

**THE TREASURY DEPARTMENT
AND TERRORISM FINANCING**

HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
ONE HUNDRED EIGHTH CONGRESS
SECOND SESSION

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MAY 19, 2004
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THE TREASURY DEPARTMENT AND TERRORISM FINANCING

WEDNESDAY, MAY 19, 2004

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the committee) presiding.

Also present: Senators Hatch, Kyl, Baucus, and Graham.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. I will call the hearing to order, and thank everybody for coming.

We have two reasons for holding the hearing today. The first is to hear from two former government officials with expertise in combating terrorism financing. We have Mr. Joseph Myers and Mr. Jonathan Winer with insights about terrorism financing and the Treasury Department's role, and its performance up until now. Second, we will consider the nominations of two officials, Mr. Zarate and Mr. Levey, for the important positions dealing with Treasury positions combating terrorism financing. The Treasury nominees will also address these issues during their testimony in a separate hearing immediately following the first panel. We will also consider the nomination of John Colvin to the Tax Court, reappointment. We are glad to have everybody here with us.

Stopping terrorism financing, of course, is one of the most important aspects and tools that we have on the war on terrorism. We have to attack terrorism financing from all sides, from the wealthy foreign donors in states who fund terrorism, to the front companies and charities who launder money, to cash smugglers and corrupt money remitters who move money, all the way down to terrorists in sleeper cells waiting to attack America again.

We must choke off the blood money of terrorism. We fail at our own risk. We owe it to the American people to act more aggressively in this area.

The government did take swift and aggressive action against terrorism funding after 9/11, freezing millions of dollars, black-listing supporters of terrorism, raiding organizations, and indicting individuals.

It is fair to say that we have made a great amount of progress. It is much tougher for terrorists to move their money, but their funding still remains in place. We only have to look at the attacks

on Madrid and Baghdad to see that they continue to operate and kill innocent people.

I have been concerned about terrorism financing and what the Treasury Department is doing to stop it for a long, long time.

Under the Clinton administration, I pushed for the Office of Foreign Asset Control to produce an annual report on terrorism assets. Guess what OFAC and the FBI told me? They said, in a sense, we do not need to know who owns the building, we only need to know what is going on inside of the building. To me, that seemed very short-sighted.

As a result, I got legislation enacted that requires the Office of Foreign Asset Control to do an annual report on terrorism assets. I am glad that our strategy now is more comprehensive.

We may have advantages in stopping terrorism financing in the regulated banking system, but terrorists have used other methods to move their money for generations, not just lately.

We have to focus on commodities, diamonds and gold, cash smuggling, and alternative remittance systems. So, that means that we cannot rest on our laurels. We have caught our breath, but now we have to renew the fight, and fight smarter instead of just harder. We have to have the political will to win.

We have to work with our allies, get tough with our enemies, and find a solution to handle the ones in between. We have to decide what to do with nations who help us at the front door, but encourage terrorism at their back door.

The Treasury Department has taken this to heart. I know that Secretary Snow is committed to this, and so is Deputy Secretary Bodman. That is why Treasury has reorganized its structure with the Office of Terrorism and Financial Intelligence. This is a step in the right direction.

The Treasury Department has a crucial and central role to play in fighting terrorism financing. Treasury is stepping up to that role and doing a pretty good job. But there is more to be done, and I think there is some untapped potential.

I also think other agencies could make a lot better use of brain power at Treasury. That is not a criticism. Now is the time for Treasury, with the help of Congress, to have a bigger role against terrorism financing.

We have some excellent witnesses today to address these issues, including two Treasury nominees who I think will do a good job.

Mr. Stuart Levey of the Justice Department is being considered for the position of Under Secretary of Enforcement. This will be the top position at Treasury to fight terrorism financing, and he will run the new TFI office.

Mr. Juan Zarate currently is Deputy Assistant Secretary of Terrorism Financing. He is being considered today for the position of Assistant Secretary of Terrorism Financing, a key position in the TFI office.

Before we hear their testimony and consider their nomination, we will hear from two witnesses already mentioned who have expertise in fighting terrorism financing from their time in government service. They will apply their perspectives and insights to the issue of terrorism financing, our successes, our challenges, and what Treasury needs to be doing.

Mr. Joseph Myers is a former official with the National Security Council in the Treasury Department, and Mr. Winer was Assistant Secretary for International Law Enforcement at the State Department for 6 years. Their expertise will be helpful to the committee and the issues that they raise will help us with our second panel.

Now, I call on Senator Baucus for his opening statement. Thank you, Senator Baucus, for coming.

**OPENING STATEMENT OF HON. MAX BAUCUS,
A U.S. SENATOR FROM MONTANA**

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

First of all, I welcome our panel on the subject of terrorism financing. As you know, on March 8, the administration announced the creation of the Office of Terrorism and Financial Intelligence, otherwise known as TFI, within the Treasury Department.

We, this morning, will hear from the nominees to the top jobs in this new office following this panel. To set the scene for our questioning of the nominees, Chairman Grassley and I thought it would be useful to hear from some experts, first, though, on terrorism financing.

Our hope is that those of you on this panel can answer some basic questions about what sort of job the Federal Government is or is not doing on terrorism funding and how this new office at the Treasury will fit into our overall effort.

That is, are they doing a good job? Are they properly organized or as disorganized and dysfunctional as our intelligence agencies seem to have been in the last several years, all at various different intelligence agencies?

I have some real concerns about how this critical element on the war on terrorism is being organized, and also how it is being conducted.

Let me summarize some of my questions and concerns. First, is the administration effectively coordinating the 19 Federal offices that work on terrorism financing? Nineteen.

Should we be concerned that the department with the greatest expertise, the Treasury Department, is no longer coordinating the inter-agency effort on terrorism financing, as it did some months ago?

Does the Treasury have the resources it needs? We recently read a report that the administration turned down a request for 80 IRS agents to be used exclusively for investigating terrorism financing.

The GAO recently reported that Saddam Hussein's regime received illegal revenues of \$10 billion from the UN's Oil for Food program, yet we can only account for \$6-\$7 billion. Having upwards of \$4 billion out there available to support terrorists is very disturbing to me, and I would gather, to all Americans. We need to know what the TFI is doing to track down these funds.

Are the resources dedicated to track down terrorist funds being used wisely, used properly? The Treasury Department has told us in November that two—let me repeat that, two—employees were assigned to go after Saddam's missing funds, and two employees were assigned to go after Osama bin Laden's money, but not two,

but 21 employees were assigned to go after those who violate our Cuba sanctions.

In response to the recent letter that Chairman Grassley and I sent to Secretary Snow, we now learn that the TFI has increased the number of employees assigned to al Qaida and Iraq. I think it is 16 to Iraq, and 16, now, to Osama bin Laden.

I am pleased that TFI has listened to my criticism and increased the number of people focused on terrorists. Yet, my opinion is, we still have a very gross misallocation of resources.

Let me stop and spell out for you how misguided I believe the administration is on Cuba. In the room here, we have seven victims of this senseless enforcement policy over at TFI. I want you to tell me if you think these people sound like terrorists.

Josh Sharpe, a Floridian paraplegic who was denied permission to go to Cuba with World Team Sports to participate in a marathon and to establish a disabled sports program in Cuba. I have met him. He does not look like a terrorist to me.

Andrea and Mike McCarthy, a Port Huron, Michigan couple fined for their trip to Cuba. Guess what they were doing in Cuba? They were there to deliver medical supplies to a Roman Catholic nunnery. I have talked to them. They do not look like terrorists to me.

Dr. Stuart Younger, denied a license to participate in an international professional conference on death and coma held in Havana this spring. No terrorist, he.

Jerry Guidera, director of the Center for Cross-Cultural Study, an academic institution that has for 35 years designed language and cultural exchange study programs abroad for thousands of students from U.S. universities, including a study-abroad program in Cuba since 1996, when licensed travel was first established. Now he can no longer go.

Bob Guild, program director at Marazul Travel Agency, the world's largest and oldest U.S. Government-recognized U.S.-Cuba travel service provider.

Sylvia Wilhelm. I just met with her. She is director of Puentes Cubanos. That is a Cuban-American nonprofit organization dedicated to reconciliation with Cuba, which lost its travel license when the administration eliminated the People-to-People education program.

She also just explained to me how another recent crack-down and restriction by this administration on Cuba, a further restriction, now limits the definition of family that she can send remittances to.

You know, Latin families are large. She cannot send money, cannot support her extended family any more under the new rules. She can only directly support her parents, and I think maybe brothers and sisters. It is ridiculous. As she said, it was a stupid policy in the first place. Now with this new restriction, it is a cruel policy. She could not help family.

So when it comes to the new Office of Terrorism and Financial Intelligence and the efforts it oversees, I believe, and I believe most Americans believe, that more time should be spent on Saddam's missing billions and Osama's missing millions—it could be billions, too, for all we know—and less time spent on Cuban cigars.

Chairman Grassley and I wrote the President on March 29 to express our concerns about the terrorism financing being heavy on generals, but light on soldiers. We asked whether there is a lack of direct authority and resources to ensure that policy initiatives for which Treasury is held accountable are put in practice.

We also referred to former general counsel David Offhauser's statement. Here is what he wrote. He said, "Treasury no longer has a police force to investigate counterfeiting. It does not have auditors to ensure compliance with the PATRIOT Act.

"It does not have investigators to pursue the priorities of the national money laundering strategy. Treasury does not have an intelligence office that is fully integrated into the national intelligence community."

As I said, we also wrote to Secretary Snow, asking him a number of questions about the TFI. We just received his response yesterday and we are looking at it very carefully.

I would like to make both of these letters, Mr. Chairman, part of the record. Let me also say, for the record, that the Chairman and I are very interested in getting an answer from the White House and our letter to the President.

I look forward to hearing from the panel on your ideas how to improve—and dramatically improve—our counter-terrorism financing effort so we can stop this as much as we possibly can. It is an extremely important subject. It is to me, and I think it is to a lot of people.

Thank you, Mr. Chairman.

The CHAIRMAN. Yes. Senator Baucus asked to put those in the record, and we will include your enclosures in the record.

[The letters appear in the appendix.]

The CHAIRMAN. I have already introduced both of you, so we will go to your statements. If you have a longer statement than the 5 minutes we gave you to testify, your longer statement will be put in the record.

We would ask you to start out, Mr. Myers, then go to Mr. Winer. Is that all right?

Mr. MYERS. Thank you, sir.

The CHAIRMAN. Then we will ask questions when you are both done.

STATEMENT OF JOSEPH M. (JODY) MYERS, FORMER NATIONAL SECURITY COUNCIL OFFICIAL FOR TERRORISM FINANCING; FORMER ACTING DEPUTY ASSISTANT SECRETARY FOR ENFORCEMENT, U.S. TREASURY DEPARTMENT; AND COUNSEL, KATTEN MUCHIN ZAVIS ROSENMAN, WASHINGTON, DC

Mr. MYERS. Thank you very much, Chairman Grassley and Senator Baucus, for inviting me to appear today to address Treasury's role in combating terrorist financing. I appreciate your attention to the issue.

Treasury plays a critical role in the fight against terrorist financing, which itself, as you said, is an integral component of the overall fight on terrorism.

I have been privileged to work closely with Stuart Levey and Juan Zarate before and after September 11, during my tenure at

Treasury and at the National Security Council. They are high-minded, public-spirited, capable, and hardworking.

They are well fit to lead the new Office of Terrorism and Financial Intelligence. I encourage you and your colleagues to confirm their appointments as soon as possible.

I am also pleased to appear today with Mr. Winer, who is a friend and former colleague, and a man whose experience, insights, and intellect I greatly value.

I have submitted a written statement, so I appreciate the opportunity to put it in the record.

I would like to focus on a few observations during my oral statement. First, the government's counter-terrorist financing infrastructure is still in its infancy and needs to be nurtured.

Effectively performing all the functions involved requires an orchestrated, interdisciplinary, and international effort. It is difficult, sensitive, and labor-intensive. It requires specialized investigators, cutting-edge technology, intensive diplomatic engagement, and cooperation from the private sector, and we do not devote enough resources to the task.

I think the NSC and the Office of Management and Budget should conduct a cross-cutting analysis of all the agencies' budgets in this area to gain better clarity about who exactly is doing what, and with what resources.

In connection with the budgetary cross-cut, the NSC should develop a strategic plan with defined metrics and assign responsibility to various appropriate officials across the government. This would help enormously in ensuring concerted action by relevant agencies.

Combatting terrorist financing is still widely and mistakenly viewed, both inside and outside the government, as principally an exercise in sanctions. Yet, it involves not only seizing money, but also identifying and locating terrorist cells, dismantling channels of funding, and deterring those who would aid and support terrorists.

Reestablishing an Under Secretary at Treasury with two Assistant Secretaries is an excellent start to rebuilding Treasury Enforcement, which was decimated by the creation of the Department of Homeland Security.

But Treasury should not try to recreate what was there before. Treasury's first priority should be to generate objective finished intelligence analysis that can support wide-ranging policy discussions.

Treasury should strive to compete with the CIA in this arena. To better support law enforcement, FinCEN should try to regain its edge in deploying and developing artificial intelligence and data mining technology.

It should triage its routine law enforcement requests, upgrade its analyst skill levels, and focus on providing support to high-impact, strategically important law enforcement cases. FinCEN's new director, Bill Fox, recently testified that he is pursuing these goals, and I applaud him for it.

The intelligence community should facilitate Treasury's access to all the information it needs, but Treasury also needs more specialized analysts. As I understand it, no provision whatsoever has been

made to staff the still-unnamed Assistant Secretary for Intelligence.

In the near term, there is probably only one option, to transfer resources from FinCEN and OFAC, but that will only frustrate those agencies' abilities to achieve their missions.

Treasury is also a natural leader in the financial crimes regulatory arena, and performing this role effectively should be among its highest priorities. Recent news reports have highlighted significant failures of control systems of well-regarded financial institutions. The time is ripe for Treasury to strengthen its capacity to ensure a consistent compliance environment.

Treasury should build a cadre of financial forensics and regulatory experts. They should have administrative subpoena powers and unfettered access to the files of the Federal supervisory agencies to whom Treasury has delegated authority to examine for Bank Secrecy Act compliance.

The very existence of such a unit would add a degree of discipline to the regulatory oversight process, and their skills could be deployed as needed in connection with significant regulatory or law enforcement matters in support of overseas trading missions, as well as on special projects, such as the hunt for Saddam Hussein's assets.

Treasury should continue conducting diplomacy through finance ministry channels, and it effectively leads the U.S. delegation to the Financial Action Task Force. Now that the IMF and the World Bank have agreed to conduct surveillance of countries' compliance with the FATF standards, Treasury should consider initiating a process in the FATF to apply multilateral pressure on rogue financial institutions such as those in Burma and Syria, recently designated by the Treasury as primary money laundering concerns under Section 311 of the PATRIOT Act.

The new Office of Terrorism and Financial Intelligence should supervise the enforcement component of Treasury's Office of Technical Assistance, whose resources are necessary to build foreign government capacity to deal with terrorist financing and money laundering.

The administration has put forward two very good nominees in Mr. Levey and Mr. Zarate. Unfortunately, the administration has declined to ask for the resources they need to rebuild Treasury's counter-terrorism capacity. I hope they will do so soon. If the mission is truly important, the Congress should give Treasury the resources whether they ask for them or not.

Thank you again for your interest in the issue, and for the opportunity to appear. I look forward to answering any questions you may have.

The CHAIRMAN. Thank you, Mr. Myers.

[The prepared statement of Mr. Myers appears in the appendix.]

The CHAIRMAN. Now, Mr. Winer?

STATEMENT OF JONATHAN M. WINER, FORMER DEPUTY ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL LAW ENFORCEMENT; AND PARTNER, ALSTON & BIRD, WASHINGTON, DC

Mr. WINER. Thank you, Mr. Chairman, Mr. Baucus, Mr. Graham.

The quality of the people paying attention to terrorism finance has been, and remains, very high in this administration. The two nominees before you, I believe, will continue and intensify the level of attention and focus on these issues.

I am concerned about the risk that there might be any delays in proceeding with the confirmation of these nominees. They are both very experienced, strong, capable people, and I believe it is very much in the U.S. national security interest for these nominations to proceed without delay.

I would be deeply concerned if any component of the Senate were to slow down their move towards confirmation. It is a national security problem for us if Treasury is not able to regain, as quickly as possible, its capacity to strategically integrate U.S. terrorism finance efforts.

Congressional leadership to get the executive branch to do the right thing is critical in this area, not because the executive branch does not want to do the right thing, but bureaucrats are always with us. Having Congress actively engaged is absolutely essential.

I believe the single most important issue facing us in connection with terrorist finance is this integration issue. The Chairman talked about untapped potential and about working smarter, not just harder.

I am very concerned that the executive branch has not united policy, regulation, and law enforcement into an integrated strategic approach against major strategic targets. This was a huge problem for us in the Clinton administration. I think this problem has continued, even post-September 11.

There was a period after September 11 where the objectives were very clear, and I think there was a great deal of strategic integration. I am not sure that that has been sustained in recent months.

As with Mr. Myers, and both the Chairman and Mr. Baucus, I believe that Treasury has been weakened and injured, if I am characterizing it correctly, by the transition with the creation of Homeland Security, and needs to be strengthened.

I strongly endorse the following 10 propositions, some of which are the same as Mr. Myers'. First, we need to ensure central coordination. We need to have someone clearly in charge of terrorist finance strategy.

I do not care whether that person is in the White House or the Treasury, but somebody needs to be in charge and have the authority to bang heads and force agencies to follow through. We did not have that in a consistent way in the Clinton administration. I am not sure it has been consistent in the current administration.

Second, we do need appropriate resources. There has not been a cross-cutting budgetary review. There are 19 Federal offices on terrorist financing. I would love to see them rationalized and strategically integrated. It has not happened. So, I endorse Mr. Myers' specific suggestion on that.

On charities. The Treasury issued voluntary best practices for U.S.-based charities a year and a half ago. They are voluntary. Why are they voluntary and not mandatory? We make such practices mandatory for all financial institutions down to pawn shops and casinos. At least those charities whose activities cross borders should have some kind of oversight.

Do we want State attorneys general to be the only ones exercising oversight over charities? The IRS should be doing that and it should be doing it in the same way it regulates other financial institutions, with an overall BSA compliance regime.

We do need to focus efforts on Saudi Arabia and compliance. Saudi Arabia has, for years, made different noises to different audiences about what it is and is not doing with Hamas. Hamas is an offshoot of the Muslim Brotherhood. The Muslim Brotherhood is intimately connected with al Qaida. We need to ensure Saudi support for Hamas has stopped and that we know what the Saudis are doing.

We need to proceed with designations of major foreign financial institutions as businesses who we know have financed terrorism in the past. There are a number of Saudi charities where there have been convincing and recurrent reports of their being responsible for terrorist finance in a number of different places in the world.

They have not been designated, and it is not clear why they have not been designated. Perhaps it is because we have been monitoring accounts cooperatively with the Saudi Arabians. But in any case, I think you need to hold people accountable to send the right message. If people fund terrorism and nothing happens, that sends a terrible message.

We need to complete the rulemaking process. Insurance companies, hedge funds, loner finance companies are among the sectors that still are not covered by regulations 2½ years after the enactment of the PATRIOT Act. We still do not have due diligence regulations under Section 312 out.

We need to fund FinCEN and fund its artificial intelligence capabilities. BSA Direct, their new artificial intelligence system, does not exist yet. FinCEN says it will take \$6 million, but the funds have not been allocated yet. They need to be allocated promptly. I would love to see the nominees in a position to push that through Treasury.

We do need, as the Chairman suggested, to develop systems regulating gold, diamonds, and other barter commodities used by terrorists. This should be done globally. The United States can take a lead on that through the Financial Action Task Force, but also domestically in devising schemes for this kind of regulation.

We need to review the regulation of free zones and develop global standards for free zones. Free zones, because they have minimal Customs review and inspection, have tended to be places of congregation for drug traffickers, arms traffickers, smugglers, and terrorists to engage in terrorist funding, and there is almost no regulation of them.

Finally, the Congress needs to trust, by verifying what the executive branch says that it is doing. When I was in the executive branch, I would often inquire what some element of the executive branch was doing, be told things, and they would turn out not to be true.

I had law enforcement agencies tell me everything was going great when they were not telling me the whole story, when I was in the government in a senior position, on issues relating to money laundering and terrorist finance.

Congress should press the executive branch very hard for the executive branch to get its own act together and to show that it is doing what it says it is doing, because we do not know what is going on behind the curtain. On this issue, it is very important that what is going on be effective.

Thank you, Mr. Chairman. Thank you all. I am available for your questions.

[The prepared statement of Mr. Winer appears in the appendix.]

The CHAIRMAN. We will start with 5-minute turns in the first round.

Both of you discussed the importance of coordinating this broad battle against terrorism financing, so I want to ask you about who is in charge of the war on terrorism financing, your opinion, then, who is a leader, who wakes up everyday and thinks about stopping terrorism financing in our government.

Mr. Myers?

Mr. MYERS. Thank you, Mr. Chairman. It is my own view that the National Security Council Office of Combatting Terrorism should chair the interagency process. I have held that view for a long time, and I get to that result for a lot of reasons.

The principal reason is that it is the only place that I know in the government that gets very broad access to all relevant information. It already chairs the Counter-Terrorism Security Group, which is focused on the rest of the terrorism campaign.

I think that the terrorist financing campaign needs to be closely integrated with that. Many of the people who sit on the PCC on terrorist financing are the same as the people who sit on the Counter-Terrorism Security Group.

There is, frankly, to speak to Mr. Winer's issue, and I, too, lived through the time in the Clinton administration when it was very difficult to get the FBI and the CIA to be forthcoming about all of their sensitive operations; frankly, the NSC is the body that they trust the most. They are much more forthcoming with people in that job than they are with people representing any of the various agencies, including Treasury.

The CHAIRMAN. All right. Now, I heard you suggest the National Security Council. Thinking about that, there seems to be some lack of focus of whether or not there is one person working full-time on terrorism financing.

If we do not see some focus, and we had to legislate focus, I think I would put more attention on the Treasury Department. Would you address that point on focus and on Treasury? I know you just touched on it a little bit.

Mr. Winer, would you like to start?

Mr. WINER. If I may, sir. I think that strengthening Treasury's strategic integration of different anti-money laundering and terrorist finance objectives would be very important, and these two nominees could help do that.

The NSC has got so many different things on its plate, that it is difficult for it to get down into the details of things very often. The NSC can, and should, play a central integrating oversight and head battering, or bashing, or knocking role from time to time. I should say, on an ongoing basis, not just from time to time.

But the NSC is not going to be in a position to exercise effective oversight of OFAC, effective oversight of FinCEN, or effective oversight, really, of the law enforcement agencies.

I did not have the privilege of serving in the Bush administration, as I did in the Clinton administration, but in the Clinton administration I attended NSC meetings in which the ball was hidden from the NSC by the law enforcement agencies as well. I mean, I saw the FBI hide the ball from the NSC on more than one occasion, and on some major investigations.

So, I think that personalities matter, tenacity, courage, drive, determination matter. Congressional oversight matters a lot because when you have to come up before them here and you are in the executive branch, if you do not have good answers to their questions and you are trying to conceal something, it does not make you feel very good.

It is a whole lot better to be able to tell Congress, yes, we are doing the right thing. So, ongoing oversight makes a big difference in executive branch performance.

So I would say, yes, centralize it with a dedicated person every single day working at the NSC, but strengthen Treasury as much as you possibly can with resources.

I endorse, in particular, Mr. Myers' idea about strengthening intelligence capacity in Treasury, which has always been very weak, exceptionally weak, and needs strengthening, and using that as one of the things Treasury brings to the table in light of the fact that Customs and Secret Service police are no longer subject to Treasury jurisdiction.

Putting that, in part, under the jurisdiction of these gentlemen and getting an Assistant Secretary in for Intelligence strikes me as a very smart thought. Thank you, sir.

The CHAIRMAN. Well, along those lines, this committee has been trying to understand what happens with Treasury's contribution to fighting terrorism financing at the Policy Coordination Committee level. This is a National Security Council's war room for fighting terrorism through the financing battle.

I do not think we have had a clear enough picture on what is happening. I know the executive branch throws in executive privilege about this process, so the information stays secret. But Congress, of course, has a duty to oversee the war on terrorism.

What do you two suggest for Congress to do to conduct oversight in this area? I mean, we could obviously establish a reporting requirement, but beyond that, even.

Mr. MYERS. Well, that is an excellent question. I realize, having been on the other side of this one, that it has been a source of frustration for the members and a difficult issue for the administration to grapple with.

I think, over time, the tactical issues will devolve out and we will be in a position where the NSC and the OMB are playing a more strategic oversight role for the administration, a coordination role, a traffic cop role, if you will.

The reason I put so much emphasis on the recommendation that Treasury generate more finished, and I would say objective, intelligence, is because the perception, unfortunately, has arisen, because of practice coming out of Treasury, that, if I may use an

analogy, that because they have a hammer, every problem looks like a nail.

Frankly, the CIA produced the best intelligence in this area, and Treasury's reports tended to be about designations. The legal standard that supports designations is a fairly low one. It is any person who is associated with. So, you could have a single intercept or a phone call, and legally make an argument that you have grounds for a designation.

Now, whether that is wise policy or not is a whole different debate, and that debate needs to happen in an interagency context. I am trying to respect the lines that counsel has given me when I was on the other side of this issue and give you a sense of the kind of debate that we would have inside.

The CHAIRMAN. Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

I would just like to focus a little more on who is in charge, and who should be in charge. Mr. Myers, I understand your preference, perhaps, for NSC. The trouble is, as Mr. Winer says, and I think you agree, we need oversight here, and NSC is hard to get oversight over. It is a lot easier to get oversight of the Treasury. Treasury officials come up here. We talk to them. NSC personnel do not.

I think, frankly, because Treasury is Treasury, Treasury has something to do with dollars, that off the top of my head, Treasury should be tasked with the central authority with other agencies to get to the bottom of this, but clearly in coordination with NSC. The government has to have some coordination, or should.

Also, the precedent this sets. Your argument can be applied to almost any government function, that it all goes to NSC to be coordinated. Pretty soon, it becomes pretty top-heavy and spread pretty thin, and so forth.

I would not blithely or easily go in that direction without giving this an awful lot of thought. I am hesitant, a little, if NSC has not done it yet, I believe the conclusion is, NSC is going to do it now, partly because we cannot have any oversight over NSC, with executive privilege, and all that that they hide behind.

So, I just wondered if an argument could be made that, principally Treasury, because they are the money guys, and then go over and work with NSC.

Mr. WINER. Senator Baucus, when I was at the Department of State, I thought that I was picking Treasury's pocket every time I led delegations on money laundering and terrorist finance issues, and I led a number of them.

I felt that Treasury should have a senior person doing what I was doing all around the world, and the fact that they did not was evidence to me of the fact that Treasury was not fulfilling its natural function. I was grabbing jurisdiction, as it were, that really should have naturally been theirs.

By the end of the Clinton administration, Treasury was getting increasingly focused on this issue. Secretary Larry Summers was very focused on this issue. It certainly was not early in the Clinton administration at all.

I cannot think of any down side to strengthening Treasury's capacities in this area. I can only think of opportunities for the United States.

Senator BAUCUS. While I have you here, Mr. Winer, so we can ask good, strong questions of administration personnel when they come up here to exercise oversight very well, what questions would you ask of the next two nominees coming up? What would you like to get from them?

Mr. WINER. I wish that nomination hearings were the best place to ask the hard questions. I think they are, but not always in public, in terms of getting the public information on issues of this nature, because the nominees are constrained by the policy of the administration that sent them there and it puts them in a very anomalous situation that I think is tremendously unfair to the persons.

On the other hand, fairness to the process is essential, which means you have the right to every bit of information that Congress has an interest in, as the ultimate overseer of how money gets spent, policy is made, and legislation is made.

So what I would do if I were in your shoes is, I would think of what the questions were that I wanted to ask and I would make sure I got answers to them, even if they were in a classified setting, in writing, before I proceeded with any number of things, certainly including anything that the administration wanted in terms of spending money.

That is what I did way back when when I was a Congressional staffer, whenever my boss agreed. It is what people from Congress did to me when I was in the executive branch, and they were right to do so. I think it is the natural function.

In terms of substance, I would want to know, are there any organizations, individuals, or businesses about whom you have information, have engaged in terrorist finance who you have chosen not to designate? Who are they? Why have you chosen not to designate them? What is your strategy for dealing with them? That would be sort of a first clear question that I would want to know.

Second, what are the principal terrorist finance investigations you have going right now, domestically and internationally? What do you see as the time horizon for them? What are the major impediments you have in concluding them and succeeding with them? Is there anything else that you need in order to be more effective here?

Are the State Department, CIA intelligence community, Justice Department, Treasury, and Homeland Security working together effectively on these investigations? So, I would start asking those questions, and I would have briefings to try and get those answers. That is, I think, how I would begin, sir. Thank you.

Senator BAUCUS. What about benchmarks? Is there some way we can give Treasury, or any other agency, an opportunity to kind of maybe even set their own benchmarks?

I believe in data, dates, and accountability to see what progress has or has not been made, not to berate anybody, but just to see where we are and where we can make improvements and so forth.

So, what kinds of benchmarks do you think we should think about here as we move to get some progress on terrorism financing? How would you define it, ballpark? I know I have kind of put you on the spot because you have not had time to think about a lot of this, but in a certain sense you probably have had a lot of

time to think about a lot of this. So, what comes to mind? I will be very brief.

Mr. WINER. I think one benchmark is indictments. Another benchmark is how many assets you have grabbed. Another benchmark is terrorist financiers you have identified. What I would like is the opportunity to think about it and respond in writing, sir.

Senator BAUCUS. Would you? I would appreciate that very much.

Mr. WINER. Thank you, kindly.

Senator BAUCUS. Anything come to mind, Mr. Myers?

Mr. MYERS. Yes, sir. I would point you to my written statement, which has about a page on the subject. We have thought a lot about it. We did think a lot about it in the government. I agree with you, it is an important issue.

I actually think this also goes to your oversight function, because regardless of who is in the chair—and I do not really disagree with Mr. Winer—I think NSC needs to be there now because I think Treasury is too weak, frankly, and they need to build up. I hope that, over time, they will get there.

But if you do a cross-cut, you have access to the results of that. You know what agencies are doing what, and with what money. Similarly, if the administration defines some metrics, then I think you have got access to that.

I think those are both good ways to test progress over time. The metrics can go from the very high and very abstract, have we had another attack, all the way down to very granular activity measures inside agencies.

Senator BAUCUS. Yes. Right.

Mr. MYERS. But the ones that I always thought were compelling were anecdotal information and the intelligence community's judgment about whether al Qaida is having a hard time paying their bills.

To me, that was very valuable information when we would get reports about whether or not people were still willing to be in the jihad business because they could not pay their bills. Frankly, that became a factor. That is difficult to quantify, but it was valuable information.

Then we had also, in the kind of typical way one works, we had a list of strategic targets, people we cared about and wanted to go after. We kept regular track of how we were doing against that.

I used the analogy of playing multiple games of chess. We decided which games we wanted to devote our resources to playing. Then the question was, always, are we making the right move? What is the next move? Are we moving all those games to conclusion? That is a similar response to Mr. Winer's I think.

Senator BAUCUS. Thank you. My time is up. Thank you.

The CHAIRMAN. Senator Graham?

Senator GRAHAM. Thank you, Mr. Chairman. Before I turn to my first round of questions, I would like to raise, again, a subject that is very concerning to me, and it relates to the topic we just discussed, and that is oversight. It has now been 6 months since we passed the Medicare reform legislation.

It has reached the point that there is now an ethics hearing going on in the House of Representatives which has criminal implications. I was pleased that last week we had a briefing scheduled

on that subject, and was extremely disappointed when it was canceled.

I have been urging that we hold a hearing, preferably an open hearing, on that subject before Memorial Day. We are now down to only 2 days left before the Memorial Day recess.

The CHAIRMAN. Let me give you an update. We did have that meeting scheduled for May 10. It was canceled at the request of Democratic members, not Republican members. Senator Baucus and I meet once a week, and we met yesterday. It is going to be scheduled for soon after we get back. We do not have a specific date yet, but it will be during the early half of June.

Senator GRAHAM. During the first half of June?

The CHAIRMAN. Yes. Yes.

Senator GRAHAM. Well, that is encouraging.

The CHAIRMAN. That would be the same meeting as was canceled May 10, because we felt that we ought to have that members' discussion. We will see if that takes care of the questions that you are asking.

Senator GRAHAM. And then if it does not, would you contemplate a public hearing?

The CHAIRMAN. I would only answer that question after that meeting.

Senator GRAHAM. Well, I am disappointed that we have lost almost a month of time in this, and would urge that that be as early in the month of June as possible, Mr. Chairman.

The CHAIRMAN. Yes.

Senator GRAHAM. To turn to our witnesses, I would like to talk about Saudi Arabia. What was our intelligence prior to 9/11 as to the role of the government of Saudi Arabia in providing financing for terrorists?

Mr. WINER. I can only address the Clinton administration period, sir. I left at the end of 1999. As of that time, we understood that we had a substantial problem with Saudi Arabia's money laundering laws and lack of enforcement of money laundering laws.

Senator GRAHAM. I am not talking about money laundering. I am talking about the government of Saudi Arabia's financial assistance to terrorists. Did we have any intelligence on that subject?

Mr. WINER. Certainly, we had some information as to the problem of Saudi charities within the Clinton administration in relationship to terrorist financing.

Senator GRAHAM. Excuse me. I am not talking about money laundering, as a facilitator. I am not talking about charities as an intermediary. I am talking about the subject of, what intelligence did we have on the Saudi government providing assistance to terrorists inside the United States prior to 9/11?

Mr. WINER. I cannot address that issue, Senator.

Senator GRAHAM. Do you have any information?

Mr. MYERS. I do not think I can address that issue either. I am sorry, Senator.

Senator GRAHAM. Were you satisfied with the intelligence that you were getting on Saudi involvement in financing terrorism?

Mr. WINER. I was not satisfied with the intelligence that the U.S. Government was getting on terrorist finance across the board during the time I was in the Clinton administration, and that certainly

would have included Saudi Arabia issues, but not have been limited to that.

Senator GRAHAM. Mr. Myers?

Mr. MYERS. That is a really difficult question. One is never satisfied. On the other hand, we have seen marked improvement in that relationship in the post-9/11 era and we have elevated, during my time in the NSC, the engagement with the Saudis on this issue to the highest level.

That was unprecedented. It was obviously warranted and necessary. It is a problem that continues to be worked, and continues to need to be worked, and it continues to need very high-level attention. It occupied probably half of my waking hours for two and a half years. Am I satisfied? Of course not. There is always more to do.

Senator GRAHAM. What would you have wanted to have tasked the FBI or the CIA to do that would have moved you towards greater satisfaction with the information that you had, or that they might have had, or might be able to develop as to whether there was Saudi governmental support for terrorists inside the United States prior to 9/11?

Mr. WINER. Senator, for me, the issue, before I get to foreign government officials, always has to do with what the financial institutions and businesses in the country are doing, because they are the mechanisms through which the money tends to move.

And while leadership targeting is a useful mechanism on any national security issue, I prefer to go to institutional nodal targeting, the approach that I personally would like to see the U.S. Government take towards intelligence. We were not doing much financial institution nodal targeting during the Clinton administration across the board.

It was an area in which our intelligence community had not moved, and did not have much understanding or expertise. That failure limited our understanding and knowledge in any number of areas, whether we are talking about dealing with drug trafficking, Russian organized crime, or terrorists.

I would have liked to have seen pretty systematic nodal analysis in which you focused on potential magnets for illegal activity based on anecdotal reporting, develop and penetrate those locations, and then follow those leads wherever they may be, whether they are to foreign officials, wealthy businessmen, or whomever.

Mr. MYERS. I would agree with that, and suggest that that is a methodology that is currently being pursued. Specifically with respect to Saudi Arabia, on one level, it is irrelevant to somebody who is working in the trenches whether a money trail leads to a foreign official or anybody else. The issue, where does the money lead? That is the task in front of us.

Several prominent Saudi people and institutions have been the subject of public action since 9/11. Yassen al-Qaddi, who was a major Jedda merchant, Wahil Jalidan was a prominent Saudi individual who was involved in funding extremists. There was a gentleman who went by the name of "Swift Sword" who was killed in a shoot-out. He was a major fund-raiser inside Saudi Arabia for al Qaida.

Numerous steps have been taken against a major Saudi charity's offices abroad, and its director has been dismissed, the al-Haramin Foundation.

Senator GRAHAM. My time is up. Were any of the people that you have just named, the organizations, governmental?

Mr. MYERS. No, sir.

Senator GRAHAM. I would like to pursue this in the second round. The CHAIRMAN. All right.

Senator Kyl?

Senator KYL. Thank you, Mr. Chairman. Let me begin by thanking you for holding this hearing. It is important, it is timely, it ties in with some other things we are doing, and I think it is especially timely with respect to the nominees that are before us.

I would note that on the Judiciary Committee, and we have two other members of the committee here, including the Chairman, the Terrorism, Technology, and Homeland Security Subcommittee, which I chair, has held hearings on this.

One of the more interesting things to come out of that was David Offhauser's testimony, the former chief counsel for the Department of Treasury, that Saudi Arabia was the epicenter of funding for al Qaida and other terrorist activities, something which I know that Senator Graham, as former chairman of the Intelligence Committee, is well aware of, and I want to get to that in a moment.

Just let me make a quick point, and then a question for each of you. It is apparent to me, because of the questions, and particularly the testimony, that we need to be involved with the administration in helping to shape the best organizational structure for dealing with this.

There are other agencies, from the Department of Homeland Security, to CIA, FBI, and the Department of Justice, but clearly NSC and Treasury are deeply involved, too. I can see pros and cons on who goes first and who goes second.

The key is to have a regime which is not unlike the military regime, which took about 20 years to reform, but now, in the jargon used, is a "purple force," meaning that all the different colors of all the different uniforms have, to some extent, been integrated into a new, different color.

They all now work in an unprecedented way together in joint commands and the like, and we need to be doing the same thing to bring to bear the unique resources of all of these different entities together on terrorism financing.

First, a question, Mr. Myers, to you. You referred in your testimony to Section 311 of the PATRIOT Act, which I view as a pretty powerful tool in this effort. I wanted to ask you to expand on how we can continue to use that.

You say that we have done a good job under the Financial Action Task Force of designating the non-cooperative countries or terrorist organizations, but now could apply more multilateral pressure on rogue financial institutions, and I would like to ask you to do that.

Then let me just ask the question of Mr. Winer, and both of you are welcome to comment on each other's testimony, and maybe that will use up the rest of the time.

You also referred to the FATF, Mr. Winer, and made a very strong case for improvements there, including making these charity

practices or guidelines, regulations, mandatory, which seems very sensible to me. I am just wondering what Congress can do.

In both of these questions, the question is, what can we do? Do we need to do something else to further enhance the authority under the PATRIOT Act? Do we need to do something further here with regard to making these regulations mandatory?

Specifically, another sub-question. Are there any problems with FOIA? A lot of times we do not really like for documents that we gain possession of in the course of investigations to then be public, and there are questions about how we can protect some of that information, especially from financial institutions. So, I would ask you to think about that a little bit. Anyway, those are my two questions, and both of you are free to take off with them.

Mr. MYERS. Thank you, Senator. Section 311 of the PATRIOT Act is a powerful authority, and I know that Treasury has now begun to use it, and I think that is a welcome development. It allows cutting off from the U.S. financial system particular institutions as opposed to countries.

What we have gone through in the past 5 years or so is an exercise of pointing out weak regimes in nations, but the government also has information about essentially criminally owned and operated financial institutions, or institutions that are so corrupted that they pose a danger in and of themselves.

What we are seeing is that Treasury has been moving out and using that authority to identify some of those institutions. Publicly, it is helpful to our private sector. It is, I would think, an effective commercial pressure on those institutions and on the governments that supervise them to do a better job.

My suggestion would be, if it were possible to do so, Treasury should multilateralize that effort. That would involve being forthcoming with the information we have with our allies, convincing them that these institutions are out of line and getting multilateral condemnation of them.

Mr. WINER. The Section 311 designation of the Mayflower Bank should have been done 10 years ago. The power did not exist 10 years ago, but it should have been done. We have known for years about their ties to the Burmese drug traffickers and terrorists, and other bad guys.

Now, charities could be defined as a financial institution under the Bank Secrecy Act. The Secretary of the Treasury has that power. The Congress could, by report language, or encouragement, or questions, all the different tools available to Congress, could encourage or direct the Secretary of the Treasury to include it as a financial institution for BSA purposes. That would require it to develop risk-based regulations to address that risk.

Now, one way of thinking about charities, there are an awful lot of charities that we know have nothing to do with terrorism. They are local. They are small. They are operating in the community. It does not make sense for all of them to have a compliance officer and having to think a lot about money laundering.

The international charities are, by definition, operating at a reasonable size and scope, and they are hard to engage in oversight on in the absence of much paperwork.

So, if it were my policy decision, I would recommend the designation of charities as a financial institution, to the extent that they are engaged in international activities, and that charities that are engaged in international activities, whether they are religious or non-religious, should have a compliance officer and basic AML policies and procedures in place that are subject to oversight by the IRS, which, after all, is responsible for monitoring its tax-exempt status. Thank you, sir.

Senator KYL. Mr. Chairman, could I just ask if either of the witnesses have a comment on this FOIA question, and perhaps they could submit that in writing to us?

The CHAIRMAN. Yes. All right.

Senator KYL. Thank you.

The CHAIRMAN. Senator Hatch?

Senator HATCH. Along the same lines, I have learned, in my position on the Intelligence Committee, as well as chairman of the Judiciary Committee where we do have oversight of the FBI, that agencies tend to rely on their own products more than those of other agencies.

We have all heard about the international failures of agencies in interacting, and I believe we addressed many of those problems in the PATRIOT Act. However, I would like to know about how the value of Treasury's products on terrorism financing is used with other agencies.

Let me ask this of both of you. Do you believe that Treasury's products and information are getting sufficient attention by other agencies, either CIA or FBI, and is there anything that you believe can be done for more efficient information sharing?

Mr. WINER. A couple of points. My information is not as recent as Mr. Myers', so if I am off on any point, I am sure he will correct me. But the OFAC-related, designation-related intelligence has been taken very seriously by all components of the U.S. Government for a very long time.

The Treasury's analysis of what it has, and the meaning of what other people in relationship to potential use of economic sanctions, is widely respected. It does not, in the end, determine all policy judgments, but it is used and integrated.

The reverse, however, has not always been true, which is to say, Treasury has tended to have very few cleared personnel to even see intelligence of other agencies. FinCEN, for an example, has had a tiny number of its analysts with clearances.

I would like to see Treasury personnel more broadly have intelligence clearances and be in the position to receive, integrate, and then build on, with Treasury information, the intelligence created and analyzed by other agencies. Thank you, sir.

Mr. MYERS. Senator, I would agree with everything Mr. Winer said. This is the beauty of the statute that creates this new office at Treasury, is they will now formally be part of the intelligence community. That should knock down all the walls in terms of getting access to the most sensitive information.

FinCEN's director recently testified that his analysts could not complete a study on illicit trafficking in diamonds and precious metals because they did not have the clearances they needed to see all the relevant information. So, this has been a problem and it

does limit Treasury's ability to, through argument, persuasion, and analysis, to drive policy.

Senator HATCH. Let me just ask one other question. Open source speculations have indicated that Saudi Arabia has funneled over \$50 billion around the world to promote Wahabism, which, of course, in many places has been used in a guise to promote anti-Americanism and to provide anti-Western hate, as well as actually supporting terrorist networks.

Now, are there any open source tabulations on Saudi financing in the past decade, and do you believe that the Saudis have opened their books to us enough so that we can measure the impact of their past financing flows?

Mr. WINER. Senator, I believe it could be done from open source information. The Saudis certainly do not make much information available to anyone about anything. They are a closed government on almost every matter imaginable. When information becomes of interest to others that they have made public on their websites, it gets removed.

If you go to the Saudi Arabian Monetary Authority website, you will see that their basic circulars that they have issued their financial institutions, some of them are not available any more because they have become of interest to journalists, for example. I mean, I am guessing as to the reason, but I can tell you, they are gone. They used to be there.

But there is lots of information available. There is lots of anecdotal information. I think one could build the statistical information.

I believe it has been a problem in Pakistan, a huge problem in Pakistan. Mushareff has complained about it to the Saudis. It is a huge problem in Indonesia, the Philippines, Malaysia, even in Cambodia and Thailand, where there are some Muslims. It is an issue.

Jemaah Islamiyah was clearly supported by Saudi funds, for example. So, it is a very significant, ongoing problem simply because of the lack of controls over what is a puritanical and rigid religious system, in terms of Wahabism.

Senator HATCH. Mr. Myers?

Mr. MYERS. Senator, I am not familiar with what is open source in this area, I guess, in my recent experience as being behind the curtain. I will tell you that the administration is heavily engaged with the Saudis on terrorist financing. I said that before.

To give a little more granularity, this becomes a matter of identity politics on some level. It is my own belief that we need the Saudis to see the need internally to reform and to become convinced of that.

In other words, I think we might make a mistake if we are essentially equating the religion with support for terrorism. That is an incredibly explosive and, in my view, unfair charge.

So what we need to do, is systematically work with them to document abuses. They are happy to clean up abuses when they are convinced that they are there. They are also involved in an internal program of reform, which I think is critical to our ability to isolate Islamic extremism.

In other words, if a conservative regime that has propagated conservative views around the world pulls back and isolates and cuts off its most extreme interpretations, that is only to our benefit, and I think we need them to do that.

Senator HATCH. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Yes. Thank you.

This is for the second round of questioning. We will take 5-minute rounds.

As you know, this committee has been investigating potential terrorism financing by the Saudi embassy, so I am taking up a little bit where Senator Kyl and Senator Graham have left off.

The situation is very alarming, because we have respected banks in our backyards that allowed very suspicious activities for years. Now the Treasury Department has fined Riggs \$25 million.

That does not seem to be the end of it. As bad as the Riggs Bank episode is, it was only the middle man. The source of money and where it goes are the key issues. I would like both of you to address these points.

So, what should be done to track down the very alarming information in the Suspicious Activities Reports that Riggs eventually filed with the government? This information had strong indications of potential support for terrorism, both groups and individuals. What do you think Treasury's role should have been in tracking?

Second, Riggs' episode exposes the danger of relying on banks self-reporting. What should Treasury be doing to monitor the financial activities of foreign entities, especially embassies inside the United States?

Third, what should Treasury do, along with the banks' regulators, to make sure that problems like this do not go on for so long in the future?

Mr. MYERS. Senator, if I could start. I am going to have to limit my remarks in response to your question, both because of access to information I had when I was with the government, and also because my current law firm has a conflict of interest. So, I cannot get too far into specifics.

But I could say, clearly, Treasury has an important role in analyzing the SARs in this case, and I have no reason to believe they have not been doing that.

One of the reasons I proposed what I have proposed in my testimony, that Treasury build a capacity, a kind of old-fashioned Treasury agent capacity to go in on a strike force basis into regulatory oversight situations, as well as strategically important investigations, is that I believe in cases where there has been indications of a massive regulatory failure, Treasury should be very muscular and be very involved.

I think that is all I can say in response to the question.

The CHAIRMAN. Mr. Winer?

Mr. WINER. Yes, sir. I also have an engagement in connection with the Riggs matter, so my comments are not about Riggs, per se.

In a situation involving senior political officials, they are known technically around the world these days as "politically exposed persons," or PEPs. The Section 312 regulation, that I expressed un-

happiness at its delay, would address that issue as to what U.S. financial institutions are supposed to do in cases of PEPs.

If embassy people are moving millions of dollars of cash around the United States, that is a PEPs situation. You have got the substantial risk of corruption, fraud, and other bad things taking place in connection with it. You need to know what is going on.

So if Treasury had issued regulations governing that kind of thing, any financial institution would have had to respond to it or have been at very significant risk. Now, it does not address the situation when a bank that knows better chooses not to pay attention to regulations, but more regulatory clarity on this particular issue would be helpful.

The regulation came out almost 2 years ago in proposed form. It has languished since. I have no reason to believe that it is coming out this week, next week, or next month. It would be desirable if it comes out today or tomorrow, but it will not. So, I think that its prompt issuance is very important.

In terms of the investigations, I am concerned about the lack of a task force approach that may be one result of the way in which we currently investigate terrorist finance cases and money laundering cases. We did not do a particularly good job when I was in the executive branch, so this is not a criticism of any one administration.

What I would like to see is regulatory information developed by FinCEN, that is to say, filed by the regulators, further developed with the assistance of FinCEN, passed on to the FBI if it is terrorism, and on to ICE if it is non-terrorism, and then the people who were at the table in the first instance continuing to participate in the investigative process as the FBI develops a case for the U.S. attorneys, for the prosecutors involved.

So, you had a constant feedback loop among the different entities and participants, and if appropriate, got the CIA involved, and if appropriate, got the State Department involved. That is the model that I would like to see.

I never saw that model when I was in the executive branch, and I would be surprised if it takes place very often now, though I was under the impression it did take place in the initial months after September 11th.

The CHAIRMAN. Go ahead.

Mr. MYERS. I beg your indulgence. I would like to just follow up. I think one phenomenon we are seeing with some of these investigations, it is very interesting, is that a criminal case or an inquiry can lead to exposure of a failure to comply with the regulation.

This is, in a sense, unprecedented. We are now seeing the regulators being called into account and having to wake up to the fact that some institutions may not have been, in fact, doing what they should have been doing.

My concern would be, how widespread is this phenomenon? My understanding is that there is a GAO study under way that is looking at this issue, and I think that is very important, and I look forward to the results of that.

The CHAIRMAN. Senator Graham?

Senator GRAHAM. Thank you, Mr. Chairman.

I would like to go back for a moment to this discussion of the PEPs regulation. Do you have any sense of why it has not been implemented?

Mr. WINER. I can only guess, sir. The Section 312 regulation that came out in the spring/summer of 2002 would have had financial institutions having to identify for themselves who is a politically exposed person.

The U.S. Government would have said, this particular person is reputed to be, forgive the expression, the political bag man for that foreign elected leader, therefore, we want you to target him.

So the financial institution said, if you cannot give us a list, if we have to figure out for ourselves who is a politically exposed person, who is friends and family of which level of officials, we are not going to know whether we are in compliance or not. You are also telling us to look at public accounts to do it.

Which public accounts are you telling us we should be looking at? How comprehensive does it have to be? Should we be reviewing everything in the world or only some things? We review some things now in connection with our AML programs.

You have to do that to know your customer. To understand what is going on in an account, you have to match the nature of a customer and their activity. So, they are already doing it.

But for this special due diligence, the financial institutions wanted more guidance. I think that sent the Treasury and the regulators into something of a tizzy bureaucratically, and I am not sure the tizzy ever was fully resolved with answers.

My own judgment is, you put the regulation out, you tell people more or less what you want them to do, they do it for a while, and as the gaps or problems or ambiguities become evident, you make it better, you fix it, you add to it, you change it, but you do not delay for years at a time. Thank you.

Mr. MYERS. Senator, my understanding is, I remember when the proposal came out. A lot of the banks are complying, or trying to comply, with the general spirit of it. So if the regulators are pushing hard enough in their examinations, I do not really see why a bank that is heavily in a risky business, any kind of risky business, should not be focusing resources on making sure that business is a clean business.

A number of the major money center banks have a joint venture, as I understand it, in New York where they actually collaborate with one another to do the kind of research that Mr. Winer refers to to figure out who is a PEP and who is related to them.

Mr. WINER. If I may, just to clarify, the Section 312 regulation is in place for banks, and in part, for broker/dealers on a temporary final basis for now, an interim final basis.

But the Treasury has always said that they did not know whether they might change the regulation completely. You could not rely on the current regulation to figure out what they might ultimately do, and that creates an awful lot of compliance uncertainty.

Senator GRAHAM. You mentioned that there has been increased engagement, I think, was the word you used, with the Saudis relative to their financial activities in the United States. What would be some of the specifics limiting your response to the government of Saudi Arabia?

Mr. MYERS. Well, sir, I think this is all a matter of public record. I am trying to remember the time frame exactly. It was the end of 2002 by the time there was a formal decision.

But a senior White House official was designated to be a special envoy from the President to the Crown Prince and the government of Saudi Arabia on terrorist financing issues, and delegations have traveled to Saudi Arabia about every 3 months since.

Those trips have all had lengthy agendas. They have all set goals for the return. They have facilitated the establishment of a joint FBI/Saudi task force on terrorist financing. They have led to specific designations and actions.

Senator GRAHAM. Based on previous experience in other areas, do we have confidence that, as it relates to the government's role in financing terrorism within the United States, that the Saudi government will be forthcoming in this engagement?

Mr. MYERS. I have no reason to think the Saudis are not cooperative on this issue, in general, and certainly in the U.S., where the FBI, as you know, has very broad jurisdiction and powers and is paying attention.

Senator GRAHAM. Well, speaking of the FBI, they had, in fact, initiated an inquiry as to Saudi government roles, including attempting to get access to bank records. After several months, they concluded that they did not have legal authority under the National Security Letter process to get access to the bank records, specifically of Riggs Bank.

Do you believe that they were being inappropriately passive, or does the law, in fact, need to be changed in order to increase the FBI's ability to access records? And this was after the PATRIOT Act had become the law.

Mr. MYERS. Senator, I think that is a very good, but difficult, question. I am going to have to demur. The first thing that comes to mind are the broader implications for our other relationships, and before speculating, I would want to have a much clearer sense from the FBI today and the Justice Department today about the level of cooperation they are enjoying. I just do not have that. I am out of date. My understanding was that there was a very forthcoming and cooperative relationship when I left the government.

The CHAIRMAN. You are done?

Senator GRAHAM. Yes.

The CHAIRMAN. Senator Kyl?

Senator KYL. Thank you, Mr. Chairman.

I will not take another round, but I think the last question Senator Graham asked is very important. I just have a suggestion. That is that, at some point, perhaps we could have a closed session where I think current administration officials will be better able to speak to issues that could involve intelligence to get a status report on the current arrangements and the degree of success that those arrangements that were spoken of here with respect to the Saudi Arabia government are having, and potentially visit with law enforcement people about what other changes, if any, would be called for.

I think probably that just an informal classified setting might be a better way for us to quickly get to the bottom of it, and then perhaps be able to hold a public hearing where we could get informa-

tion out publicly. But I appreciate the reluctance of the witnesses to get too deeply into things which could get into classified material.

The CHAIRMAN. All right. We will be glad to take that into consideration. I do not want to promise anything with the schedule we have with some of our legislation on the floor, but we can surely consider that and have your staff talk to my staff about it.

Senator Hatch?

Senator HATCH. Just one more question. There is a fascinating book out by Doug Farrah, I believe his name is, called *Blood From Stones*, about terrorism financing from diamonds. Can you speak about what more can be done to disrupt this type of particular terrorism financing?

Mr. MYERS. Thank you for raising that subject, Senator. I have not had a chance to read the book, but the articles that came out in the Washington Post which preceded the book got a great deal of attention inside the administration when I was there. We took that seriously, and I know that the FBI and the CIA followed up.

Mr. Winer, I think, has, in his testimony, made a fairly specific recommendation which I would endorse, which is that this area needs to be looked at in terms of international standards and regulation.

Clearly there is, in the case of diamonds, the Kimberly process. But I think it is fair to say that smuggling diamonds is a fairly easy thing to do. It is a vexing problem. We need to bring, as in many problems in this area, attention from all sides: we need intelligence, we need law enforcement, we need regulation.

I understand that the new director of FinCEN, Bill Fox, is looking closely at regulations on gold dealers and jewelers, and was recently traveling internationally and speaking with foreign officials about pursuing that agenda. So, it looks to me like Treasury is on the ball and following up.

Mr. WINER. Senator, I have read the book. Mr. Farrah makes what I find a very comprehensive case, a very specific fact-based case, that al Qaida has been taking advantage of the diamond trade.

In his book, he describes how the CIA did not believe him, did not believe his witnesses, and sought, in his view, to discredit the witnesses. I cannot evaluate those different accounts, but I am concerned about the account presented in the book and think it is worth looking at and trying to understand.

My own view is, the Kimberly process is not as strong as it might be, and that diamond marking is feasible, invisible marking, for a system that would provide a chain of custody from mining to end use that would be useful for all kinds of different purposes, and appropriate, including deterring diamond theft, as well as allowing us to trace when terrorists have gotten involved in the diamond trade.

That would be, in part, a DHS issue, but it might also be of interest to Treasury, given the financial regulatory compliance scheme that could be put into place at the same time for banks that are handling the proceeds of the diamond trade.

Thank you, sir.

Senator HATCH. Thank you, Mr. Chairman.

The CHAIRMAN. I thank all my colleagues for their attention to this very important issue. I thank you, as a panel, for coming. This has been very useful to us. Terrorism financing is a very important issue, and of course our committee is going to continue to look into this. So, I thank you for participation in that process.

There may be questions, in addition. So from the people who were here, as well as people who were not here, we would appreciate your cooperation on that.

[Whereupon, at 11:16 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. MAX BAUCUS

I want to welcome our panel today on the subject of terrorism financing. As you know, on March 8 the administration announced the creation of the Office of Terrorism and Financial Intelligence (TFI) within the Treasury Department. We will hear from the nominees to the top jobs in this new office following this panel.

To set the scene for our questioning of the nominees, Chairman Grassley and I thought it would be useful to hear from some experts on terrorism financing. Our hope is that you can help us answer some basic questions about what sort of job the Federal government is doing on terrorism funding, and how this new office at the Treasury will fit into our overall effort.

I have some real concerns about how this critical element of the war on terrorism is being organized and conducted by this administration. Let me summarize some of the questions and concerns that I have:

- Is the administration effectively coordinating the 19 Federal offices that work on terrorism financing?
- Should we be concerned that the Department with the greatest expertise, the Treasury Department, is no longer coordinating the interagency effort on terrorism financing, as it did some months ago?
- Does the Treasury Department have the resources it needs? We recently read a report that the Administration turned down a request for 80 IRS agents to be used exclusively for investigating terrorism financing.
- The General Accounting Office recently reported that Saddam Hussein's regime received illegal revenues of \$10.1 billion from the United Nation's oil for food program. Yet we can only account for \$6 to \$7 billion of Hussein's funds. Having upwards of \$4 billion out there—somewhere—available to support terrorists is very disturbing to me, and to all Americans. We need to know what the TFI is doing to track down these funds.
- Are the resources dedicated to track down terrorist funds being used wisely?

The Treasury Department told us in November that two employees were assigned to go after Saddam's missing funds, and two employees were assigned to go after Osama bin Laden's money, but that 21 employees were assigned to go after those who violate our Cuba sanctions. In a response to a recent letter Chairman Grassley and I sent to Treasury Secretary John Snow, we now learn that the TFI has increased the number of employees assigned to al Qaida and Iraq. I'm pleased that the TFI has listened to my criticism on this issue and increased the number of people focused on the terrorists, yet in my opinion we still have a misallocation of resources.

Let me stop and spell out for you how misguided I believe the administration is on Cuba. In the room today we have 7 victims of this senseless enforcement policy over at the TFI. You tell me if these people sound like terrorists:

- Josh Sharpe, a Floridian paraplegic who was denied permission to go to Cuba with World Team sports to help establish a disabled sports program in Cuba;
- Andrea and Mike McCarthy, a Port Huron, Michigan couple fined for their trip to Cuba to deliver medical supplies to a Roman Catholic nunnery;
- Dr. Stuart Younger, who was denied a license to participate in an international professional conference on Death and Coma held in Havana this spring;
- Jerry Guidera, director of the Center for Cross-Cultural Study, an academic institution that has for 35 years designed language and cultural exchange study programs abroad for thousands of students from U.S. universities, including a study abroad program in Cuba since 1996 when licensed travel was established;

- Bob Guild, program director at Marazul Charters, the largest and oldest U.S. government-recognized U.S.-Cuba travel service provider; and
- Silvia Wilhelm, director of Puentes Cubanos, a Cuban-American non-profit organization dedicated to reconciliation with Cuba, which lost its travel license when the Administration eliminated the people-to-people education category.

Why do we have more folks over at the TFI tracking down these people than we do looking for bin Laden's money? That makes no sense to me. When it comes to the new Office of Terrorism and Financial Intelligence, and the efforts it oversees, I want more time and effort spent on Saddam's missing billions and Osama's missing millions, and less time spent on Cuban cigars.

Finance Committee Inquiries on Terrorism Financing Effort

Chairman Grassley and I wrote the President on March 29 to express our concerns about the terrorism financing effort being heavy on generals but light on soldiers. We asked whether there was a lack of direct authority and resources to ensure that policy initiatives for which Treasury is held accountable are put into practice.

We referred to former General Counsel David Aufhauser's statement that, "Treasury no longer has a police force to investigate counterfeiting. It does not have auditors to ensure compliance with the PATRIOT Act. It does not have investigators to pursue the priorities of the National Money Laundering Strategy. And Treasury does not have an intelligence office that is fully integrated into the national intelligence community."

As I said, we also wrote to Secretary Snow asking a number of questions about the TFI. We just received his response yesterday morning and we are looking at the new information very carefully. I would like to make both of these letters part of today's record.

Let me also say for the record that the Chairman and I are very interested in getting an answer from the White House on our letter to the President. I look forward to hearing from our panel on your ideas on how to improve our counter-terrorism financing effort. We appreciate you being here today.

LETTER TO PRESIDENT GEORGE W. BUSH

CHARLES E. GRASSLEY, IOWA, CHAIRMAN
 ORRIN G. HATCH, UTAH
 DON NICKLES, OKLAHOMA
 TRENT LOTT, MISSISSIPPI
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 BILL FRIST, TENNESSEE
 GORDON SMITH, OREGON
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MAX BAUCUS, MONTANA
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 TOM DASCHLE, SOUTH DAKOTA
 JOHN BREAUX, LOUISIANA
 KENT CONRAD, NORTH DAKOTA
 BOB GRAHAM, FLORIDA
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 JEFF BINGAMAN, NEW MEXICO
 JOHN F. KERRY, MASSACHUSETTS
 BLANCHE L. LINCOLN, ARKANSAS

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

March 29, 2004

The Honorable George W. Bush
 The White House
 1600 Pennsylvania Avenue, NW
 Washington, DC 20500

Dear Mr. President:

It has been over a year since you signed into law the Homeland Security Act of 2002. This restructuring brought together agencies from other departments to create a new, centralized department focused on protecting our country from acts of terrorism. However, this same restructuring has disassembled and scattered the Government's apparatus to detect, investigate, and prevent financial crimes. This is particularly disturbing because the government's capacity to combat financial crimes is essential to eliminating the terrorist threats that the Homeland Security Act hoped to protect us against.

While the Administration's announcement on March 8, 2004 that it intends to create a new Office of Terrorism and Financial Intelligence (TFI) at the Department of the Treasury is a step in the right direction, it is no substitute for an agency empowered with significant legal authorities and law enforcement resources to combat financial crimes. The proposed new office contemplates one new Undersecretary and two Assistant Secretaries to oversee approximately 320 people within the Financial Crimes Enforcement Network and the Office of Foreign Assets Control. The restructuring appears to be heavy on generals and light on soldiers. There is a lack of direct authority and resources to ensure that policy initiatives for which Treasury is held accountable are put into practice.

The Senate has heard testimony from experts underscoring the need for more enforcement capacity within the Department of Treasury. In a statement provided to the Senate, Former General Counsel David Aufhauser explained, "Treasury no longer has a police force to investigate counterfeiting. It does not have auditors to ensure compliance with the Patriot Act. It does not have investigators to pursue the priorities of the National Money Laundering Strategy. And Treasury does not have an intelligence office that is fully integrated into the national intelligence community." Similarly, the former National Coordinator for Security and Counter-terrorism stressed the critical importance of organizing the government to coordinate efforts against terrorist financing and of giving Treasury more resources for enforcement.

The Federal government's system to prosecute the war on terrorist financing is in need of fundamental reform. The transfer of Treasury's major law enforcement agencies to other departments for the purpose of enhancing homeland security has created a gap in

The Honorable George w. Bush

March 29, 2004

Page Two

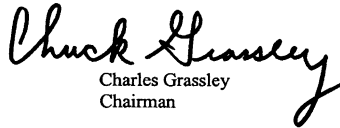
the government's ability to successfully fight the financial war on terror and all aspects of financial crimes. The Secret Service and the Customs Service have moved to the new Homeland Security Department, while the Office of Foreign Asset Control, the Financial Crimes Enforcement Network, and the investigative resources of the IRS have been left behind. This taxes Treasury's enforcement capability at the risk of jeopardizing its many important national security missions, including investigating and thwarting terrorist financing, money laundering and counterfeiting; coordinating, imposing and monitoring economic sanctions; and developing secure and resilient critical financial infrastructures.

This is clearly a complex matter, and there are multiple problems that must be addressed. While the coordination of financial intelligence is important, the more pressing problem is getting Treasury the investigation and enforcement resources it needs to fight financial crime. The testimony we have seen before the Senate and our own research on the issue leads to the conclusion that the creation of a coordinated financial crimes agency at Treasury, perhaps within the Office of the Undersecretary for Enforcement, is the best step we can take to address this problem. In developing such an agency, it is important to restore the enforcement personnel that Treasury needs to effectively carry out its missions.

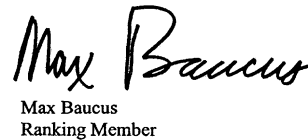
The Finance Committee's interest in this matter is ensuring that the Department of Treasury, and the Government overall, maximize the available resources in the campaign against terrorist financing. We now have multiple agencies in several different departments who are tasked with gathering information related to illegal financial activities. What the government lacks, however, is a central venue to coordinate and analyze the information and, most importantly, the capacity to respond effectively. While it is plain that there must be shared responsibilities between Treasury, Homeland Security and other departments in the borderless war on terror, there must be one hand at the helm empowered to deny terror of its currency. The lack of strategic direction, coupled with the unnecessary duplication of effort and the potential squandering of valuable government resources, hinders the government's effectiveness in pursuing a variety of financial crimes.

As we continue to examine this problem and consider legislative solutions, we are requesting the Administration's views on the feasibility of creating a coordinated financial crimes enforcement agency at Treasury. We look forward to working with the Administration and to receiving your response.

Sincerely Yours,



Charles Grassley
Chairman



Max Baucus
Ranking Member

LETTER TO TREASURY SECRETARY JOHN SNOW

CHARLES E. GRASSLEY, IOWA, CHAIRMAN
 ORRIN G. HATCH, UTAH
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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

April 28, 2004

The Honorable John Snow
 U.S. Department of the Treasury
 1500 Pennsylvania Avenue, N.W.
 Washington, DC 20220

Dear Mr. Secretary:

We appreciate your letter of April 16 on the new Office of Terrorism and Financial Intelligence (TFI) in the Department of Treasury. Also, your response to our letter on the Office of Foreign Assets Control's (OFAC) role in enforcing economic sanctions was especially helpful.

Operations of TFI

In order to better understand the operations of the TFI we would appreciate the following information:

1. An analysis by quarter, from the first quarter of 1995 to the first quarter of 2004, of terrorist related assets seized and/or frozen by Treasury's Office of Foreign Assets Control. Please provide the totals of assets seized and assets frozen for each of the quarters. Additionally, please provide total assets of Al Qaeda seized or frozen by quarter for the same time period. For each order or designation leading to frozen or seized funds of a person or entity, please characterize whether the person or entity is one of the following three: a donor, or source of funds; a transmitter or carrier of funds; or a recipient or user of the funds.
2. Please provide the number of FTEs dedicated to terrorist financing activities by country (Afghanistan, Iran, Cuba, Syria, etc.), as well as by terrorist group (Al Qaeda, Hamas, etc.), within each of the following: OFAC, Financial Crimes Enforcement Network (FinCEN) and all of TFI.
3. In staff briefings, we have heard that OFAC had approximately three to four FTEs dedicated to enforcing sanctions in Iraq during the late 1990s and early 2000s. Is this accurate? If you are unable to provide exact counts of FTEs during that time, please provide your best possible estimate of the average number of FTEs working on Iraq sanctions programs during this period.

Terrorism Financing Investigators

Recent news media reports asserted the Administration reduced an IRS request for an increase in criminal investigators devoted to enforcement, particularly terrorism financing activities. A senior Treasury Department official, however, told committee staff that there are plans for the IRS to receive 500 to 600 more agents in the next few years. While funding and manpower are important, even more important is efficient and effective use of available and plentiful resources and a dedicated focus on tax crimes and terrorism financing.

4. For fiscal years 1998 to the present, please provide the following information on an annual basis:

A) The number of agents for both general enforcement activities and particularly terrorism financing duties that the IRS asked the Administration for, and the amount of funds for both general enforcement activities and particularly terrorism financing that the IRS requested.

B) The number of IRS agents for both general enforcement activities and particularly terrorism financing duties that the Administration asked Congress for, and the amount of funds for both general enforcement activities and particularly terrorism financing duties that the Administration requested.

C) The number of IRS agents for both general enforcement activities and particularly terrorism financing duties that Congress authorized and appropriated, and the amount of funds for both general enforcement activities and particularly terrorism financing duties that Congress authorized and appropriated.

5. For ongoing budget plans and estimates for future years, please provide the following information on an annual basis:

A) The number of agents for terrorism financing duties that the IRS plans to ask the Administration for, and the amount of terrorism financing funds the IRS plans to ask the Administration for.

Hussein Oil for Food Revenues

We would also like a summary of the Department of Treasury's efforts to track the funds that Saddam Hussein's regime received in illicit and illegal revenues – estimated by the General Accounting Office to be \$10.1 billion – related to the United Nation's oil for food program from 1997 to 2002.

- 6.
- A) Specifically, what amount of Hussein's funds from the oil for food program have been frozen or seized?
 - B) What is the dollar value that has been returned to the Iraqi people? What amount remains under U.S. control?
 - C) What amount remains under control of foreign governments?

We very much appreciate your attention to these questions, and we request a complete answer by Monday, May 17, 2004.

Sincerely,



Charles Grassley
Chairman



Max Baucus
Ranking Member

PREPARED STATEMENT OF HON. CHARLES E. GRASSLEY

We are holding this hearing for two reasons. First, we are considering the nominations of two officials for the Treasury Department. Mr. Juan Zarate and Mr. Stuart Levey have been nominated for two very important positions to combat terrorism financing.

I want to welcome both of you and your families.

We will also consider the nomination of John Colvin to be Judge of the United States Tax Court. Judge Colvin has served as a capable judge on the Tax Court, and he has been re-nominated by the administration to serve another term.

I'm glad to see you here, Judge Colvin.

Second, we are going to hear testimony about, and discuss the problem of, terrorism financing, what we're doing to stop it, and the Treasury Department's role and performance.

The Treasury nominees will address this during their testimony on the second panel. Before that, we will hear from two former government officials with expertise in combating terrorism financing.

Mr. Joseph Myers and Mr. Jonathan Winer will give us their insights about terrorism financing.

Stopping terrorism financing is one of the most important aspects of the war on terrorism. We have to attack terrorism financing from all sides: from the wealthy foreign donors and states who fund terrorism, to the front companies and charities who launder money, to the cash smugglers and corrupt money remitters who move money, all the way down to the terrorists and sleeper cells waiting to attack us here. We must choke off the blood money of terrorism. We fail at our own risk.

The government took swift and aggressive action against terrorism funding after 9/11. We froze millions of dollars, blacklisted supporters of terrorism, raided organizations and indicted individuals.

It's fair to say we've made a great amount of progress. It is much tougher for terrorists to move their money.

But their funding remains in place. We only have to look at attacks in Madrid or Baghdad to see that they continue to operate and kill innocents.

I've been concerned about terrorism financing and what the Treasury Department is doing to stop it for a long time. Under the Clinton administration, I pushed for the Office of Foreign Asset Control (OFAC) to produce an annual report on terrorism assets.

Guess what OFAC and the FBI told me. They said: "We don't need to know who owns the building, we only need to know what's going on inside it."

That seems pretty short-sighted to me.

As a result, I got legislation enacted that requires OFAC to do an annual report on terrorism assets. I'm glad our strategy now is more comprehensive.

We may have advantages in stopping terrorism financing in the regulated banking system. But the terrorists have used other methods to move their money for generations.

We have to focus on commodities, diamonds and gold, cash smuggling and alternative remittance systems.

So that means we can't rest on our laurels. We've caught our breath, but now we have to renew the fight, and fight smarter instead of harder.

And we have to have the political will to win. We have to work with our allies, get tough with our enemies, and find a solution to handle the ones in between.

We have to decide what to do with nations who help us at the front door but encourage terrorism out the back door.

The Treasury Department has taken this to heart. I know Secretary Snow is committed to this, and so is Deputy Secretary Bodman.

That's why Treasury has re-organized its structure with the new Office of Terrorism and Financial Intelligence (TFI). This is a step in the right direction. The Treasury Department has a crucial and central role to play to fight terrorism financing. Treasury is stepping up for this role, and doing a pretty good job.

But there's more to be done, and I think there's some untapped potential. I also think other agencies could make a lot better use of the brain power at Treasury.

That's not a criticism. Now is the time for Treasury, with the help of Congress, to step up into a bigger role against terrorism financing. We have some excellent witnesses today to address these issues, including two Treasury nominees whom I think will do a great job.

Mr. Stuart Levey of the Justice Department is being considered for the position of Under Secretary for Enforcement. This will be the top position at Treasury to fight terrorism financing and will run the new TFI office.

Mr. Juan Zarate currently is the Deputy Assistant Secretary for Terrorism Financing. He is being considered for the position of Assistant Secretary for Terrorism Finance, a key component of the TFI office.

Before we hear their testimony and consider their nomination, we will hear from two witnesses with expertise in fighting terrorism finance from their time in government service. They will apply their perspectives and insights to the issue of terrorism finances, our successes and our challenges, and what Treasury needs to be doing.

Mr. Joseph Myers is a former official with the National Security Council and the Treasury Department.

Mr. Jonathan Winer was Assistant Secretary for International Law Enforcement at the State Department for six years.

Their experience should be helpful to the committee, and the issues they raise will help us with our second panel, the nominees.

PREPARED STATEMENT OF JOSEPH M. MYERS¹

Thank you, Chairman Grassley and Senator Baucus, for inviting me to appear before the Committee to address the Treasury Department's role in combating terrorist financing. I appreciate your attention to the issue. The Treasury Department plays a critical role in the fight against terrorist financing, which itself is an integral component of the overall effort to combat terrorism. The Congress and the Administration must continue to work together to develop our government's still relatively new capacity to combat terrorist financing.

I am privileged to appear on the occasion of your consideration of the President's nominations of Stuart Levey and Juan Zarate. I have worked closely with both gentlemen, before and after September 11, 2001, during my tenure at the Treasury Department and at the National Security Council. They are two high-minded, public-spirited, capable, and hardworking individuals. They are well fit to lead the newly established Treasury Office of Terrorism and Financial Intelligence. I encourage you and your colleagues to confirm their appointments as soon as possible.

Background

Prior to September 11, 2001, there was little political will to take aggressive enforcement steps against domestic fund-raising for terrorism, which in many cases was difficult to distinguish from First Amendment protected freedoms of speech and religion. Similarly, few resources were devoted to assessing global terror fund-raising networks; fewer still were directed to doing something about them.

¹The views expressed in this testimony are the personal views of Mr. Myers. They do not necessarily reflect the views of the law firm of Katten Muchin Zavis Rosenman.

After 9/11, eyes and ears were opened. At Treasury, Secretary O'Neill's initial skepticism about money laundering and terrorist financing control gave way to enthusiastic support and creative leadership. The FBI's white-collar investigators and the CIA's financial analysts were integrated into their respective counter-terrorism divisions and quickly proved their value both to the backward looking 9/11 investigation and to preventing attacks. Customs investigators turned their formidable financial investigative resources to sanctions busters, currency smugglers, and illegal money remitters. The Justice Department began using the terrorist financing statutes to take terror cells off the streets before they had a chance to strike. Our diplomats helped persuade and assist countries around the world to improve their own capacities to deal forcefully with supporters of terrorism. This interagency work was formalized by the creation of a policy coordination committee (PCC) under the NSC structure.

The PCC has made great strides in focusing our limited resources on the most important issues and tasks, and ensuring methodical, thorough all-source intelligence analysis of strategic financial targets. The agencies have worked to balance, in particular cases, competing interests in collecting intelligence, pursuing criminal investigations, imposing sanctions, and empowering our allies to take the initiative to address problems posed by their own citizenry and institutions.

Several important objectives have been achieved. Most important, al Qaida's ability to raise and move funds with impunity has been severely diminished. This is not to say that the organization has been crippled, I'm sorry to say. But the government's efforts have made a real impact on the organization's financial picture, and it is a weaker organization as a result. Much of our impact has been through deterrence—*i.e.*, donors are either afraid to support, or repulsed at the thought of supporting, an organization whose goal is to slaughter innocent civilians.

There continues to be a relatively high level of international support for the UN sanctions regime against al Qaida and its affiliates.

Key agencies in our government have grown accustomed to working with one another in new ways, and have become better at accommodating one another's interests. The CIA and the FBI, in particular, cooperate closely up and down the chain of command, on a tactical and strategic level.

The White House leads a regular, high level, and wide-ranging dialogue with Saudi Arabia on financing and ideological support of extremists. The Saudis are now engaged in a multi-faceted campaign against terrorism that seeks to overthrow their regime, and their cooperation with the U.S. is extensive.

The Europeans now formally recognize Hamas as a terrorist organization, and the Saudis have withdrawn official support for its activities.

Challenges

The government's counter-terrorist financing infrastructure is still in its infancy, and needs to be nurtured. Effectively performing all of the functions involved in combating terrorist financing requires an orchestrated, interdisciplinary, international effort. It is difficult, sensitive, and labor-intensive. It requires specialized investigators, cutting-edge technology, intensive diplomatic engagement, and cooperation from the private sector.

1. *Devote adequate resources to the task.* Because we do not today have a clear sense of how many financial and human resources are actually devoted to the various tasks involved in combating terrorist financing, it is impossible to make fully informed, strategic decisions about whether the resources are adequate or the allocations optimal. Nevertheless, there is an unfortunate historical pattern of authorized but unfunded and under-supported initiatives in this area. This pattern needs to be broken.

As a first order of business, the NSC and OMB should conduct a cross-cutting analysis of all the agencies' budgets in this area, to gain some clarity about who exactly is doing what, and with what resources. Provision should be made to incorporate classified material, so that the full range of activity underway is considered: (1) intelligence collection, analysis, and operations; (2) law enforcement operations (including related operations against money laundering, drug trafficking, and organized crime); (3) regulatory activity, including policy development, enforcement, and international standard setting and implementation; (4) sanctions, including an analysis of their effectiveness as an interdiction and deterrence mechanism; (5) diplomatic activity in support of all of the above; and (6) contributions made by the Defense Department.

I am confident that the outcome of such a study would support at least the following propositions:

- (a) The U.S. Government has inadequate resources to conduct forensic financial investigations.

(b) The U.S. Government spends a pittance (\$7–\$11 million) on building foreign governments’ capacity to fight terrorist financing. (Aside from the Defense Department budget, whose counter-terrorism assistance efforts are not coordinated with the rest of the government, relatively little is spent on strategic counter-terrorism assistance overall.)

(c) The U.S. Government’s handling of documents received from multiple overseas sources—including documents recovered from the battlefield in Afghanistan and Iraq, as well as documents obtained more formally from foreign law enforcement agencies—is a confusing morass that needs to be addressed. If we do not address it, we are never going to be able to “connect the dots” in financial investigations (or in other subspecialties of the counter-terrorism effort, for that matter).

(d) The government also desperately needs more translators who can deal with Arabic and other languages used by Islamic extremists; this is not news, but it is equally important in financial investigations as it is in other arenas.

2. *Focus available resources on real threats to our national security.* In connection with the budgetary cross-cut analysis, the NSC should develop a strategic plan, with defined metrics and assigned responsibility to various appropriate officials throughout the government. This could look much like the early National Money Laundering Strategies, but portions of it would need to be classified.

Our focus should be narrow, and our use of terms more precise. “Terrorist finance” means different things to different people. For some, it means almost any kind of support for Islamic fundamentalism. Others seem to mean “financial support for violent Islamic extremism” (as distinct from conservative Islam). Still others speak very broadly of support to all kinds of terror groups. (The State Department has designated 36 “Foreign Terrorist Organizations” pursuant to section 219 of the Immigration and Nationality Act, as amended by the Anti-terrorism and Effective Death Penalty Act of 1996. State’s official publication, *Patterns of Global Terrorism*, cites 38 others that do not meet the statutory definition.) Terrorism, after all, is a tactic, not a movement. But even though we loathe all terrorists’ choice of tactics, and we are right to denounce all of them, not all terrorist movements pose equal threats to the national security of the United States, or warrant the attention of our relatively scarce financial investigative or analytical resources. These resources should be focused on financial and ideological support for violent operatives from particular terrorist groups with a perverse, extremist understanding of fundamentalist Islam and who wish to inflict mass casualties on U.S. and other Western civilians.

Precision (or a lack thereof) in our language is important in a variety of contexts, and especially so in our effort to build alliances against al Qaida and affiliated Islamic extremist groups. Labeling Iraq “the front line of the global war on terror” and calling home-grown Iraqi Ba’athist insurgents “terrorists” is demagoguery and it undermines our credibility with allies we need to fight Islamic extremism.

3. *Use resources efficiently.* Once we have agreed on the most significant threat(s), we need to conduct our campaign efficiently, across a number of functional agencies. Combating terrorist financing is still widely and mistakenly viewed—inside and outside the government—as principally an exercise in sanctions. Yet it involves not only seizing money, but also following leads to terrorist cells, dismantling channels of funding, and deterring those who would aid and support terrorists.

The tactical exercise can be described with two central metaphors: on the one hand, following the money is like jumping into a stream and trying to swim both downstream to identify and interdict terrorist cells before they strike, as well as upstream to identify donors or other paymasters. It is also like playing multiple simultaneous games of chess: the pieces at our disposal represent the various aspects of U.S. diplomatic, economic, law enforcement, intelligence, and military power. Each contest is different; the challenge is deciding which pieces to move, where and when.

The campaign also needs to give due attention to international standard setting, maintaining alliances, and building capacity. Because the campaign works on multiple levels and requires choices among competing goals and priorities, the inter-agency process must be led by someone who is perceived as neutral and fair, and who is empowered to call others to account. For these reasons, the NSC’s Office of Combating Terrorism should chair the PCC on terrorist finance.

4. *The role of OFAC blocking actions.* Blocking actions issued by Treasury’s Office of Foreign Assets Control (OFAC) are an important component of the terrorist finance campaign. These sanctions can send an important political message, and are a transparent way to communicate our policies and—when endorsed by the UN—to empower foreign states to take local enforcement steps. Also, the threat of OFAC sanctions can be very effective in private negotiations with foreign governments. Finally, interagency discussion of sanctions forces debate about alternatives.

But there are limits to the impact of OFAC blocking actions, and they should not be overemphasized or considered a default choice. This is especially true of sanctions imposed unilaterally or almost solely by the U.S. (for example, sanctions against Hamas or Hezbollah fund-raising). It is also true of sanctions against low level functionaries or entities without economic ties to the U.S. And even where there is multilateral support for sanctions, there is certainly not universal capacity or political will to actually implement them. Moreover, transparency with respect to U.S. targets can itself cause problems, either by compromising other sensitive operations or diplomacy, or by revealing the sources or limits of our intelligence. Insisting on sanctions without solid intelligence undermines our credibility and limits our ability to orchestrate collective action.

5. *We cannot go it alone.* One of the standard “talking points” for senior officials discussing counter-terrorism generally, or terrorist financing specifically, is to note the importance of allies, and international cooperation. One of my favorite, often repeated lines, illustrates the necessity for cooperation in gaining access to records from foreign financial institutions by invoking the unworkable absurdity of the alternative—bombing a foreign bank. But I am concerned that these talking points are too often mere lip service, and that we don’t realize how destructive our other, often contradictory words and actions can be in securing effective cooperation.

The political posturing on Saudi Arabia is a good example of the importance of careful language to maintaining alliances. The Saudis are regularly portrayed as either our worst enemies or our best, most loyal and steadfast allies. The reality in my limited experience is that our relationship with the Saudis has much in common with our other bilateral relationships: it is strategically important, and complex, and we seek to maximize areas where our interests overlap, while we minimize conflict in order to achieve as many of our common goals as possible. The relationship is in the spotlight for good reason: we face a common deadly enemy in al Qaida, and neither of us anticipated how serious an enemy it would be. But the Saudis are fighting it with us, on many levels, including by pursuing a reform agenda inside the Kingdom. Whether they have taken the right steps, or taken them quickly enough, is a subject about which reasonable people can reasonably disagree. But there is no reasonable option other than to work with Saudi Arabia to fight al Qaida, and to support the Saudis’ reform agenda in the process.

I fear a larger obstacle to our terrorist financing efforts is emerging now, largely as an unintended consequence of the war in Iraq. As Robin Wright wrote in the *Washington Post* this past Sunday (May 16 edition, pp. B1, B4):

“Whether the U.S.-led occupation was wise or well-handled, the way it unfolded in Iraq has profoundly disappointed many Muslims both near and far from Iraq’s borders. . . . The occupation of Iraq has affirmed the worst fears of the Islamic world, reinforcing distaste for America and what it represents, and spawning wild conspiracy theories about the motives of the West.”

Certainly the photographs emerging from Abu Ghraib are an ideal recruiting tool for Osama bin Laden. But there are broader questions. Have we stepped into a trap by overreacting to the September 11 attacks? Are we becoming more isolated in the Islamic world than Osama bin Laden? Let’s hope not, because if our effort against terrorist financing becomes a fight against a newly energized and radicalized Muslim Brotherhood, wiser heads than mine are going to have to figure out a way to secure necessary international cooperation against support for violent Islamic extremism.

6. *Metrics.* Though it will be difficult to do so, the government needs to devise metrics to measure success against terrorist finance that actually are connected to the day-to-day activities of many of the people necessarily involved in the fight. The most fundamental metric was articulated by Secretary Rumsfeld in his famous “leaked” memorandum—*i.e.*, whether our efforts are resulting in fewer, as opposed to more, terrorists. One degree removed from this measure is whether people are still willing to contribute money to violent Islamic extremists. I do not know, but I fear we are not doing well against either of these benchmarks. If we are failing, however, our failure has little to do with the community of people charged with fighting terrorist financing per se, and much to do with our mismanagement of the conflict in Iraq and other matters that have inflamed anti-U.S. sentiment in the Arab and Muslim world.

The more pedestrian metrics I find most meaningful are: (1) whether any more catastrophic attacks are carried out against the U.S. at home or abroad; (2) anecdotal information—and the intelligence community’s assessment—about whether al Qaida was having more or less trouble paying its bills and supporting its operatives; and (3) our success or failure in killing, capturing or otherwise taking out of commission key financial and logistical operatives for al Qaida.

Other measures are also in circulation, and have been cited as more or less meaningful by others. These include: (4) how many people have been charged or convicted of financial support for terrorists; (5) how much money has been seized or frozen by the U.S. and our allies; (6) how much “flow” has been choked off by sanctions; (7) how many names are on OFAC’s list; (8) how many names have particular agencies proposed for discussion by the PCC; (9) how many prominent individuals or institutions have been publicly exposed or punished; (10) how many countries passed new laws and regulations to stem terrorist financing; (11) how many foreign missions have focused on these and related issues.

Now that I am in the private sector, I have a better appreciation of the time and money spent by financial institutions in trying to comply with their regulatory obligations. Some other industry relevant performance measures might include: (12) how many final rules has Treasury issued under the USA PATRIOT Act; (13) how many terrorist financing SARs have been filed by U.S. financial institutions; and (14) whether the government has successfully translated its knowledge of terrorist financing into guidance for the industry.

This range of possible performance measures demonstrates that one’s view of success or failure very much depends on one’s perspective.

Conclusions

1. *Treasury’s role.* Reestablishing an Under Secretary at Treasury, with two Assistant Secretaries, is a good start to rebuilding Treasury Enforcement, which was decimated by the creation of the Department of Homeland Security. But Treasury should not try to recreate what was there before. The present and former Treasury enforcement bureaus have had a proud history, and distinguished themselves particularly in financial investigations. But Treasury’s headquarters enforcement office has too often tended to live vicariously through the bureaus, and indulge in a fantasy that it supervised them in an operationally meaningful way. Too many enforcement office staffers were drawn from the enforcement bureaus, and a great deal of energy was spent trying to compete with the Justice Department for resources or for control over particular categories of cases. Meanwhile, Treasury’s enforcement office often failed to realize its competitive advantage, to focus its energies on areas where it could make a unique contribution. I hope that, as the new office comes into being, its leaders can avoid these mistakes.

Treasury should lead, but do so through support, strength of work product and argument. It should not try to do so by favoring its own powers at the expense of other agencies. The top priorities in the war against al Qaida and its allies must remain to kill, capture, prosecute, and collect information to identify cells and prevent attacks. Treasury should support, and not interfere with, these actions first. Often, Treasury’s powers can be used to support these other steps.

Treasury’s resources should be focused on specialized intelligence analysis, support to law enforcement, regulatory policy and oversight, international financial crime enforcement policy, and the administration of sanctions.

Intelligence analysis. Treasury’s goal should be to compete with the CIA in generating quality finished intelligence analysis of terrorist finance and other illicit finance issues. OFAC’s analytical product tends to be formulaic, styled as an administrative record to support blocking action. But given the complexities involved in making informed decisions about the best ways to proceed against particular targets, the government as a whole would be better served by products that presented a more objective view, and could be used to support a range of actions. The new director of Treasury’s Financial Crimes Enforcement Network (FinCEN), William Fox, testified recently before the Senate Committee on Banking, Housing and Urban Affairs, that FinCEN analysts need training and upgraded security clearances and equipment in order to be able to complete a study on the illicit trade in diamonds and other precious stones and metals. The intelligence community should do everything it can to facilitate FinCEN’s access to the information it needs.

After all, there is much to consider, and it is always difficult to stay current. Though the patterns of terrorist financing that have developed over time—with charitable funding from Gulf states being diverted to support extremists—are still worth pursuing, we also need to look at emerging realities. Al Qaida financing *per se* has almost certainly become more diffuse since our war in Afghanistan and the bombings—and resulting enforcement and regulatory steps—in Saudi Arabia. Whereas once al Qaida’s funds were managed centrally, communication and logistical difficulties have forced local operatives in many cases to fend for themselves. The Madrid bombing investigation indicates that the cell there relied on self help, and on drug trafficking and document fraud, to fund its operations. Does this signal a trend? Treasury analysts should be in a position to answer this question.

Support to law enforcement. FinCEN has made significant strides over the years in leveraging technology to support law enforcement investigations, and most recently has contributed through developing and implementing a secure network to communicate law enforcement requests to financial institutions pursuant to Section 314(a) of the USA PATRIOT Act. But FinCEN has lost its edge in developing artificial intelligence and data mining technology, and its analytical reports have suffered from an assembly line approach taken to respond to the pressures imposed by the large demand from the law enforcement community. FinCEN should strive to be a leading technological service provider for law enforcement investigating financial crimes. And it should triage its routine law enforcement requests, upgrade its analysts' skill levels, and focus on providing support to high-impact cases. Director Fox's recent testimony indicates that he is pursuing precisely these goals.

Regulatory policy and oversight. Treasury is the natural leader in the financial crimes regulatory arena, and doing so effectively should be among its absolute highest priorities. Treasury is uniquely situated to gather information from all relevant components of the government, from foreign governments, and from the private sector. And by virtue of its statutory authorities it can oversee the activities of the Federal functional financial regulators in examining for compliance with the Bank Secrecy Act. Recent news reports have highlighted significant failures of the control systems of well-regarded financial institutions. The time is ripe for Treasury to strengthen its capacity to ensure a consistent regulatory compliance environment.

International financial crime enforcement policy. Treasury has an important role to play in conducting diplomacy through finance ministry channels around the world. Treasury has effectively led the U.S. delegation to the Financial Action Task Force and ensured robust and updated international standards to combat money laundering and terrorist finance. Treasury needs to continue to lead this work, now that the IMF and World Bank have agreed to conduct surveillance of countries' compliance with the standards. The FATF list of "non-cooperative countries and territories" has largely served its purpose. Treasury should now consider initiating a process in the FATF to apply multilateral pressure on rogue financial institutions, such as those in Burma and Syria already designated by the Treasury as "primary money laundering concerns" under section 311 of the USA PATRIOT Act.

As an adjunct to this work, Treasury needs to play an important role in the government's delivery of training and assistance to countries wishing to build their own capacity to combat terrorist financing. Very few foreign governments have any significant capacity to block assets or conduct financial investigations. For some reason, however, Treasury has declined to transfer to the new Office of Terrorism and Financial Intelligence the enforcement component of its Office of Technical Assistance, whose resources are necessary to execute this work. The new office is the logical home for the enforcement assistance component, and it should be moved there immediately.

Administration of blocking orders and sanctions. Of course, Treasury should continue to administer blocking and related actions under the International Emergency Economic Powers Act, the Trading with the Enemy Act, and various relevant country-specific sanctions legislation. In many ways, OFAC is on the ascendancy, having grown significantly in recent years, and having been able to attract many capable analysts and attorneys. As indicated above, OFAC could be an even more effective agent within the U.S. government if its work product was more accessible and presented in a more objective manner.

2. *Resources.* Treasury needs time and resources to perform these functions. At the moment, Mr. Levey and Mr. Zarate will return to Treasury to add another layer of management over a still very small complement of workers. The office is slated to grow some over the coming year, but not nearly enough.

I was troubled to learn that the Office of Management and Budget denied the IRS's request for financial investigators to support terrorist financing cases in 2005. The IRS fields some of the most competent, selfless financial investigators in the government. I am confident that the program they wanted to staff enjoyed the full support of the FBI.

More to the point for this hearing, as I understand it, no provision whatsoever has been made to staff the new Assistant Secretary for intelligence with a complement of analysts. In the near term, there is probably only one option—to transfer resources from FinCEN and OFAC. But that will only frustrate those agencies' ability to accomplish their missions.

I would strongly encourage the Administration to request a substantial increase in the workforce of the new office, in two key areas. First, Treasury should hire a complement of intelligence analysts, to work for the yet to be named Assistant Secretary for intelligence, and to focus their energy on reviewing and analyzing classified material and producing finished analyses to compete with the CIA's work prod-

uct in this area. These analysts could also focus on other issues of significance to the Treasury Department.

Second, Treasury should build a cadre of financial forensics and regulatory experts. These people could be deployed to support strategically important law enforcement investigations at home or abroad, as well as significant regulatory matters. They should have administrative subpoena powers, and unfettered access to the files of the Federal financial supervisory agencies to whom Treasury has delegated authority to examine for Bank Secrecy Act compliance. The very existence of such a unit would add a degree of discipline to the regulatory oversight process. And their skills could be deployed as needed in connection with significant regulatory or enforcement matters, in support of overseas training missions, as well as on special projects such as the hunt for Saddam Hussein's assets, if and as they arise in the future.

The Administration has inexplicably declined to ask for these basic resources to rebuild Treasury's ability to perform a critical role in the United States counter-terrorism campaign. I hope they will do so soon. If the mission is truly important, the Congress should give Treasury the resources anyway.

Thank you again for your interest in the issue, and for the opportunity to appear before you today. I would be pleased to answer any questions you may have.

PREPARED STATEMENT OF JONATHAN M. WINER

Chairman Grassley, Senator Baucus, and Distinguished Members of the Committee:

I am honored to be provided the opportunity to testify here today to share my views on terrorist finance and the role of the U.S. Treasury in combating terrorist finance as the Committee considers the respective nominations of Mr. Stuart Levey and Mr. Juan Zarate for the positions of Under Secretary of the Treasury and Assistant Secretary of the Treasury for Enforcement. I am also honored to share my appearance before you today with Mr. Jody M. Myers, who served both the Clinton and Bush Administrations with distinction, loyalty and courage for a decade working to build domestic and international policies and systems to combat money laundering and terrorist finance.

My views are based on 20 years of experience in the field of money laundering. My work in this field includes 6 years of service as Deputy Assistant U.S. Secretary of State for International Law Enforcement from 1994 through 1999 and ongoing contacts with the U.S. government on terrorist finance issues since. My testimony is also informed by my continuing service as a member of the Independent Task Force of the Council on Foreign Relations on Terrorist Finance chaired by Maurice R. Greenberg and on the Steering Committee on Transnational Threats of the Center for Strategic and International Studies ("CSIS") at Georgetown.

Let me begin by endorsing the two nominations before the Committee.

To be effective against terrorist finance, the Treasury Department needs a high-level, fully functional Office of Enforcement. The nomination of Mr. Levey to an Under Secretary position for Enforcement is a welcome correction to the elimination of that position at the time of the creation of the Department of Homeland Security. He has an excellent reputation, has earned wide respect, and I support his confirmation.

Mr. Zarate, whom I have had the opportunity to observe in action, has by all accounts performed superbly as Deputy Assistant Secretary for Terrorist Finance, working with diligence, drive, and creativity. In addition, Mr. Zarate's previous experience as a prosecutor would be extremely helpful to Treasury carrying out its proper role in fighting terrorist finance, which extends in my view beyond leadership in policy and regulation to leadership in enforcement.

I turn now to the broader issue of Treasury's role in combating terrorist finance. In my view, the single most important issue facing the Committee in this hearing is how to assist the executive branch in uniting policy, regulation and enforcement into a single, integrated strategic approach. Despite all we have learned since the September 11 terrorist attacks, this goal has eluded us. The restoration of a fully-functioning Office of Enforcement at Treasury with an Under Secretary and an Assistant Secretary responsible for an Office of Terrorism and Financial Intelligence provides the opportunity for considering anew how to achieve it.

Please note however: without adequate authority to secure the cooperation of other agencies, including the FBI, and without adequate personnel resources to carry out its strategic function, Treasury's Office of Enforcement will not be able to meet the enormous challenges facing our country in combating terrorist finance. At this time, neither adequate bureaucratic heft nor personnel have been allocated to

Treasury, and these real gaps make the very hard job for these two nominees all the harder.

This is not a new problem, but one that is ongoing.

During the Clinton Administration, in which I served, responsibility for both money laundering and terrorist finance was fragmented. Responsibility and leadership in these areas were shared among many agencies. These included the Department of State, where I was the most senior official focused on the issue, the Department of Justice, responsible for prosecutions, the Department of the Treasury, responsible for regulation and some investigations, and the National Security Council of the NSC, where Richard Clarke sought to integrate the work through the Office of Transnational Threats. Through years of work, by the late Clinton Administration we had interagency processes in place that integrated many of our disparate efforts into a strategic whole for the purposes of policy and regulation. But we were never—and let me emphasize this point—*never* able to integrate policy and regulation with strategic law enforcement. The law enforcement agencies, especially the FBI, evaded integration, and chose to discourage independent efforts to think strategically about making important cases in the field of international financial crime.

When the Bush Administration came into office, it made no significant changes to money laundering and terrorist finance enforcement prior to the September 11 terrorist attacks. In the first months after the attacks, however, a new team spirit was built. Treasury, the CIA, the Justice Department, and the FBI began to work closely together strategically, to integrate policy, enforcement activities, and regulatory activities under the Policy Coordination Committee (“PCC”) structure. This approach produced enormous results in the first 6 months following the attacks, and these results were substantially consolidated in the period between the spring of 2002 and the spring of 2003. Some major terrorist financiers were subjected to economic sanctions on a global basis. The U.S. closed a major international hawala network being exploited by and helping to fund al Qaida, Al Barakaat. The U.S. secured growing cooperation on the part of the Government of Saudi Arabia in regulating Islamic charities, and in one case, Al Haramain, in closing some of the offices most obviously involved in terrorist finance. The U.S. also closed some of the major nodes in the funding network of the Muslim Brotherhood, a central element for funding global terrorism.

In the spring of 2003 some momentum was lost in connection with the creation of the Department of Homeland Security (“DHS”). That reorganization transferred U.S. Customs in total to DHS out of the Department of the Treasury, and terrorist finance investigations to the FBI from Treasury. Treasury’s existing terrorist finance investigations—Operation Green Quest—were moved to the FBI, along with a small number of the key investigators from Treasury most knowledgeable about Terrorist Finance. The remaining former elements of Treasury’s enforcement capabilities relating to money laundering were subject to a Memorandum of Understanding between the Attorney General and the new Secretary for Homeland Security that limited the DHS side of enforcement to non-terrorism money laundering cases.

The result was that Customs was taken out of active participation in terrorist finance investigations. Treasury lost its key policy professionals above Mr. Zarate to Homeland Security, and the Under Secretary for Enforcement retired and was not replaced. This was harmful to Treasury’s leadership in this area, vacating the enforcement field, at least, to the FBI, which has had an erratic track record in the area of money laundering and terrorist finance investigations. Some months later, the very active David Aufhauser, General Counsel to the Department of the Treasury and a key player in combating terrorist finance, also chose to leave the government to return to the private sector. Senior officials in the Administration also had to focus their attention on other significant foreign policy and national security issues such as the Iraq war.

As GAO has concluded, the removal of Customs jurisdiction over terrorist finance reduced the incentives of persons at that agency from future active participation in terrorist finance investigations. But a deeper injury also took place. By removing Treasury from its enforcement role, the new structure may have made it more difficult to continue the strategic integration of terrorist finance policy, regulation, and enforcement.

The structural reasons for this are pretty obvious. Following the creation of DHS, Treasury continued to have responsibility regarding money laundering and terrorist finance policy and regulation. It also had regulatory enforcement responsibility for violations of sanctions through the Office of Assets Control (“OFAC”) and for violations of money laundering regulations through FinCEN. In addition, FinCEN continued to be responsible for serving as a resource for money laundering and terrorist finance investigations being undertaken by the FBI and DEA at Justice, and by the

new ICE investigators at Homeland Security. However, with the elimination of the position of Under Secretary for Enforcement, no person at a senior position was in charge of the whole at Treasury. And Treasury was in no position to direct significant international investigations of money laundering or terrorist finance.

While some visible progress continued to be made after March 2003—such as the global designation in the summer of 2003 of the major European elements of Hamas—the pace of regulatory designations slowed. While a few major enforcement cases also were made—such as the guilty plea involving the head of Benevolence International in Chicago¹—these cases have been relatively few in number.

As an outsider, it's hard for me to know whether the relative quiet we have seen over the past year masks intensive activity on the inside, and substantial progress being made beneath the surface—or whether progress has actually slowed. But that appearance of relative slowing of activity itself carries a cost. If terrorists think we are not going to shut down their networks, they may be less deterred from trying to move their money. To maintain the deterrence function credibly, the U.S. must continue to make highly publicized enforcement and regulatory actions on a regular basis. Not to do so represents at least a tactical failure, and very likely, a strategic one as well.

As the GAO found in its September 2003 report, Treasury, Homeland Security and the Attorney General still need to strengthen how they develop and implement strategies. One problem is that no one has been in charge of doing that. Another problem has been that the three Departments have failed to develop a centralized system to coordinate investigations. As the GAO stated, “although Treasury generally took the lead role in strategy-related activities, it had no incentives or authority to get other departments and agencies to provide necessary resources or compel their participation.”

So where do we go from here?

The Council on Foreign Relations Independent Task Force on Terrorist Financing is continuing to evaluate U.S. government strategies against terrorist finance. And while the latest recommendations remain in draft, the thrust of the Task Force's earlier findings is little changed. As a member of the Task Force, the steps that I view to be most important are as follows:

1. Ensure central coordination.

The absence of a designated official in the White House to coordinate terrorist finance activity continues to represent a real gap that inhibits the U.S. government's ability to create strategies that integrate policy, regulation, and enforcement. The White House needs to appoint such a person. Alternatively, the Administration (or the Congress) need to give the Under Secretary of the Treasury for Enforcement the mantle for doing this in such a way that causes the FBI and the CIA to accept the Under Secretary's lead in strategy on terrorist finance. I continue to be concerned that law enforcement cases are not being integrated with regulatory activity and international policy-making in a manner that would produce the greatest impact on terrorist finance.

2. Provide appropriate resources.

Treasury needs the resources to do its job, as does the rest of the U.S. government. Financial crime investigations have never been adequately funded by the U.S. government. They are hard to do. They involve lots of paper. They require a great deal of sophistication on the part of investigators. They are personnel-intensive. I share Mr. Jody M. Myers views on this point, and endorse his recommendation of an NSC/OMB analysis to drive further allocations of funds and personnel.

3. Regulate charities.

As Mr. Zarate has stated on numerous occasions, terrorist groups continue to seize on charities as a means of raising and moving funds and logistical support. In his words, “the infrastructure of charitable organizations and their geographic scope have enabled terrorist groups to shift funds, supporters and operatives around the world quietly through charities.” The U.S. has worked to develop case studies and typologies of terrorist abuse of charities, working closely with the Financial Action Task Force (“FATS”). It has also developed measures that donors and charities can use to protect themselves, releasing the “Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S. Based Charities,” which it released in November 2002. Mr. Chairman, these voluntary measures are fine. But they are voluntary. They should be mandatory. Charities should be no less responsible for combating terrorist finance than are financial institutions. We require banks, mutual funds,

¹ <http://www.usdoj.gov/usao/iln/pr/2002/pr1009-01.pdf>.

money services businesses, broker/dealers, investment advisers, and many other categories of financial institutions to put anti-money laundering policies and procedures in place as a condition of license. We are in the process of requiring insurance companies, which are State-regulated, loan or finance companies, which are largely unregulated, and hedge funds, which by definition are not subject to regulation, to put these policies and procedures into place. And yet we have done nothing to require charities—which are tax-exempt institutions and required to file documentation with the IRS to maintain that status—to put anti-money laundering policies and procedures in place. To me, this represents a huge gap.

If the voluntary standards are worth anything, they should be more than voluntary. The problem with charities funding terrorism has not been limited to foreign charities, but has involved charities based in the U.S. In an affidavit filed in U.S. Federal court, U.S. Customs Agent David Kane cites a recent CIA report made public in response to a FOIA request, which states that of more than 50 Islamic nongovernmental organizations in existence in 1996, “available information indicates that approximately one-third of these Islamic NGOs support terrorist groups or employ individuals who are suspected of having terrorist connections.”² We should put into place regulations of charities similar to that of other businesses we have found to have substantial risk of money laundering or terrorist finance. Terrorist finance compliance should *not* be a faith-based initiative, but subject to some oversight, with at least a baseline of anti-money laundering and terrorist finance policies and procedures made a condition of tax exempt status.

4. *Focus efforts on Saudi Arabian compliance.*

Saudi Arabia has been the single most important source of funds for global terrorism. Some half a dozen of the most visible charities, including two of Saudi Arabia’s largest, the International Islamic Relief Organization (“IIRO”) and the WML, have repeatedly been linked to supporting terrorist organizations in areas well beyond the Persian Gulf. As described by Kuwaiti liberal politician Abdallah Bishara, “Charitable associations of Kuwait, Saudi Arabia and other Gulf countries have invested huge sums in Afghanistan and its neighboring countries to create a structure of schools, Koranic seminaries, Islamic cooperatives, humanitarian associations, and social services networks that feed Islamic terrorism. This Islamic system is the rear echelon that supports bin Laden. . . . If it were wanted to dry up the funding sources of terrorist organizations at the world level it would not be difficult, because they are all concentrated here in the Gulf region.”

Since the May 12, 2003 attacks in Riyadh, the government of Saudi Arabia has reportedly put into place comprehensive anti-money laundering and terrorist finance compliance systems, as well as a system for regulating charities. These systems include active monitoring of charities by the government, and enhanced know-your-customer obligations for Saudi financial institutions holding charitable funds. All of this activity is welcome. But compliance requires actions in practice and implementation, not just policies. And the degree to which Saudi Arabia has actually put into practice the standards it professes remains uncertain, due to the enormous secrecy that accompanies the Saudi approach to governance. As Mr. Zarate told the Congress on March 24, 2004, implementation by Saudi Arabia of its new laws and regulations to combat terrorist finance posed “ongoing challenges.” A particularly critical challenge, in Mr. Zarate’s words, remains Saudi Arabia “fully implementing and enforcing the comprehensive measures . . . enacted to ensure charities are not abused for terrorist purposes.” I concur with Mr. Zarate’s previous testimony stating that Saudi Arabia must “move forward to clarify and empower an oversight authority that will administer effective control over the [charities] sector and ensure compliance with obligations under the new regulatory measures.” In particular, the U.S. still needs to determine whether Saudi Arabia is serious about shutting down its previous support for Hamas. In the past, senior Saudi officials have stated publicly, if sometimes euphemistically, that they support funding for Hamas. Hamas is an offshoot of the Muslim Brotherhood and has had operational, financial, and institutional relationships with elements of al Qaida. The Saudis need to know that the U.S. government will not tolerate the continued support of Hamas by Saudi Arabian entities or individuals. It is not clear to me today whether the U.S. government has sent this message, whether the Saudi government is still providing support to Hamas, and if it is, whether the U.S. government would do anything about it. This lack of clarity may represent an ongoing vulnerability in closing off terrorist funding of Hamas.

² Affidavit of David Kane, Special Agent, United States Customs Service, filed under seal in “In the Matter of Searches Involving 555 Grove Street, Herndon, Virginia and related locations,” in the U.S. District Court for the Eastern District of Virginia, Mar. 2002 (“Kane Affidavit”).

5. *Proceed with designations of major foreign financial institutions and businesses as terrorist financiers.*

If I differ from Mr. Myers in any area of his testimony, it is in his emphasis on cooperation with Saudi Arabia, to the exclusion, perhaps, of accountability. Mr. Myers states that there is no reasonable option other than to work with Saudi Arabia to fight al Qaida and to support the Saudis' reform agenda in the process. To state this should not mean that in the process we cannot use tough tools as well as diplomacy to secure our objectives. To an outsider, it is not clear that we have been as firm with the government of Saudi Arabia as we should have been, or that we have sent the proper message to the private sector individuals and institutions in Saudi Arabia whose actions helped lead to the murder of our people on September 11, 2001. Aside from the Saudi charity Al Haramain, the U.S. Treasury has not in recent months taken actions against important financial institutions or businesses in Saudi Arabia for past involvement in terrorist finance.

Many members of the Task Force on Terrorist Finance of the Council on Foreign Relations have expressed to me their concern about the U.S. having failed to take this important step in light of Saudi Arabia's failure to take public punitive actions against any member of the Saudi establishment for financing terror. To date, there have been no publicly announced arrests, trials or incarcerations in Saudi Arabia involving the financing of terrorism, nor has the U.S. taken action against a number of Jeddah businessmen and Saudi charities whose names have repeatedly surfaced in public in connection with serious terrorist finance allegations.

Last July 31, when I testified before the Senate, Mr. Rick Newcomb, head of the Treasury Office of Foreign Assets Control, testified that he had put together a number of packages for possible designations of such persons and entities pertaining to Saudi Arabia. The gist of his testimony was that there had never been a decision by the Administration to move forward with those packages. It is my understanding that the U.S. government is receiving cooperation from Saudi Arabian financial institutions and the Saudi Arabian government to monitor accounts of charities or certain other suspected terrorist financiers, and that the U.S. would not have received this cooperation if we had proceeded with the designations. Accordingly, the U.S. made a strategic decision to undertake monitoring in early 2002 by agreement with the Saudis, rather than to simply freeze and sanction relevant Saudi accounts unilaterally.

I cannot fully evaluate the merits of this decision from the outside, as I do not know what information the U.S. has received as a result of the monitoring of financial accounts in Saudi Arabia undertaken with the cooperation of Saudi officials and financial institutions. Regardless of the reason, I strongly believe that the U.S. should take action in this area to hold all known Gulf State terrorist financiers accountable through economic sanctions, regardless of whether such action might alienate or anger persons in Saudi Arabia or elsewhere. Our failure to do this in public sends the message that you can fund terror and if you are politically protected, and there will be no public consequences. That is certainly the wrong message, and we should send one that unmistakably makes clear that there are consequences for funding terrorism regardless of one's political patrons or connections.

6. *Complete the rule-making process.*

Congress mandated that the Treasury Department issue all PATRIOT Act regulations within 1 year of the PATRIOT Act's enactment. It is now 2½ years since Congress issued that direction, and yet many categories of financial institutions have yet to be covered by regulations. Insurance companies, loan and finance companies, hedge funds are among the major categories of institutions awaiting guidance from the Treasury as to how they are to proceed with anti-money laundering and terrorist finance compliance. The long delays create compliance uncertainty for these financial sectors. The delays also weaken our ability to counter terrorist finance, as those sectors that remain uncovered by regulations may also remain vulnerable to money laundering due to a failure to put compliance provisions in place. Meanwhile, all financial institutions are awaiting the issuance of Section 312 regulations on special due diligence for the handling of foreign correspondent accounts, private banking accounts, and politically exposed persons, which have now languished for many months since the issuance of proposed regulations. Regulatory uncertainty creates very difficult problems for regulated businesses, making it impossible for them to develop systems that they can predict will be compliant. I hope that these nominees will be in a position to speed the completion of this regulatory process.

7. *Fund FinCEN and enhance its artificial intelligence capabilities.*

The new director of FinCEN, William J. Fox, has a well-deserved reputation for intelligence, creativity, ethics, judgment, and energy, all of which are needed at

FinCEN, an agency which long did not receive the attention it needed from Treasury. FinCEN has had difficulties in achieving its regulatory mission, that is, getting regulations out, as discussed above, and interpreting them once they are out. It has not always delivered on its promise of providing financial intelligence to enforcement agencies. And it has had tremendous limitations in its handling and analysis of sensitive financial information, and its dissemination of this information to those in the government, and in certain circumstances, the private sector, who need to use it. Mr. Fox has described the provision of counter-terrorism support to law enforcement and the intelligence community as the single most important operational priority for FinCEN. To do this, FinCEN needs to continue to move forward with BSA Direct, its new system for data mining and financial analysis. BSA Direct has taken a long time to come online. FinCEN currently estimates that it will require another \$6 million before BSA Direct is built. Given what terrorism costs the American people, that is not a great deal of money. Treasury should be accelerating the delivery of these funds to FinCEN, and should be accelerating the development and implementation of BSA Direct on an urgent basis.

8. *Develop systems for regulating gold, diamonds, and other barter commodities used by terrorists.*

It is in the interests of our government to understand how terrorists use commodities in conjunction with hawalas and other alternative remittance systems to go around the formal system of banking and thereby to fund terrorism. Our understanding of these areas remains inadequate. The need for understanding them and then developing systems for marking and regulation is critical for us to make it harder for terrorists to evade oversight. The pioneering work done by the Drug Enforcement Administration (“DEA”) in understanding the black market peso exchange, which involved money laundering through commodities as well as alternative remittance systems, may be a useful place to begin in this analysis. Ultimately, we will need regulatory regimes covering these additional sectors, applied on a global basis through the FATF.

9. *Review the regulation of free zones and develop global standards.*

The world’s free zones have long been vulnerable to money laundering, due to their relative lack of customs controls. The Gulf States today have some prominent free trade zones, multiple mechanisms for alternative and informal payment systems, and these are adjacent to gold markets. Panama’s Colon Free Zone has demonstrated that this combination is susceptible to money laundering abuse. Yet to date there is no global set of regulations applying to free zones to deal with money laundering and terrorist finance vulnerabilities. While regulation and review of free trade zones may today in the first instance be in the jurisdiction of the Department of Homeland Security, attention should be given to the two Departments working together to think through the intersection of the payments systems and trade documentation at the free trade zones to determine whether the zones today pose special vulnerabilities for terrorist finance.

10. *Trust, but verify.*

Every Administration, Republican or Democrat, constantly seeks to put the best face on things when their witnesses testify before the Congress. Indeed, I have been on both sides of that equation, as a former Congressional staffer and executive branch policy maker. But the oversight function of Congress is especially urgent when it comes to terrorist finance, because in the absence of public activity, failures of coordination and successes in coordination may look identical to the outside world. We may never know what is going well and what isn’t, unless the Congress insists on holding the executive branch accountable.

During my time in the Clinton Administration, I found it impossible to secure cooperation from the FBI on enforcement activity in the area of money laundering. This was not merely because I was located in the Department of State, and the FBI was in the Department of Justice. FBI enforcement activities were decentralized and, over time, it became clear to me that no one in Main Justice had a good idea of what the FBI was doing in the field on money laundering or terrorist finance. Indeed, whenever I would stumble into an active investigation and sought to look further into it, I would be told that it was under control, going well, and I should stay out of it. Inevitably, and I mean inevitably, I would later find out that the investigation was not going well and was not being undertaken strategically. Repeatedly, the FBI’s failure to include other elements of the government (and often, other relevant elements of the FBI itself), was making the investigations strategically ineffective.

Now that the Treasury had been stripped of its enforcement capacity in the area of terrorist finance, the U.S. Government is more vulnerable than ever to the risk

of failures in strategic thinking by the FBI with regards to terrorist finance cases. Such failures are endemic in government whenever an agency is insufficiently connected to other elements of the government that may often hold important information and have important insights from other perspectives. Here, we need an FBI that cooperates completely not only with the Justice Department and the CIA, but with the White House NSC, with the Department of Homeland Security, with the Department of State, and with the Department of the Treasury, to make major cases against major terrorist targets on an international basis, using all available tools.

I do not know whether or not such cooperation is taking place today. Based on what is public, the problem of interagency cooperation would seem to remain an acute one. Again to quote the GAO, "long-standing jurisdictional and operational disputes regarding terrorist financing investigations may have strained interagency relationships to some degree and could pose an obstacle in fully integrating investigative efforts."

Mr. Chairman, the only method that I know of to hold the executive branch accountable on issues of this nature is the oversight function of the Congress. You sit on the Judiciary Committee in addition to your chairing this Committee. You are thus in a unique position of authority to exercise oversight regarding terrorist finance. You have labored for years to meet those extraordinarily important oversight responsibilities, and the task remains as essential as ever. I can only say that in the absence of aggressive, ongoing, demanding Congressional oversight, because of the nature of bureaucracy rather than any bad intention, neither this Administration nor any other is likely to take all of the steps needed to protect our public against terrorist finance.

I appreciate being provided the opportunity to testify before you today and would be pleased to respond to any questions.

