the DEA is unequivocally the international leader. Through their informant network, they routinely penetrate the international streets like no other agency. They are in the trenches and make the cases. In my humble opinion, to make this case, much overseas street work must be done. DEA should fulfill its mission by contributing its resources to the effort.

CLOSING THOUGHTS

Mr. Chairman, I want to thank the committee for this opportunity to address you. It is my hope that I have shed some light on the need to address and eliminate the enormous informal banking sector which exists in our country. Criminals from all backgrounds manipulate this network and the system is growing larger by the day. This system is available to everyone; Hawala intermediaries can now combine with Colombian drug traffickers and Asian black-marketers on a regular basis. The informal system is competing with our formal money remittance systems and creating opportunities for criminals to gain greater access to their assets and to use them for their criminal and often, evil purposes. The crisis that we find ourselves in today, with respect to the money, has been growing for some time. Terrorists use the underground system much the same as other criminal groups. I believe that the terrorists did not need to create a new system to move their money, rather they created new relationships with other international criminals, which allowed them to expand their capabilities. Crime will always be, but the true crisis is this informal banking system and it must be dealt with immediately.

Statement of

America's Community Bankers

and

Independent Community Bankers of America

on

"Dismantling the Financial Infrastructure

of Global Terrorism"

Submitted to

The Committee on Financial Services

of the

U. S. House of Representatives

on

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America's Community Bankers (ACB)[1] and the Independent Community Bankers of America (ICBA)[2] join in this statement regarding anti-money laundering legislation being considered by Congress after the tragic events of September 11. Community bankers throughout the country are committed to help in the fight against terrorism.

Community bankers vigorously support any effective measures that will help dry up the funds that terrorists depend on. As President Bush and others have said, the war on terrorism will take place on many fronts, and the financial system will play a key role. We look forward to doing whatever we can to help.

Congress is now drafting a variety of legislative proposals to better target money laundering. Given the pace of events, it is difficult to be aware of and comment on all the individual provisions being considered. However, we understand that provisions of two bills that were introduced before September 11 are receiving serious consideration. These are H.R. 1114/S. 398, the International Counter-Money Laundering and Foreign Anticorruption Act of 2001, introduced by Rep. John LaFalce (D-NY) and Sen. John Kerry (D-MA), respectively, and S. 1371, the Money Laundering Abatement Act, introduced by Sen. Carl Levin (D-MI). Other provisions are likely to be considered in the days ahead.

Most of these provisions are targeted towards international transactions, though some may have broader application. Generally, community bankers focus on serving domestic consumers and businesses in their local areas. However, this legislation raises issues that concern all banks, not just a few large ones. Community bankers near international borders or in areas with significant immigrant populations are more likely to engage in international business. Other community banks may engage in international transactions for small and medium-sized businesses that operate in international markets. Virtually any bank will conduct an occasional international transaction on behalf of a local customer.

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[1] America's Community Bankers represents the nation's community bankers of all charter types and sizes. ACB members, whose aggregate assets are more than $1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities. For more information visit www.AmericasCommunityBankers.com.

[2] ICBA is the primary voice for the nation's community banks, representing 5,000 institutions at nearly 17,000 locations nationwide. Community banks are independently owned and operated and are characterized by attention to customer service, lower fees and small business, agricultural and consumer lending. ICBA's members hold more than $486 billion in insured deposits, $592 billion in assets and more than $355 billion in loans for consumers, small businesses and farms. They employ nearly 239,000 citizens in the communities they serve. For more information, visit www.icba.org.

No matter what the level of international business, each community banker will have to be prepared to comply with whatever new rules Congress enacts. That will involve implementing new procedures, retraining of tellers and other personnel and buying new software. ACB and ICBA members are fully prepared to make those investments in our nation's security.

Congress and the Administration can help by making the new rules clear, understandable, and workable, not just for the most sophisticated international bank, but for community banks in towns and neighborhoods across the country.

Most of the provisions of legislation currently under consideration appear to pass that test. For example, S. 1371 prohibits maintaining a correspondent account for "a foreign bank that does not have a physical presence in any country." This offers a fairly bright line, though to be implemented bankers would need access to information to help them determine whether a given institution fell into this category. Similarly, S. 1371 requires a financial institution to terminate a correspondent relationship that fails to comply with a subpoena. This would be triggered by a notice from the Treasury or the Attorney General. Again, this presents no ambiguity.

Other requirements in these bills that require banks to obtain the names of the beneficial owners of correspondent accounts may be difficult to implement. We do note that H.R. 1114 and S. 398 direct that the required steps be "reasonable and practicable." That is helpful. However, S. 1371 includes broad language that requires financial institutions to establish "enhanced due diligence policies, procedures, and controls to prevent, detect, and report" money laundering. If language like this is included in the final bill, community banks would benefit from regulatory guidance to help them comply.

One thing that all bankers can do under current law is implement the Treasury Department's strong recommendation to reduce substantially the number of currency transaction reports (CTRs) that we file. In Congressional testimony last week and in its 2001 National Money Laundering Strategy, the Treasury recommended that banks more fully use the exemptions that Congress provided in 1994. Under that law, banks need not report the currency transactions of "qualified business customers" that operate cash-intensive businesses. However, the Treasury reports that many banks are continuing to file CTRs on these customers.

ICBA and ACB pledge to work with the Treasury and our member institutions to educate and encourage them to make better use of these exemptions in order to avoid filing unnecessary CTRs. We strongly endorse the Treasury's goal to reduce the number of CTRs by 30 percent, and we encourage Treasury to continue to review and refine the exemption system to make it as workable as possible and eliminate unnecessary reporting. The exemption system will decrease the paperwork burden both for them and for law enforcement, so that efforts can be focused where they can most bear fruit.

As Congress considers this legislation and regulators and bankers implement it, we must all recognize that banks also have substantial responsibilities under current laws, including those that prohibit improper discrimination and protect privacy. ICBA and ACB believe that the new provisions should be harmonized with these requirements and we will diligently work to achieve that goal.

In conclusion, the Independent Community Bankers of America and America's Community Bankers strongly endorse the efforts of Congress and the President to enact carefully crafted legislation that will take additional steps to prevent terrorists' use of the banking system.