STARVING TERRORISTS OF MONEY: THE ROLE OF MIDDLE EASTERN FINANCIAL INSTITUTIONS

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

AND THE

SUBCOMMITTEE ON
INTERNATIONAL TERRORISM AND
NONPROLIFERATION

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

MAY 4, 2005

Printed for the use of the Committee on Financial Services

Serial No. 109–24

U.S. GOVERNMENT PRINTING OFFICE

24–090 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

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STARVING TERRORISTS OF MONEY: THE ROLE OF MIDDLE EASTERN FINANCIAL INSTITUTIONS

Wednesday, May 4, 2005

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
JOINT WITH THE
SUBCOMMITTEE ON INTERNATIONAL TERRORISM
AND NONPROLIFERATION,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, D.C.

The subcommittees met, pursuant to call, at 2:19 p.m., in Room 2128, Rayburn House Office Building, Hon. Sue Kelly [chairman of the Subcommittee on Oversight and Investigations] presiding.

Present from Subcommittee on Oversight and Investigations: Representatives Kelly, Royce, Kennedy, Garrett, Barrett, Davis of Kentucky, Gutierrez, Lynch, Scott, and Wasserman Schultz.

Present from Subcommittee on International Terrorism and Nonproliferation: Representatives McCaul, Poe, Weller, Sherman, Schiff, and Berkley.

Chairman KELLY. [Presiding.] I call this hearing of the Financial Services Committee on Oversight and Investigations and the International Relations Subcommittee on International Terrorism and Nonproliferation to order.

This hearing was called to examine and assist efforts to reckon with the very difficult problem of charities being used to support terrorism and the spread of extremism.

Since the vicious attacks on our country, we have placed special focus on this issue and despite the important progress we have made, this particular problem is not one that lends itself to simple solutions.

As we continue our push for progress, our approach must continue to reflect an understanding of the complexities inherent in the task. We must consistently improve our understanding of the context which makes an honorable humanitarian impulse vulnerable to dangerous exploitation and misdirection.

And while it is improper to think that the cure to this particular problem can be found through a stronger relationship with any one country, it is clear in this case that a key to greater success will involve improvements in our partnership with Saudi Arabia, which possesses a unique statue as a beacon in the Muslim world and has historically been a leader in Islamic charitable activities.

There is good reason for us to be troubled with this aspect of U.S.-Saudi relationship in fighting terror finance. In that regard, I would like to enter for the record an exchange of letters that my colleague Congressman Royce and I had with Saudi Ambassador Bandar this year.

So moved.

Recently, attention has rightly focused on the Saudi Relief Committee for the Palestinians, one of the charitable committees run directly by the Saudi Government. Though it has provided legitimate relief aid, it also apparently provided a structured financial reward system for the families of Palestinian suicide bombers.

This abominable practice was advertised openly on a government-run Web site that was only taken down about 2 weeks ago. Unfortunately, we have seen reports that Arab Bank and other institutions may have been involved in this payment scheme.

Concerns related to this manner are emphasized by actions taken by the Treasury Department in response to inadequate money laundering controls at Arab Bank's branch at New York City.

The OCC said, "The inadequacy of the branch's controls over its funds transfer business is especially serious in light of the high-risk characteristics of many of the transfers."

The Oversight and Investigations Subcommittee is committed to learning more about these deeply troubling circumstances. The public has a right to know what has happened and how our Government has responded.

The committee's attention to this issue in the coming months will remain focused on finding out what has happened. And I will be holding another hearing on this matter.

The public will learn more about the Saudi charitable committee, the role of institutions used as conduits for supporting terrorism and the response of our Government to these circumstances.

The public, and particularly the victims of these attacks and their families, deserve nothing less. This must be pursued, not only because of the critical importance of ensuring accountability for those who support terrorism, but also because of the disturbing precedent it ostensibly sets for other Saudi-run charitable committees which direct relief to other areas, such as Kosovo and Iraq.

While on a fact-finding trip to Saudi Arabia last month, I learned about some of the positive effects from positive efforts undertaken by the Saudi Government in dealing with these charitable committees. There are significant efforts under way that we must acknowledge, but there is still more to learn about the controls for these government-run agencies.

Recent reports about the Saudi Arabian chief justice encouraging the donation of funds to insurgents in Iraq should intensify our interest in assessing the effectiveness of Saudi charitable controls.

In addition to these charitable committees, we must focus on international Islamic charities based in Saudi Arabia, such as the World Assembly of Muslim Youth, WAMY, and the International Islamic Relief Organization, IIRO, which are unaffected by the new Saudi Government regulations.

These organizations are alleged to have supported Al Qaida and are known to proselytize a form of Islam which has shown itself

prone to spawning extremist, militant movements, such as the Taliban.

These Saudi-based charities still operate throughout the world with minimal transparency or controls. To date, Saudi officials have indicated that these charities operate largely outside of their sphere of influence.

But it is difficult to accept this argument. There are deep interconnections. WAMY and IIRO were, in fact, created by the Saudi Government and are run currently by Saudi citizens.

I note that even earlier this year, the Saudi Embassy put out a media release heralding a donation made by IIRO. This suggests a deep and continuing relationship.

I very much agree with Undersecretary Levey's statement in his written testimony which underscored the acceptance and importance of placing these charities under the review of the charitable commission of the Saudi Government and that the Saudi Government is in the process of establishing for monitoring charitable donations outside the kingdom.

These charities, however, are not included in the commission's portfolio. And I am talking about WAMY and IIRO.

There must be open, continuing dialogue with the Saudis about this issue.

Based on my meetings in Riyadh last month, I believe that Saudi officials would be willing participants in a more frequent discussion with Congress, as they, too, now bear the scars and burdens of being an Al Qaida target.

Officials in Riyadh expressed to me repeatedly their interest in working with our Government and the Congress in fighting terrorism.

We must engage that interest.

In our discussions, we must also be prepared to refine our own approach to this issue.

We have been mindful and we will be mindful that we are directly addressing one of the five pillars of the Islamic faith, that of Zakat, which guides Muslims to regularly donate a portion of their wealth to charitable causes.

U.S. complaints regarding Muslim charities are often mistakenly perceived as lacking in respect for this fundamental obligation of the Islamic faith, thereby creating a serious complication for our hopes of resolving our national security concerns.

It is critical that we continue discussions, not just with Saudi Arabia, but with all governments in the Middle East and North Africa, on steps they can take to strengthen their ability to detect and stop terrorist money flows without impeding important, honorable, humanitarian efforts.

An important step forward in this effort has been the establishment of the Middle East-North Africa Financial Action Task Force. The MENA-FATF provides the ability for governments in the region to develop best practices and to share information on terrorists and their network within their different countries.

I am pleased that the United States government and our U.S. Treasury is an official observer, has a delegation to MENA-FATF, and has provided technical assistance to the organization and its members.

Most nations have laws on their books to fight money laundering and terror financing, yet there is no way to measure the effectiveness. Banks, charities and agencies of our own government are left to use their own resources to find out whether certain countries are trustworthy business partners.

While organizations like MENA-FATF can help, the U.S. Government must take action to protect institutions that deal with nations that are not enforcing their anti-terror finance laws.

I have introduced H.R. 1952, along with Ms. Berkley and my friend Mr. Royce and Mr. Feeney, to do just that.

A terror finance certification regime can eliminate uncertainty in businesses and charities facing and working overseas while spurring other countries to enforce their laws.

I look forward to working with the Treasury and my colleagues to move this bill forward in the near future.

The U.S. and its allies continue to fight a ruthless enemy that will use any weapon whatever at its disposal to try to defeat us—whether it is defaming its own religion, misleading banks and community leaders, or stealing aid meant for the poor and the starving.

As we continue to take the necessary steps to defend ourselves, we must ensure that those who are victimized because of Al Qaida are not unduly hurt by those measures that we are trying to provide and are provided the means for making themselves as whole as possible.

I turn now to Mr. Royce, my chairman.

Mr. ROYCE. Thank you very much, Chairwoman Kelly.

And by way of explanation, Chairwoman Kelly and I serve on the Anti-Terrorist Finance Task Force, the task force we put together over a year ago in order to kind of collaborate and work together to surface information. And her staff and my staff worked together.

And so she has asked me, as the chairman of the Subcommittee on International Terrorism and Nonproliferation, if I could help her organize this joint hearing today. And I know this is unusual for us to come together across committees but, in fact, I think the paramount importance of this issue, the challenges we are facing, dictate that we work together.

The 9/11 Commission, frankly, recommended for us a number of changes in Congress. And one of those key aspects that they focused on was tracking terrorist financing. They said that that must remain front and center in U.S. counterterrorism efforts.

Now, terrorist organizations such as Al Qaida have allegedly used a variety of methods to finance their operations that stretch across the globe, including the misuse of some Islamic charities, including wealthy donors, including Hawalas and financial institutions—as Chairwoman Kelly is highlighting—drug trafficking and conflict diamonds.

These are the major methodologies used by terrorist organizations.

Tracking terrorist financing has proven an effective way not only to disrupt terrorist plots and organizations, but also to glean intelligence on terrorist operatives. As a matter of fact, it is one of the best ways.

And on top of that, it is one of the best ways to get convictions, because once you have the paper trail, once you have the hard evidence financially, you have got the ability to indict and convict.

However, because of its complexity and variety of methods, terrorist finance has been a hard target for the United States.

As we will hear today, there has been progress in the fight against terrorist financing. For instance, the administration reports that funds that flow to Hamas have seen a substantial reduction. However, there is a long road ahead, and terrorists are constantly changing their financing tactics.

The larger challenge is checking the ideology fueling terrorism. Charities continue to provide a variety of important functions in the Middle East and around the globe.

A major goal of these charities, however, for some of them, is to spread a radical version of Wahhabist beliefs. And just as there is Christianity and the Christian identity movement, there is Wahhabism and there is radical Wahhabist ideology.

And, thus, some Gulf state charities have funded several madrassas in Africa, in Southeast Asia, South Asia, Central Asia and Europe that teach jihad.

And I have spoken with local leaders in a number of these countries—Uzbekistan, Kyrgyzstan—and I will give you one example, Chairwoman, in terms of Kyrgyzstan. There was a madrassa set up; 13 young men went to that madrassa in order to get an education. They found out they were learning jihad. When they tried to leave, they were all decapitated.

And as the assembly member representing that district told me, in Kyrgyzstan, he said, "This is not a local Kyrgi custom. This is a radical custom that is being imported and taught here. And it is being done with petro dollars funding it from the United States and the rest of the world, and you need to cut off that flow of financing that is setting up and using these jihadi schools."

It came home a little bit to me when I was on the southern border, by the way, a couple of weeks ago talking to a border patrol agent who had intercepted someone from Kyrgyzstan who had trained in jihad in Afghanistan and was coming over our border.

So eventually this does come back to haunt us in terms of national security.

Algeria, Chad, same situation—West Africa, East Africa, most of the countries that I have visited there have raised this as a key problem in those societies.

And it is these radical madrassas that are fueling the next generation of jihadists and perpetuating what some African leaders call a generational struggle between the vision of the elders in the community and the youngsters.

So experts I have spoken with measure the amount of spending to support the building of madrassas worldwide in the hundreds of millions, if not billions annually, and a certain portion of this goes to the teaching of radical Wahhabist beliefs.

Much of this, as I said, is our own petro dollars, and this has to be part of our dialogue with countries in the region at every level. And this is just as much an issue of public diplomacy as it is terror finance.

Of course, those who are working to spread this ideology of terror are often depending on Muslims seeking to fulfill the Zakat requirements of their faith.

We need to do everything we can to shine the light on those who seek to prey on fellow Muslims who are simply seeking to fulfill their religious obligations. Protecting the charitable community from terrorist abuse is of paramount importance and we need to work together with the Muslim community to do that.

Significant international cooperation through bilateral relationships and multilateral institutions will be key to stem the flow of money to terrorist groups and extremist causes.

Countries in the region have taken some first steps, yet many still do not have terrorist financing laws or have established financial intelligence units. And we have a lot of leverage to force the establishment of financial intelligence units and we should use it.

Some have put laws on the books but enforcement remains in question. These issues will require our constant engagement.

While progress has been made, I think there is little question that our enemies have a large lead.

Thank you very much, Chairwoman Kelly.

Chairman KELLY. Thank you, Chairman Royce.

Mr. Guttierez?

Mr. GUTIERREZ. Good afternoon.

Thank you, Chairwoman Kelly, for this hearing. I have enjoyed working with you on many issues including those related to terrorist financing and I trust we will continue to do so in the future.

I believe we need greater communication between the regulators and the industry regarding the filing of suspicious activity reports or SARs.

While the quantity of SARs has grown exponentially to defensive filing, the Treasury's Inspector-General recently found that the quality of SARs is severely lacking: 62 percent of the SARs examined revealed problems in data quality, including incomplete, inappropriate and/or inconsistent information.

The Inspector-General's report indicated that FinCEN needs to prioritize this issue. And I look forward to hearing from Undersecretary Levy about his ideas for improvement in this area.

I also would like to hear from the witnesses whether it makes sense to put the families of suicide bombers on OFAC lists to prevent payments for martyrdom. Will this place too high a penalty on families that may have been unaware of their relatives' activity? Or is this justifiable in the fight against terrorism?

I am pleased that guidance was finally issued on April 26th for banks regarding money service businesses. While I would prefer that banks provide these services directly to consumers until enough banks and credit unions enter this market, and hopefully follow the fine example of Bank of America and offer no-cost remittances products, MSBs will be necessary to fill the gaps in service for many communities.

This morning, the committee held a hearing about breaches in data security in private sector companies.

While I am very concerned about that issue, I find it even more disturbing that Treasury has had ongoing problems with its own information security.

It is rare that I agree completely with any of my colleagues, but specifically, Mr. Sensenbrenner. But on this issue, he stated on April 20th, he called Treasury's failure to securer taxpayer and bank security data as completely unacceptable.

Mr. Sensenbrenner went on to say, "It needs to be corrected immediately." Mr. Sensenbrenner is absolutely right, and I would like to know what is being done in that area.

I would be receptive to requests for more I.T. funding, but I am not convinced that it would be spent sufficiently.

The Inspector-General recently found that getting Treasury's HR Connect, high-tech personnel system up and running cost $173 million, substantially more than similar human resource computer systems at two other agencies.

For example, at the U.S. Coast Guard, it spent $24 million, and the Agricultural Department, which spent $15 million, according to the audit report prepared by the Treasury inspector-general for tax administration.

Furthermore, they are paying about $22 million annually to run HR Connect, far more than the $5 million to $6 million paid by the Coast Guard and the Agricultural Department to operate their system.

The I.G. calculated that the $41 million may have been wasted in the development of the HR Connect. The contractor on that project was paid $109 million, and I would like to know who that contractor is, whether this contract was bid competitively, why the costs were so high and where the funds for the project came from.

Finally, I am troubled that the assistant secretary for the Office of Intelligence and Analysis—and issue I have raised before—a position created more than 2 years ago continues to remain unfilled. I would hope that this office and its functions are a priority for Treasury and that this vacancy does not continue much longer.

This chronic understaffing appears to be rampant throughout Treasury and may be the reason for some of the problems I mentioned earlier.

I have been very supportive in the past for budgetary increases for Treasury, particularly in the area of terrorist financing. However, I would like to know how these funds are being spent to fill these vacancies, both in the area and overall. And I would like to know where and for what purpose these funds are being used.

As of 2 months ago, press reports indicated that fully one-third of the senior policy positions at Treasury were vacant. While I am heartened that a few of these posts now have nominees, I would like to see more progress in this area.

Thank you again, Ms. Kelly, for calling this hearing. And I look forward to the testimony of the witnesses.

Chairman KELLY. Thank you, Mr. Gutierrez.

Mr. Sherman?

Mr. SHERMAN. Thank you, Chairwoman Kelly and Chairman Royce and Mr. Gutierrez, for holding these important hearings.

I know that Chairwoman Kelly has been concerned with this issue generally and with the particular case of the Arab Bank, which she talked about.

The Arab Bank has been ordered by the OCC to cease most of its banking activities and faces lawsuits by the relatives of Americans killed by Palestinian terrorists in the intifada.

I commend her for holding these hearings, and look forward to future hearings specifically focused on the Arab Bank.

It is an important case, that case of the Arab Bank, because it points out two of the most difficult problems facing us in the struggle against terrorism.

One is the flood of Saudi money finding its way into the hands of terrorists and used to support certain madrassas and other organizations, which while not terrorist organizations themselves, teach a proterrorist line.

The second is the willingness of some people—even people outside the Arab and Muslim world in some cases—to feel that the word terrorism does not apply to those who try to kill Israeli civilians.

Now, let us look at the Saudis. Whatever positive developments the administration will tell us about today, Saudi cooperation preventing terrorism seems to apply only to those terrorists who have attacked Saudi Arabia's ruling elite.

It certainly does not apply—and in fact the opposite applies—where you have Palestinian groups such as Hamas, Islamic jihad and others who are widely recognized as terrorist organizations by the civilized world, but who are supported by the Saudi royal family and those it has enriched.

We should be very careful who we hold hands with. Saudi Arabia is not concerned about America. The Saudi Government is certainly not concerned about the Israeli civilians and the Indian civilians killed by Islamic terrorists. They are concerned solely with their own survival.

That means that the Saudi Government will work against terrorism very narrowly, only against those groups that threaten the Saudis. Their support is not terribly deep. When it suits them, they will provide subsidies even to those groups that are at war with them.

There is a tendency of the Saudi Government to buy off terrorists and to try to pacify those who support terrorists by showing those terrorist supporters that they are on their side, by aiding those terrorist groups who kill Israeli civilians, Indian civilians or just about anybody other than the Saudi elite.

If you are in the business of fighting terrorism, first and foremost, you have to know who a terrorist is. We need definitions and lists.

Hamas is not considered a terrorist organization by the Saudis. Thus, one of the most infamous terrorist organization can be funded and is funded by Saudi civilians, by the Saudi royal family. No amount of cooperation will be effective if we do not even agree on what problem we are trying to fight against.

Second, the Saudis are not alone in supporting Palestinian terrorists. In fact, much of the world does not want to confront the truth.

However you feel about the politics of their cause, the preferred weapon of Palestinian extremists is the suicide bomber who blows himself up in the midst of civilians.

The United Nations is not able to come up with a definition of terrorism, because much of the world will not accept the definition of terrorism that does not exclude all Palestinian extremists from the definition, no matter what terrorist acts, no matter what barbarous acts that they engage in.

Who expects any country to fight the funding of Palestinian or other terrorists if they do not believe that these groups are, in fact, terrorists?

But as we focus on what others are doing abroad, we must also focus on what is going on in our own country. "Jihad in America" first broke the story as a PBS documentary last decade. It was produced by Steve Emerson, who now heads the investigative project.

That show demonstrated what continues to be true today, and that is millions of dollars being raised from residents and citizens of the United States for the purpose of supporting terrorism in the Middle East.

We have to be particularly vigilant of certain charitable groups, whose donors are getting tax deductions, when those groups operate substantially in the Middle East.

New organizations can be formed by filing a few papers by the IRS. And the presumption is that they are entitled to tax deductions until such time as the IRS proves they are not.

We may have to have a different rule for those groups who operate primarily in the Middle East, and that is that the IRS will have to investigate before tax exempt status and deductibility status can be presumed by contributors.

Charities and NGOs operating in Palestinian territories ought to be subject to this greater scrutiny simply because so many of them, in the guise of providing charity, instead reward suicide bombers and their families.

Helping widows and orphans sounds good. Earmarking funds for the widows and orphans of suicide bombers is nothing more than cash support for terrorism. And yet it is being done not only with U.S. dollars—private U.S. dollars—but private U.S. dollars subsidized through our tax system.

I look forward to focusing on this problem further. I, myself, have to go to another hearing soon. And I will read that portion of the testimony I am not here to see live.

I thank my colleagues again for holding this hearing.

Chairman KELLY. Thank you very much, Mr. Sherman.

Mr. Garrett, you have—Mr. Weller, do you have an opening statement?

Who else do we have out there?

Mr. Barrett, do you have an opening statement?

Mr. BARRETT. No.

Chairman KELLY. We are all clear over there?

Does anybody have an opening statement? Let me put it that way.

Mr. Lynch?

Mr. LYNCH. Thank you, Madam Chair.

Just briefly, I want to thank yourself and my friend Mr. Royce and the ranking members here, Mr. Gutierrez and Mr. Sherman, for holding this hearing.

And I want to thank Mr. Levey and Mr. Simons for coming forward to help us with our work.

Several weeks ago I was in Ramallah with Abu Allah, the new prime minister of the Palestinian Authority. And I see our problem now in two lights: One, we have to deny resources to terrorists and those organizations who would support terrorism; but secondly, we need to find a way to make sure that the resources that should be properly finding their way into the hands of legitimate charities in the Middle East get to their rightful destinations and are used for proper purposes.

Some of the estimates I got when I was in the West Bank several weeks ago have the unemployment rate in Gaza and the West Bank among Palestinians between the ages of 17 and 35 at somewhere in the area of 40 percent.

And that also is a source of terrorism—or a source of receptivity to extremism and possibly terrorism.

So we have got to address both these problems. One is to deny those resources to known terrorist entities and people that would support that, but also to try to reduce the number of young Arab men that are unemployed—and young women who are unemployed—and so to sort of mitigate the circumstances that would give rise to extremism in that region.

So we are hoping that the gentlemen here today will be able to help us with that problem. And I am looking forward to hearing the testimony of the witnesses.

Thank you, Madam Chair.

Chairman KELLY. Thank you, Mr. Lynch.

Ms. Berkley?

Ms. BERKLEY. Thank you, Madam Chairman, and I also want to thank Chairman Royce and Ranking Member Sherman and Ranking Member Gutierrez for allowing me to participate in this hearing. I am not a member of either of these subcommittees, but I am a member of the Subcommittee on the Middle East, where we have seen and investigated the dangers of terrorism and extremism.

I want to give special thanks to Chairwoman Kelly, who has authored a bill that takes a very strong stance against State funding and State support for terrorism, and I am proud to be an original co-sponsor of that legislation.

Tracking and ending terrorist financing must remain at the forefront of any American counterterrorism effort.

We must make sure that terrorist organizations like Al Qaida, Hamas and Hezbollah, organizations that seek nothing but death and destruction for us and our allies, especially the State of Israel, do not have the financial means to carry out their missions of chaos and destruction.

We must stop the flow of money that might fund another 9/11-style attack.

After a March 2003 terrorist attack in Netanya that wounded 35 people, a local Islamic charity paid the bomber's family over $14,000. The bomber's father said that he believed the money was paid by Islamic Jihad.

That money was funneled from terrorist fund-raisers into accounts in the Middle East through a Jordan Arab bank. That same bank is believed to be aiding and abetting terrorist groups and is

implicated in the transfer of more than $20 million to over 45 suspected terrorist groups.

It has also been accused of conspiring to commit terrorist acts with organizations such as Hamas, Islamic Jihad and the al-Aqsa Martyrs Brigade.

How many suicide bombings are funded? We do not know.

How many more of these terrorist funding streams exist but remain undetected by law enforcement? We do not know.

I was pleased to learn of a recent action of the Office of Comptroller of the Currency when it downgraded the Arab bank's status in the United States, but I remain very concerned that not enough is being done to stem the tide of terrorist money or Islamic money being channeled into terrorist organizations.

When I think of the Saudis—and I blanch when they are called our so-called allies in our war against terrorism—the irony of this is that the Saudis, in my opinion, are the biggest exporters of terrorism and the biggest financiers of terrorists.

They have the worst record on the planet when it comes to women's rights and human rights and religious rights. They are the largest purveyors of anti-Semitism in the world. And this is what we call our ally in our war against terrorism—the very nation that is the perpetrator of our terrorist attacks, especially on 9/11.

If one says that this is old and that there is a new relationship with the Saudis, and now after being attacked themselves they have, shall we say, found religion and are as concerned about the terrorists as the United States, I would like to draw your attention to something that happened just last week in Saudi Arabia when the Saudi chief justice publicly encouraged donations to the families of suicide bombers and donations in support of terrorism. Apparently, the Saudis have not yet gotten the word that they are our allies in our war against terrorism.

One of the solutions to ending the financing of terrorism worldwide lies in the approach taken in a bill that will soon be before this committee, sponsored by Congresswoman Kelly.

By requiring that nations comply with the requirements of the International Convention for the Suppression of the Financing of Terrorism, the United States can hold the rest of the world to a firm and identifiable standard. Nations must be required to adopt measures and pass laws that will prevent funds from being used in whole or in part in order to carry out terrorist attacks.

It also makes clear that political, philosophical, ideological, racial, ethnic or religious considerations are not justifications for criminal acts.

By withholding 50 percent of bilateral aid and refusing to support any multilateral aid, the United States will send a strong message that financing of those who support violence is not acceptable.

Our focus here must not only be domestic, but international as well. Our European and Asian allies must take similar steps.

Are they requiring tighter regulations and controls on banks and other financial institutions? Are they also willing to withhold multilateral assistance and place pressure on nations that do not cooperate in what has become another front in the global war on terror?

These and other questions need to be answered.

Legislation like the one introduced by Chairman Kelly offers a good solution.

Stiffer financial controls and exerting our influence on other nations also is a solution. However, we must pressure our allies to match our actions.

I want to thank you, Chairman Kelly, for calling this hearing. And I am anxious to hear from our witnesses.

Chairman KELLY. Thank you, Ms. Berkley.

Mr. Schiff, have you an opening statement?

Mr. SCHIFF. Madam Chair, in the interest of time, again, the witnesses, I will be happy to waive my opening statement.

Chairman KELLY. Thank you very much.

Without objection, all members' opening statements will be made part of the record.

I would like to call our first panel: the Honorable Stuart Levey, undersecretary for enforcement in the Department of the Treasury, and the Honorable Paul Simons, the principal deputy assistant secretary, the Bureau for Economic and Business Affairs at the Department of State.

Gentlemen, we welcome you. And we are very happy that you have been willing to share some time with us today.

I would like to begin with you, Undersecretary Levey. I would like to hear your opening statement.

STATEMENT OF HON. STUART LEVEY, UNDER SECRETARY FOR ENFORCEMENT, DEPARTMENT OF THE TREASURY

Mr. LEVEY. Thank you very much, Chairwoman Kelly and Chairman Royce, distinguished members of the subcommittees. Thank you for inviting me to testify here today about the progress the U.S. Government has made in its fight against terrorist financing in the Middle East.

Your personal leadership and that of these subcommittees has been vital to our shared work to keep our nation safe, and I am grateful for it.

In the Office of Terrorism and Financial Intelligence, the office I head at the Treasury Department, we are working tirelessly to track and disrupt the flow of funds to terror in every area of the globe.

Today, however, I would like to focus on the work we are doing in the Middle East and in particular with respect to charity.

Terrorist groups have long exploited charities, using the sentimental appeal of widows and orphans to finance the murder and maiming of innocents. Charities are vulnerable for several reasons, as I have explained in the written testimony I submitted to the committee.

As the Chairwoman stated in her opening statement, there are no simple solutions to this problem. That said, the U.S. Government has confronted the problem head on.

Since 9/11, we have designated dozens of corrupt charities, including the Holy Land Foundation, the Al-Haramain Islamic Foundation, the Islamic African Relief Foundation, and many others. We have truly worked as a team, coordinating criminal actions with designations and diplomatic engagement to get the maximum impact.

I am pleased to inform the committees of another significant action that we are taking just today. This afternoon, we designated the Elehssan Society, including all of its branches, as a charitable front for the brutal terrorist group, the Palestinian Islamic Jihad.

Elehssan masquerades as a charity while actually helping to finance hideous acts of terror against the Israeli people and other innocents.

As we have repeatedly demonstrated, we will not hesitate to act against those who enable murderers, regardless of how they disguise themselves.

The impact of U.S. sanctions, such as these designations, carries tremendous weight in and of itself. In most cases, our actions prevent foreign designated entities from carrying out transactions in U.S. dollars, the international currency of choice.

But recently we are also seeing that the ramifications of these actions extend much further than we had previously known.

Some foreign private banks are now voluntarily using our list of designated parties as a screen to protect them from processing transactions from terrorists and criminals, even when not required by their domestic law.

Such practices give a wide-ranging effect to our actions and represent a real success.

Nor should the deterrent value of these actions be overlooked. In contrast to terrorist operatives, who may be willing to die for their hateful ideology, terrorist financiers typically have something to lose, whether it is property, occupation, family or social position.

Being publicly identified as a financier of terror threatens an end to all of that.

Our reporting confirms that once-willing donors are now thinking twice or balking altogether before sending money to terrorist groups. This, too, is a success.

We recognize that the enforcement actions have sometimes also cut off sources of relief to communities in need. Our goal is not to deter charitable giving, but instead, as Chairman Royce suggests, to protect the charitable sector such that donors' generosity is not abused.

As you know, the assistant secretary has shown devoted leadership on this issue.

This work has been especially important with the Arab and Muslim communities in the United States where the corruption of Islamic charities by terrorist groups has created a real problem.

As Mr. Lynch suggested in his statement, this predicament is especially acute in the Palestinian territories where Hamas and other terrorist groups have intermingled ostensibly legitimate activities with terrorism.

There is a particularly urgent need in this region to create safe channels of assistance that will not be subverted by terrorists.

It is important for the prospect of peace in the region that a social safety net be provided in the territories by an entity or entities that are not subverted by terrorist organizations.

I have explored this idea with President Abbas and the Palestinian territories and other Palestinian-Israeli officials. I was gratified to receive support and agreement from all involved. We are currently working with the Palestinian Authority to develop op-

tions through which such aid could be provided, and I am hopeful that we will be able to do so.

A further promising development in the Middle East is the emergence, as the Chairwoman indicated, of the Middle East-North African Financial Action Task Force or the MENA-FATF. Launched in November 2004, this FATF-style regional body of 14 member countries has taken on the charge of developing regional solutions to terrorist financing and money laundering, based on the global guidelines set out by FATF.

The expectation is that this will set standards and hold countries to those standards. This is a tremendous step in the right direction. But we are clearly only at the very beginning of the process.

Many of these countries have not passed their own money laundering and terrorist financing laws; others have not established financial intelligence units; others have control over their informal hawala sectors; and others have failed to implement standards to stop the illicit flow of money through cash couriers.

Our most important task in the Middle East to ensure that these standards are not only adopted, but they are implemented and enforced. We cannot measure our success by the number of laws put on the books but by changes made on the ground.

Real progress will come in the form of border stops, cash seizures, account blockings, arrests and the like.

It is my job in that process to be impatient for progress, and I can assure you that I am.

We look forward to continuing our work with you on these issues, and I look forward to answering your questions.

[The prepared statement of Hon. Stuart Levey can be found on page 70 in the appendix.]

Chairman KELLY. Thank you very much, Mr. Levey.

Mr. Simons?

STATEMENT OF PAUL SIMONS, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU FOR ECONOMIC AND BUSINESS AFFAIRS, DEPARTMENT OF STATE

Mr. SIMONS. Thank you, Madam Chair.

Chairman Kelly, Chairman Royce, distinguished members of the subcommittees, we very much appreciate the opportunity to be with you here this afternoon to talk about Middle Eastern terrorist financing issues.

As Undersecretary Levey has noted, we have a very strong interagency process in place and, a rich toolbox of vehicles with which to encourage improved performance with our allies across the Middle East.

Improving and strengthening the political will in key Middle East countries is a high priority for the State Department.

My full statement contains details of what we are doing with individual countries. I thought I would just very briefly review a couple of the tools that we have available that we have been able to build up since 9/11.

First, the international designation process: Mr. Levey indicated we have a new designation today.

I think it is important to note that not only is the U.S. utilizing the designation process through the United Nations, through Reso-

lutions 1267 and 1373, but we have encouraged our partners in the Middle East themselves to propose and to join us in designations. Iraq, Syria Jordan, Saudi Arabia, Algeria and Kuwait, have all availed themselves of this technique, and we intend to encourage it further.

Secondly, as you mentioned, Madam Chair and as Undersecretary Levey mentioned, we have the multilateral standard-setting process through the FATF—the Financial Action Task Force—and the new MENA-FATF efforts.

And we are moving a long way to use this multilateral vehicle, as well as the mutual evaluation process within that vehicle, to get countries on board to upgrade their terrorist finance regimes.

Third, we carry out bilateral capacity-building through technical assistance programs that are run through Treasury and the State Department. And we have come a long way there, too, over the last 4 years.

For example, we provided training to the Central Bank and the FIU in the United Arab Emirates in the areas of hawala and alternative remittance systems. And they in turn have become active in conducting their own follow-on training through a regional training center located in the UAE.

Fourth, we have diplomatic engagements. Our ambassadors are very heavily engaged in promoting our terrorist financing agendas in the region.

The Homeland Security Adviser Fran Townsend has repeatedly traveled to the region to indicate the high-level interest in the White House with both the Saudis and the UAE.

And within every embassy we have designated a terrorist financing coordinating officer who basically runs an interagency process within our embassies to make sure there is good coordination.

And finally we have law enforcement and intelligence cooperation with our partners in the Middle East that has been strengthened since 9/11.

So I think we have come quite a long way in terms of building the toolbox. I believe that the effort that is advanced by this committee is pointing out that we still have a long way to go. And I think both Undersecretary Levey and I would agree to that.

We have a lot of the tools available. We are moving in the right direction. Certainly our partners in the Middle East agree with us on objectives. And we are largely now in a debate over the pace of reform and how quickly we can move ahead.

So in that regard we very much appreciate this hearing and look forward to your questions.

[The prepared statement of Hon. Paul Simons can be found on page 77 in the appendix.]

Chairman KELLY. Thank you very much, Mr. Simons.

I would like to start questions with Undersecretary Levey.

Sir, I am very concerned about the stories I have seen about terrorism transactions going through Arab Bank to the Middle East.

I know you are unable to comment on the transactions leading up to the ongoing investigation of Arab Bank, and while we respect those constraints and appreciate Treasury's focus on worldwide compliance with money laundering laws, I remain very interested in making sure the public learns more about this case and about

what our Government is doing in response to these deeply disturbing reports.

I would like to know what you are doing in response to the revelations to make sure that the international financial sector is secured against the supporters of terrorism. I would like to know if you are working with the Jordanian government on this, and what you are asking of the Jordanian government and what their response has been.

That is a lot of questions. I am glad to repeat them. Would you like me to repeat them or you think that once is enough?

Mr. LEVEY. Why don't I give it a whirl, and if you think I have not answered them, I am sure, knowing you, that you will remind me.

Let me say at the outset, Madam Chairwoman, I share the concerns that you have expressed. But as you also indicate, I am unable to comment on the particular transactions and the particulars of an ongoing review of Arab Bank's New York branch.

FinCEN and the OCC are working together in that case. And I have every confidence that they will take robust, fair and effective action at the appropriate time.

For our part, as you indicate, the Treasury Department is focused on worldwide anti-money laundering controls as part of our responsibility to safeguard the international financial system.

International financial institutions have a key role to play in that process by implementing appropriate controls within their operations. It appears that such controls were indeed sorely lacking at Arab Bank across all of their global operation.

I traveled to the Middle East in February, in part to discuss the disturbing information we had received with respect to Arab Bank's international operations, and also to stress to the Jordanians that they needed to put in place systemic controls—for example, passing an anti-money laundering law—to safeguard their own financial system.

As it happened, on my way to Jordan, I stopped in Ramallah first. And there I met with a group of Palestinian bankers to hear their concerns about doing business in the West Bank, including the manager of the Arab Bank in the Palestinian territories.

And what I heard from him was also disturbing. He told me that his banks had not filed a single suspicious activity report in the past 2 years across all the Arab Bank branches in the West Bank and in Gaza.

When I got to Jordan, I met with the prime minister, the finance minister, other officials, the central bank governor and others. I underscored the concerns that I had when I left, as well as those that I discovered when I was in Ramallah, and stressed that, looking forward, effective controls must immediately be implemented to safeguard all Jordanian banks, including Arab Bank, against money launderers and terrorist financiers.

Everyone I met with assured me they were committed to seeing those proper safeguards implemented in all of Arab Bank's branches worldwide.

As the primary regulator of Arab Bank in Amman, the Central Bank of Jordan is probably in the best positioned to oversee the bank's procedures and reforms. And so, since I have returned, I

have continued to engage with the Central Bank of Jordan as the regulator and have received on Arab Bank's progress in instituting those reforms.

Frankly, I have not been entirely satisfied with what I have heard. But I am encouraged by the responsiveness of the Central Bank of Jordan, and we will continue to work with them to ensure that effective safeguards are implemented across Arab Banks' branches worldwide.

The risks are simply too great to tolerate anything else. And I intend to keep the pressure on.

Chairman KELLY. Thank you. I appreciate your comments, Mr. Levey.

I intend to keep working with you, with both the Department of State and the Department of Treasury, because we need to learn all we can about this matter, because I believe that it will help us in moving forward, through strengthening our financial defenses against terrorism.

To the extent that other members may be interested in talking about this particular issue, the Arab Bank issue, I want to let you know that I will be holding another hearing on this matter, where we can continue to examine the issue and the public will learn more about this issue as time goes on.

Now, I have a question for both of you. In both of your submitted statements, the World Assembly for Muslim Youth, WAMY, and the International Islamic Relief Organization, the IIRO, are mentioned. I think it would be helpful if you could both elaborate as to why these particular organizations should be of great concern to us.

Whichever one—Mr. Simons, you want to start with that?

Mr. SIMONS. As you have mentioned, Madam Chair, and as several of the other members have mentioned, we have been working very closely with the Saudi Government over the last several years to persuade them to get a better handle on their charities situation.

And as the Saudis have laid it out, they see two types of charities operating in Saudi Arabia: what they call domestic Saudi charities, some of which have international branches, and then what they look to as more multilateral organizations, such as WAMY and IIRO.

We both publicly as well as privately, have indicated to the Saudi authorities that we believe that the same disciplines, in terms of oversight, ought to be applied to the domestic charities as well as to international charities such as WAMY and IIRO.

So we believe that these are entities that need to have appropriate scrutiny by the Saudi authorities.

And in that regard, we appreciate your trip and the efforts that you have made to interact with the Saudi Government on that particular issue.

Chairman KELLY. Thank you.

Mr. Levey?

Mr. LEVEY. Well, as you indicate, Madam Chairwoman, on the IIRO and WAMY, these have been organizations that we have long been concerned about.

And Mr. Simons is right that the Saudis have articulated this distinction that they say that certain organizations are domestic

charities, others are multilateral ones. I do not think that we really believe that that is a valid distinction.

The important point, though, is that when we consider the controls that they have put in the place or are in the process of putting in place with charities, on the one hand, they have said, "We are setting up a charities commission," but it has not actually been made operational yet.

When we raised that issue very vociferously, they said, "Okay, well, in the meantime, we are not going to let any charitable money leave Saudi Arabia."

And as I said in my statement that I submitted to the committee, if that is actually what happens, in the sense that no charitable money leaves Saudi Arabia, well, that is a satisfactory state of affairs for as long as it goes on.

Frankly, I think we have significant concerns that because IIRO and WAMY and the Muslim World League are explicitly exempted from their definition of charities, we have significant concerns that that temporary fix is not being put in place with respect to these organizations and that is something which we intend to press on.

Chairman KELLY. Thank you very much. I am out of time. I will turn now to Chairman Royce.

Mr. ROYCE. Secretary Levey, good to see you again.

And you mentioned that Saudi Arabia has worked with the United States to some extent to address Saudi charities, and you mentioned the concerns you have or measures which have not yet been taken—in your words, "measures that have not yet been taken by the Saudi Government."

And I appreciate your frank assessment. And that assessment contrasted a bit with Secretary Simon's assessment that our terrorism finance cooperation with Saudi Arabia is real-time, ongoing and fully embedded into our day-to-day counterterrorism operations.

Of course, what comes to mind is the question of why Saudi Arabia has not established an effective Saudi FIU, and you mentioned the failure to include three large multilateral charities under its Charity Oversight Commission, which the Saudis have failed to implement.

So I guess my question is: What is the commitment of the Saudis moving forward on these points and what is the commitment of the United States on pushing these issues?

We do have leverage. Saudi Arabia would like ascension into the WTO and other points of leverage.

So how important is this issue to the United States in terms of utilizing what pressure we do have in order to get compliance on what I think a number of us feel is vital in terms of long-term national security interests?

Mr. LEVEY. Let me respond to that, Chairman Royce.

I think that the interagency group that works on terrorist financing, which Mr. Simons and I participate in actively, we do take it incredibly seriously. I think it is fair to say that there is no other country that has spent nearly as much time on engagement.

And not only have we done it, the president's Homeland Security Adviser, Frances Townsend, has engaged on the highest levels with them repeatedly.

There has been undeniable progress, particularly since the spring of 2003. It is a much different state of affairs. And I think that is what Mr. Simons was referring to in his statement—a much different state of affairs since that time than before that time.

They have taken real-time action to capture and kill Al Qaida facilitators and operatives in Saudi Arabia. That is real.

They have, indeed, joined us in designating organizations and individuals that facilitate terrorism.

In some respects, I think it is fair to say that Saudi Arabia has come further than other countries in the region. And we have to be careful that we do not become solely focused on Saudi Arabia.

But that said, and I think, as you allude to, I think they have come the furthest and they had the furthest to go. They had significant problems in these areas and they still have a long way to go.

Mr. ROYCE. The establishment of effective Saudi FIU would seem to be pretty basic. And that is of grave concern to us.

Mr. LEVEY. And to me as well. And I know to Chairman Kelly as well.

Mr. ROYCE. I was going to ask Assistant Secretary Simons: There was a column the other week by Jim Hoagland that a national security policy directive is being pulled together for what some have started to call the global war on extremism, and I wondered if you could shed any light on this.

And an essential part of this, I guess, would be an effort to check the charities who are working to spread radical Wahabist beliefs and have crossed the line over into teaching jihad.

Mr. SIMONS. Thank you, Mr. Chairman.

We are, indeed, in an internal deliberative process, in taking a look at our tools with respect to the global war on terrorism. There is not too much I can say about it in an open hearing. We might be able to talk more about it in a closed session.

But I can assure you that the two issues that you mentioned, terrorism finance as well as how to deal with what is taught in the madrassas and kind of the content issue that I think you have elaborated here—both of those are very important elements in this policy review that is under way.

Mr. ROYCE. Undersecretary Levey, you mentioned the deterrent impact that the threat of being publicly identified as a financier of terrorism has had on those in the financial community.

Would it not make sense to go a bit further and in essence name and shame also the states that are not cooperating in anti-terrorist financing efforts?

Such a process would then require an annual written certification of Congress detailing the steps that foreign nations have taken to cooperate in U.S. and in international efforts to combat terrorist financing.

And this process, then, would be similar for what we have in place for compliance of foreign nations on our anti-narcotics effort. I think everybody would agree that terror finance is just as important.

And I just close by saying—well, also you might want to comment on what role Syria may be playing in financing of terrorism, on that subject.

Thank you. And thank you very much for your good work, Undersecretary Levey. I appreciate that.

Mr. LEVEY. Thank you. Thank you for that, Mr. Chairman.

You raise a very complicated subject, actually, because in some ways we do call out countries that are not cooperative on terrorism—terrorism generally.

Now, you have actually made it more particular on terrorist financing, and I appreciate that, because as we have discussed personally, or in your office, that is an issue that is obviously at the center of what I do, and we do go around the world trying to use whatever tools we can to persuade, cajole, coerce, whatever we have in order to get people to do more and better on this topic.

On the other hand, one does not necessarily want to separate terrorist financing from terrorism. It is a part of the bigger picture, and so I think we have to be careful not to create a fault line that we do not really mean to create.

But I do think that this is an issue that I would be very interested in exploring. And I know that there is a proposed bill that you and the Chairman have already introduced, which is something that is perhaps a topic of further dialogue between us, so that we can see if there is something that makes sense that we will be able to support.

Mr. ROYCE. Thank you, Stuart.

Chairman KELLY. Thank you.

Mr. Gutierrez?

Mr. GUTIERREZ. Undersecretary Levey, I am going to go back to my opening statement and the several questions that I raised as I read it.

The quantity of SARs has grown. Many feel they are defensive filings.

Treasury's Inspector-General's recently found that the quality of SARs is severely lacking. They stated that 62 percent of SARs examined reveal problems in data quality, including incomplete, inappropriate or inconsistent information.

The Inspector-General's report indicated that FinCEN needs to prioritize this issue.

I would like to hear you comments for ideas and improvement in this area.

Mr. LEVEY. Thank you for that question.

I am familiar with the inspector-general report that you refer to, and obviously it has raised certain concerns.

One of the things that I think is also worth pointing out is that the inspector-general, who has been very—the Office of the Inspector General in the Treasury—has been very helpful. They focused a lot of attention on the whole bank secrecy act system, and I think has made excellent suggestions over the years.

And we have responded to those recommendations, I think, in a way that everyone involved thinks is very cooperative, including with respect to this report.

We are committed to making the improvements that you refer to. I should maybe take a step back and say that, with respect to FinCEN's ability to get high data quality in SAR filings and Bank Secrecy Act filings, I think that when we are fully on board with the BSA-direct project that Director Fox is working on, I would say,

it is fair to say tirelessly, in order to get that up and running by October of 2005, frankly with the great support of this committee. That will be very helpful on that side as well.

And also as we continue to increase electronic filing, one of the advantages—electronic filing has another advantage, which is that data quality is improved by the simple fact that you have electronic filing.

Mr. GUTIERREZ. I guess maybe—because we are going to have 5 minutes—you might, if you could respond more elaborately in terms of how you seen FinCEN prioritizing this issue and the exact responses that are going to be taken.

I would like to go to another issue that I raised.

The committee held a hearing this morning on breaches in data security in private sector companies. And, as I said, it is very rare when I agree completely with Mr. Sensenbrenner, but on this issue, he said, on April 20th, he called Treasury's failure to secure taxpayer and the Bank Secrecy Act data, "completely unacceptable."

Mr. Sensenbrenner went on to say, "It needs to be corrected immediately."

What is your response to Mr. Sensenbrenner's comments on Treasury and your information-gathering and the secrecy around it?

Mr. LEVEY. Well, all I can say on that issue is that I very much agree that keeping the integrity of the Bank Secrecy Act data that, as you know, initially comes into the IRS, is extremely important. We take it very seriously.

And again, it is something that the BSA-direct system would hopefully handle better from FinCEN's perspective. To the extent this is a question that goes to——

Mr. GUTIERREZ. What measures are you taking to respond to what Mr. Sensenbrenner called as "completely unacceptable"?

Mr. LEVEY. I think it would be best to give you a completer answer in writing, because this is something that I think the IRS is the entity that should be responding.

Mr. GUTIERREZ. I will look forward to that.

I want to ask you about the inspector-general, again.

He found that getting Treasury's HR Connect, another high tech personnel system, up and running costs $173 million. He compared that to the $24 million that was spent at Agriculture, $15 million that was spent at the Coast Guard.

He furthermore talked about $22 million annually to run HR Connect—far more than the $5 million to $6 million. So he made a comparison between what Treasury spent, both in terms of the system—$173 million—versus $24 million and $15 million—and in terms of $5 million to $6 million to run. This would be your $22 million.

And the I.G. calculated that $41 million may have been wasted in development of HR Connect.

So could you give us the name of the contractor on the project that was paid $109 million? And I would like to know if the contractor is and whether the project was bid competitively and why the costs were so high, and just as importantly, where the funds for this project came from.

Mr. LEVEY. I am sure that this will not be a satisfying answer to you, but I know I am not the right person to answer that question. And we will have to have the department respond.

Mr. GUTIERREZ. And I raise this as an issue because I know that when there is not sufficient money and when large amounts of money are spent like this, I guess my concern is money being transferred from one area of Treasury to another area of Treasury. I did not bring it up, the I.G. looked at it and examined it. I am using their report and their data.

And then I know I raised some issues—and my time is up—so if you could put in writing about the Office of Intelligence and Analysis and the assistant secretary, who is going to fill that job. I have raised this before. And other kinds of positions which have remained vacant, if you could give us a time line on how you see those positions being filled so that I am sure you will be better equipped to fight this war on terrorism.

Thank you very much for your comments, Mr. Levey.

Chairman KELLY. Thank you very much, Mr. Gutierrez.

Mr. Garrett?

Mr. GARRETT. Thank you.

You had indicated earlier during your testimony with regard to another organization, ostensibly a charitable organization that has now been found to be in actuality a terrorist front, if you will—I guess besides looking at those organizations themselves, what action by either you or other agencies are taken for here and abroad the wealthy individuals who are contributing in supplying the funds to those organizations? If you can just briefly touch on that—under the Patriot Act.

Mr. LEVEY. Well, the Patriot Act does a lot of things, but this is something we had before the Patriot Act.

If we designate an entity under this executive order, under IEEPA, which is a separate statute, it is a crime in United States domestic law for U.S. persons to contribute money to this organization.

Mr. GARRETT. Is that a known standard? What is the mens rea requirement for the individual who donates to that organization?

Mr. LEVEY. For a criminal prosecution there is a mens rea. You must have criminal intent. It is still an OFAC violation to have any transaction with a person who is on any of the OFAC designation lists, including this one.

Mr. GARRETT. Is that any different under the Patriot Act, for an individual to be contributing to organizations?

Mr. LEVEY. I do not believe that the Patriot Act affected that.

Mr. GARRETT. So it is still, as far as you know, it is still——

Mr. LEVEY. There may be a change in penalties. I think it is possible. I am trying to think back to my time at the Justice Department where there were a number of penalty enhancements in the Patriot Act, but the basic crime of contributing money to a terrorist organization or designated terrorist existed prior to the Patriot Act.

Mr. GARRETT. And I assume the answer to this question is no, but I will throw it to you. Is there any mechanism for a charitable organization—let us say it is a legitimate charitable organization—to go to anyone, yourself or otherwise, to get themselves designated

truly as a charitable organization and not one that anyone has to worry about them being a terrorist organization?

Mr. LEVEY. Well, there is an answer to your question, which is not quite a one-word answer, which is, if we designate an organization and they want to be delisted, and they can come back. And we have had individuals, at least one individual I am thinking of in particular, that we have delisted after designating as a terrorist. We have resisted suggestions from many people that we create a white list of charitable organizations for a lot of reasons.

We do not think that is the right way to go. We think that charities should be policing themselves instead of looking for us to come up with a white list. But the answer to that is, no, there is no list of charities that we endorse.

Mr. GARRETT. You obviously understand the reason why people come with that question, because they feel that they are now the subject of being criminal prosecutions or otherwise by giving to the charities. And if they are trying to do their best to make sure that they are not, just because they are not on the list, if they had given to that charity 2 months ago before your designation, thinking that it was a charitable organization, they now may be suspects for what they are doing.

The other question: You must have—and we have had a number of people come before us on this area, money laundering, what have you—and the amount of data that you must have to review and collect is just—is probably mindboggling. And is that the case?

Mr. LEVEY. Well, luckily it is not just me.

Mr. GARRETT. But it goes to a question that was raised by the other side of the aisle. Fortunately, we are moving in the right direction. In the banking industry, there is a more formalized customer I.D. program that is now in place.

Despite some of their testimony elsewhere, we see that the SARs reports, that there is a more proactive and a more robust program as far as the SARs reports, that that is going in the right direction as well.

And there is also the 314a response, back and forth, that are getting under those programs as well.

So in light of moving in the right directions on all of those fronts, my question to you is, doesn't it seem that where we are now with the CTRs, the cash transaction reports, that they are basically redundant and may be provided you with more data than is useful, that, A, it is redundant and more than you are going to be able to deal with anyway, and that we do not really need the CTRs at this point—more time on the SARs?

Mr. LEVEY. I am sorry. I think that our position on that is that it is not an either/or situation. It is not either use 314a and cash transactions report—or use 314a and SARs or use the cash transaction reports. We think it should be a both/and, and we are best off by using both methods.

I do agree that the—first of all, are moving in the right directions with respect to getting better SARs. There is, you know, bumps on the road, but I think we are generally headed in the right direction.

And 314a is a fabulous tool which, frankly, we intend to and are trying to use more robustly than we have in the past. Just in the

last few weeks, FinCEN set up a secure Web site that can be used to push information to the financial sector under 314a, and now we have to take the next step and actually do that.

But the CTR reports that you refer to still do, from what we have been able to learn in the last few months, they still do provide very valuable information. I have not been privy to what all law enforcement agencies are doing with them, but I am familiar with the FBI's experience and it still proves to be a very valuable source of leads for the FBI.

Mr. GARRETT. Perhaps I would assess then, if not here but in the future, if you will be able to provide us in writing some example to substantiate that.

Mr. LEVEY. I would be happy to.

Mr. GARRETT. Thank you.

Chairman KELLY. Thank you.

We have just been called for a vote, but I would like to turn to you, Mr. Lynch, if we can keep it for 5 minutes, we can still, at least, get your questions in.

Mr. LYNCH. All right. Thank you, Madam Chair.

Gentlemen, I do not want you to take this criticism the wrong way. I appreciate all the work that you are doing, no question about it. And I know that you are doing everything possible and that we are still trying to devise tools to be more effective.

But this September will be the fourth anniversary of the attacks on September 11th, and this process is taking too long. That we do not have a financial intelligence unit in Amman yet, we do not have one yet in Riyadh. I do not believe we have one in Beirut, Cairo.

It is tough when we hear—and I appreciate your work at this. This is not criticism of you. It is of others who need to cooperate.

But when we find out that we do not have one SAR from any bank in Ramallah—that is your testimony—that is troubling. And I just question, even with the establishment of this Middle East and North African Financial Task Force, are the tools in place for us to—even though we have got at least signals of willingness now—and I am not sure how genuine those are—do we have auditors in place who are actually going to be able to tell us whether or not we are getting compliance?

You know, is this the real—in terms of what we are expecting from these other nations? I know it is a tough thing for you to judge. You are a couple of good guys, and you are trying to do the right thing. And I am not critical at all of your performance. I am just recognizing the difficulty at hand.

And my question would be: What can we do here? What can Madam Chair do and Democrats and Republicans?

This is, fortunately, one of the issues we actually are all together on. So it is not partisanship in this case that gets in the way. It is really how best to help you. Are there tools that we could give you or provide to you that would allow you to be more effective and remove some of the obstacles that you have?

We have a strong relationship with Jordan. I was in Amman last month. And I know that we have given the blessing to a lot of NGOs to locate their Iraq-related activity in Amman. We have got

the Iraqi policy academies in Amman, Jordan. We have got all this cooperation with them.

And they have a lot to lose, quite frankly, by not cooperating—similar to the Saudis.

Are there things that we are not using that could be helpful to you in your task?

Mr. LEVEY. I think maybe we should both answer this one, since it certainly applies to both of our departments.

Let me say, I appreciate the spirit of the question. I always get a little nervous when someone starts, "Do not take this as personal criticism."

But I do appreciate—and both of these subcommittees have been very helpful to us and it has not been a partisan issue at all. I do think that, with respect to some of these countries—I should first say: I am as impatient as you are.

I always say to the people I work with that I can only bring two things to this job: I am very impatient and I worry a lot. And those are the two things that I think are the most important characteristics that I need.

Mr. LYNCH. And you are young. That might help as well at the rate we are going.

Mr. LEVEY. Well, I do not know.

But first of all, some of these countries are setting up FIUs. We have good FIUs in Lebanon and in Egypt that are doing good work. I believe we are going to get an FIU quite soon in Jordan. Certainly the atmosphere with Jordan is, as you say, very, very cooperative.

So I think that there is a real—certainly a large number of people in these countries "get it." And I am told that the discussion at the MENA-FATF, which one of my deputy assistant secretaries, Danny Glazer, went to, was very, very forward leaning and strong.

But as I said in my testimony, it is not standard setting that we need. We need standard setting plus implementation and enforcement. Though I have to say, we are not going to get implementation and enforcement until we get the standards set and the laws passed, because it is hard to pressure a government to take action if they do not have the legal infrastructure in place to do it.

In terms of tools that we need—and we had the exchange that I had with Mr. Royce—I certainly appreciate the attempt being made to try to fashion a tool that would give us more leverage. The tool given to us in the Patriot Act, Section 311 of the Patriot Act, has proved to be fantastic, really a powerful tool.

As I put in my written testimony, the impact of a proposed rule on the Government of Syria, when we did a proposed rule designating the Commercial Bank of Syria as a primary money laundering concern, has been—I have to say, I, frankly, was surprised at how powerful the response was. But I am now coming to understand just how powerful that tool is.

Whether there are additional ones, I think is the kind of dialogue that we should continue with respect to the attempt being made by Mrs. Kelly and Mr. Royce on their bill.

Mr. LYNCH. Thank you.

Chairman KELLY. Thank you, Mr. Lynch.

We have been called for a vote. There are some members who have additional questions for this panel. They may wish to submit them in writing.

I also have additional questions for this panel which I will submit for writing.

So without objection, the hearing record for this panel will remain open for members to submit written questions to these witnesses and place their responses in the record.

We thank you both very much for your appearance today. Since we have been called for a vote, we will be adjourning for—we will go into recess for approximately 20 minutes, and then we will resume for the second panel.

Thank you both, gentlemen, for your patience and for appearing here today.

Mr. LEVEY. Thank you very much.

[Recess.]

Chairman KELLY. Thank you very much for your forbearance in our taking the time to vote. I appreciate the fact that the two of you are here and welcome you.

Just to let you know, the other members may have a little difficult time getting back. One of the elevators transporting members to and from the floor in the Capitol is broken and one of the trolleys seems to be down. So it is a little more difficult for us to get moving around right now.

But we welcome you.

We have panel two, the second panel, Mr. John Byrne, the director of the Department of Compliance from the American Banking Association, and Mr. Zahid Bukhari. He is the director of the American Muslim Studies program and a fellow at the Center for Muslim-Christian Understanding in the School of Foreign Service at Georgetown University.

We welcome both of you and look forward to your testimony.

Let us begin with you, Mr. Byrne.

STATEMENT OF JOHN BYRNE, DIRECTOR, DEPARTMENT OF COMPLIANCE, AMERICAN BANKING ASSOCIATION

Mr. BYRNE. Thank you, Madam Chairwoman. ABA appreciates this opportunity to discuss how the financial industry is addressing compliance with the USA Patriot Act and all the laws covering financial institutions' anti-money-laundering obligations.

To update members on the various industry AML challenges, we offer the following three observations and recommendations: Number one, the detection of terrorist financing by banks or other financial institutions, whether through charities or any other entity, will not be successful without effective government intelligence and continued private sector involvement in organizations such as the Financial Action Task Force.

Two, whether in terms of BSA compliance or how banks work with MSBs, effective compliance with evolving AML requirements necessitates accompanying guidance. For example, it is counterproductive to label an entity or a country "high risk" without also issuing guidance on how to mitigate that risk.

And three, until the financial sector receives improved guidance and a more balanced approach to examiner oversight, the volume

of suspicious activity reports that banks submit to regulators will continue to skyrocket, frustrating government efforts to accurately detect genuine threatening activity.

We have previously emphasized to Congress and this subcommittee that the banking agencies need to reach agreement on how the financial services industry will be examined for compliance under the Patriot Act. We are pleased to note that there is formal movement on coordination of exam procedures and these final procedures are now due out June 30th.

ABA is also pleased that the agencies are exhibiting a commitment to greater consistency in 2005. For example, not only has FinCEN Director William Fox expressed public support for uniform assessments, but he has also directed the Bank Secrecy Act Advisory Group to form a subcommittee on exam issues.

This subcommittee, co-chaired by ABA and the Federal Reserve Board, has met several times—as recently as April 29th—to discuss the pending interagency exam procedures.

Uniform exam procedures will assist with industry concerns about exam inconsistency and the continued threat of zero tolerance by these same errant examiners.

Terrorist financing: As Congress reviews how to best to detect terrorist financing conducted through charities, it must be restated that the financial profile for this crime gives no direction to the financial sector on what could be done to prevent this activity in the absence of additional government information.

This crime is difficult, if not impossible, to discern, as it often appears as a normal transaction. We have learned from many government experts that the financing of terrorist activities often can occur in fairly low dollar amounts and with basic financial products. Guidance in this area is essential if there is to be effective and accurate industry reporting.

The bottom line is that terrorist financing can only be deterred with government intelligence. A renewed commitment by law enforcement to real information sharing must become a priority, not a second thought.

The financial industry continues to struggle over how to assess what types of risks are relevant to spotting terrorist financing. To date, the only public examples are the typologies listed by FATF for charities or non-government organizations, NGOs. The FATF warning indicators in this area do not, in our opinion, offer any real insight as to what types of activities are inherent to risky charities as opposed to risks in any other entity.

We believe that government organizations, such as FATF, could benefit from developing typologies after active consultation with the private sector, a goal that the ABA is pursuing through an organization that we are part of, the International Banking Federation.

There appears to be progress in this area, but we urge Congress to recommend to FATF that there be formal opportunity for the financial sector to be part of the FATF efforts in the areas of money laundering and terrorist financing.

Finally, in deference to Undersecretary Levey, I must disagree with his answer to one of the questions regarding currency transaction reporting.

As ABA has previously testified, again before this subcommittee, the 35-year-old law that relates to cash transaction reporting has become redundant and lost its usefulness. We believe that the time has come to dramatically address this reporting excess by eliminating CTR filings for transactions conducted by seasoned customers through their bank accounts.

We would note that the purpose of Title 31 in establishing the Bank Secrecy Act regulatory regime is to require certain reports or records when they have "a high degree of usefulness for the prosecution and investigation of criminal activity, money laundering, counterintelligence and international terrorism."

ABA and its members strongly believe that the current CTR reporting standards have long departed from this goal of achieving a high degree of usefulness. We believe that CTR filing has been rendered virtually obsolete by several developments. We now have formalized customer I.D. programs under section 326 of the Patriot Act. We also have more robust suspicious activity reporting, and when we finally do address the problem of defensive filing, those forms will be more carefully crafted and certainly, the guidance will be improved.

And the Government use of the 314a inquiry process, we think is a valuable addition from the Patriot Act that does help banks detect and look for terrorist activity through individual entities when those entities are named.

We believe that combined improved monitoring conducted by institutions as part of their SAR processes with better minding of SAR data by law enforcement as well as judicious use of the 314a process yields a much more effective approach to law enforcement investigation of patterns of fraud, money laundering and terrorist funding.

Consequently, we believe the time has come to recognize the redundancy of CTR filings for seasoned customers and to eliminate this inefficient use of resources by bankers and, more appropriately, by law enforcement.

Changing the thinking about mandating the collection of routine cash data would have the following benefits: The vast majority of the over 13 million CTRs would stop; wasteful SARs would cease; bank systems and resources could be redirected; regulatory criticism for technical mistakes with CTR filings would end; and finally, law enforcement could redirect its resources to better evaluate SARs.

In conclusion, we have been in the forefront of industry efforts to develop a strong public-private partnership in the areas of money laundering and now terrorist financing.

This partnership has achieved much success, but we know that more can be accomplished. We commend the Treasury Department, the banking agencies, and FinCEN for their recent efforts to ensure a workable and efficient process.

We obviously will continue our support for these efforts.

Thank you, and I would be happy to answer any questions.

[The prepared statement of John Byrne can be found on page 57 in the appendix.]

Chairman KELLY. I thank you, Mr. Byrne. I think what you have just said is very, very important. I would hope that someone from Treasury is sitting here taking notes.

We turn now to you, Mr. Bukhari.

STATEMENT OF ZAHID BUKHARI, DIRECTOR, AMERICAN MUSLIM STUDIES PROGRAM FELLOW, CENTER FOR MUSLIM-CHRISTIAN UNDERSTANDING, SCHOOL OF FOREIGN SERVICE, GEORGETOWN UNIVERSITY

Mr. BUKHARI. Thank you, Chairman Kelly.

Thank you for giving me this opportunity to state the significance of Zakat in everyday Muslim life, and also to express the concerns of the American Muslim community on the efforts of starving terrorists of money.

I was asked to address three specific questions, and I will do it one by one. But bear with me. I will sing a little different song, so please bear with me.

The first question was raised said: What role does the Islamic charitable obligation, or Zakat, play in everyday Muslim life?

Charity is an integral part of all religions. It is also a fundamental obligation of all Muslims to share their wealth with the poor and needy members of the society.

Zakat, calculated at 2.5 percent of total savings, assets per year in the Sunni tradition, is one of the five pillars prescribed in Islam.

The emphasis in Islam is not only on faith, but also on practice. Belief in God is not acceptable if one does not give charity to the poor or hungry people.

It is strongly recommended that Muslims should give as charity more than the obligative Zakat. It is called Sadaqa. And there is a Jewish term almost sounding like that, meaning like that. Sadaqa is another act of charity.

The difference between Zakat and Sadaqa is the nature of the giving. Zakat is compulsory and Sadaqa is voluntarily, and it can consist of anything from monetary gifts to acts of kindness, even a smile.

The Islamic traditions discourage publicizing the acts of generosity. For that reason, Muslims give Zakat and other Sadaqa without any fanfare and only for their own salvation on the day of judgment.

Another difference, I think, with Islam and the other religions about this issue of Zakat is, as a spiritual and philosophical matter, the ownership does not exist in Islam. All wealth and properties belong to God. A person is a trustee of his and her wealth and property and has the responsibility to spend and manage its wealth.

In that sense, the poor have a right to part of it. On the day of judgment, each person will be asked about his or her acts of charity, including visits to the sick and responsibility to one's neighbors.

Among the Muslim communities all over the world, the Zakat has always been an effective tool for alleviating poverty, redistributing the wealth and resources among all sectors of the society, and establishing the system of social justice.

But Islamic law has described a detailed set of rules and regulations for the collection and management of the Zakat money. According to the Koran, there is Chapter 9 and 60, there are eight specific categories where the Zakat money could be spent, and very briefly: for the poor, for the needy, for employees involved in the collection and administration of Zakat, for freeing captives, for relieving those in debt, for those who are traveling, for the sake of God, for Allah.

This is where the public goods including education, health and infrastructure fall.

And very interestingly, the last category is for winning the hearts and minds of others. That is also a part of Zakat, is another item.

In America, the potential of the Zakat collection by the Muslim community is estimated by one economist around $1 billion per year. And every kind of the Zakat, Zakat-al-Fitr, that is the charity for the Ramadan feast at the end of Ramadan, the month and the festival of Eid al-Fitr is also estimated within $35 million to $40 million each year. And that was distributed for the poor of the society and the community.

The other Sadaqa, the other charity, is more than that, annual Zakat and annual Zakat-al-Fitr.

At this point, let me also briefly talk about the American Muslim community. It is the most diverse and influential community in the world. Here we have, in America, Muslims from 80 different countries. And no other country on the planet has this type of diversity.

Only compared in the parallel is the annual Hajj in Saudi Arabia, where we have 2 million Muslims coming from more than 100 countries. But next to that, only we have in America this type of diverse Muslim community.

A small replica of the Muslim world is living in the U.S. today. We have representation of all the religious schools of thought and intellectual trans-political ideologies. There are a large number of highly qualified professionals, fellows and experts in all fields in the American Muslim community.

And I was also involved, before this American Muslim Studies Program, in a project map, Muslims in the American Public Square. It was funded by the Pew Charitable Trust. So we compiled a "who's who" among American Muslims, and that will be published this year. We publish this volume, "Muslims' Place in the American Public Square." And we are publishing another volume about Muslims engaging the quality and the society here in America.

Comparing with the national average, the community is much younger, more educated, and have higher income level.

The American Muslim community is also becoming politically mature. In a national survey conducted in 2004 by the Project MAPS and Zogby International, 58 percent of the Muslim respondents said that they were profiled or discriminated after the September 11th, 2001.

However, an overwhelming majority, more than 90 percent, also favored their participation in the American political process, interfaith activities and giving money to non-Muslim charitable organizations.

So there is the first question about the Zakat.

The second question was raised: How have terrorists used this obligation in American-based charities to fund illegal and dangerous activities aimed at the United States?

Chairman KELLY. Mr. Bukhari, we will enter your entire written statement as a part of the record, but we would like you to sum up now please. Each of you were invited to testify for 5 minutes, and you have been talking for 5 minutes. If you could sum up, I would appreciate that. Thank you.

Mr. BUKHARI. I gave the written statement, but very briefly I will say that right now, unfortunately, at this time Muslims are facing this dilemma. There is a shadow of suspicion on the Muslim charity that every act of Muslim charities is the act of terrorism.

And that shadow of suspicion should be removed. The Muslim community and the Muslim charitable organizations, they are doing their best. They have established a national council of Muslim for nonprofit recently. They are doing their work in international arena, in the domestic.

So I think the main concern is that that shadow of suspicion should be definitely removed.

And we are ready; we can facilitate. Any agency of the Government should work with the Islamic organizations, charitable organizations and the needy people all over the world.

For example, there are a lot of questions raised by Palestine today. But then one statement was made that millions of dollars by American Muslim community have been raised for terrorists. I simply very respectfully say that this is not true—absolutely not true.

So we would like to facilitate—that any agency of the Government work with the American Muslim charitable organizations, work in the Palestinian or anywhere in the world to make that the money should be spent where the money should be spent, for the needy and the people—those who are very hopeless over there.

So that is right now the crisis at this time, that this shadow of suspicion should be removed and the proper working mechanism should be developed for the partnership of the American Muslim community.

[The prepared statement of Zahid H. Bukhari can be found on page 53 in the appendix.]

Chairman KELLY. I thank you both very much for your testimony.

Mr. Byrne, you mentioned you think CTRs are redundant and not useful. You also suggest that banks are having to file many too many SARs reports.

If you were sitting in the position that Chairman Royce and I are sitting, what would you to do help clarify both of those things in terms of helping Treasury give banks more clarity and more certainty about both of those reports and the way that they file them?

Mr. BYRNE. Madam Chairwoman, the issue of suspicious reporting is an interesting one because we actually are very active with the Treasury's Bank Secretary Advisory group, and through the efforts of Bill Fox at FinCEN they have really made the system much more transparent.

We are starting to get better example of trends through the SAR activity review, which, as you know from my testimony, I am part of that. But, more importantly, topologies and examples typically come back now through FinCEN and Treasury with some assistance from the private sector.

So the SAR guidance is getting better. I think the real answer there is for you to perform oversight on how the examination of banks is going to occur, kind of post these new exam procedures through 2005 and 2006, and see if the banking industry has, in their view, felt that they have been treated fairly in terms of their SAR programs and procedures—more of an oversight on how our programs work.

In the CTR area, this has been an issue for me for quite a while. In fact, I wrote a law review article back in 1990 that we thought then that CTRs really needed to change their focus.

But now, in 2005, law enforcement will sit in front of you and say, "All data is valuable." Well, it is just not the case.

I think you need a very comprehensive review of where currency reports have been going—13 million a year—70 percent of them are on Wal-Marts and J.C. Penneys and retail stores that serve no value.

The minimal amount that might be on something that they are investigating—law enforcement—really kind of supplements their ongoing investigation.

So it is another area where I think you should demand a very careful review of where that process is.

But do not look at CTRs in a vacuum. Look at what we are doing today with suspicious reporting, with wire transfer record keeping, with customer ID, and look at it in that context. Where does CTRs fit in with all the other information that banks are providing?

If you do it that way, they are going to have to be frank about CTRs—where they fit in.

And again, my educated guess is they will respond and say, "All information is valuable." We just do not believe that is the case.

Chairman KELLY. Mr. Byrne, I wonder if you would be willing to send this committee a copy of that article that you wrote?

Mr. BYRNE. I will be happy to. It was before the days of electronic—so we will copy it and send it through.

Chairman KELLY. Good. Okay.

Chairman Royce and I both introduced H.R. 1952 that would create a terror finance certification regime to try to enable the private institutions to know which countries are the countries of concern.

And I did not get the time to ask Secretary Simons about what they are doing on this front. But I would be very interested in whether you think that H.R. 1952 might be a useful tool for you.

Mr. BYRNE. Having not read the bill, but I heard your description of it, it is basically setting up something similar to the noncooperative country designations of FATF, but only on terrorist financing.

Obviously, in the abstract, designating a country as higher-risk is useful. The only caveat I would offer is that we have seen, specifically in the area of the MSBs—and, as you know, banks were told that MSBs were inherently risky and they gave us no real way to mitigate that risk—if you designate a country as noncooperative in the terrorist financing area, are you telling the banks to com-

pletely stay away from the relationship, are you telling us to just simply enhance our due diligence to work with Treasury or whomever to make better decisions?

I would only suggest that we have seen some examples—for example, in the country of Latvia. Latvia is seen as a country that has a lot of problems.

The problem with that designation is that many U.S. banks have simply distanced themselves from relationships there. And perhaps that was too broad a response on our part, because we really have no way to mitigate the risk.

So I would just urge that, however you proceed with the legislation, understand that if you designate something risky, we will react, but we will react broadly and probably distance ourselves completely without some more direction.

Chairman KELLY. I understand that one of the problems that the Treasury has and all the regulators in the financial area have is to maintain a certain oversight in such a way that they are not closing down channels that they need to be looking at.

I am interested even with the MOU that just came out on SARs. Don't you think maybe there could be a place for safe harbor for financial institutions that really made an honest mistake? I do not see in the way that the SAR reports are being used right now that we have got any place, any safe harbor, any placeholder for a bank that made an honest mistake, can come in and correct it and get on beyond it. What do you think about that?

Mr. BYRNE. Well, there are a couple of issues here.

First, we are filing today a comment letter to the FDIC and the other agencies on the overall regulatory burden relief project—the acronym is EGRPRA. And one of the many recommendations we are making besides the CTR recommendation that we are talking about today has to do with the multiple filing of suspicious activity reports.

What happens today, what has added to the multiplicity of filings—if I file a suspicious report tomorrow on a particular entity, we have been directed every 90 days, if that account is still active, to continue to file on the same activity even if there has been no additional information. We do not think that is very useful. And we think that is adding to the problem.

The safe harbor, in the early 1990s—again, unfortunately, I have been here way to long—but in the early 1990s, we supported a provision crafted by this committee that gives a safe harbor from litigation if an individual wanted to pursue an action against the institution.

So this is not a safe harbor from the Government, this is, if we file on an entity and the entity decides to litigate, we are protected because we have made a decision, right or wrong, to file a suspicious report. So there is a safe harbor from that.

But in terms of the Government, we do think they need to give us better deference on our SAR filings. And one area that it could help—and maybe it is not a safe harbor per se—but if a bank has made a decision not to file a suspicious activity report, I have heard too many times from our members that we get criticized for failure to file even though we looked up the activity, documented

why we did not file and actually working hard to not file something defensively. Examiners have been critical of that.

We need deference paid to the bank that had a program that looked at the activity and at the end of the day made a decision not to file. You can call it a safe harbor, you can call it due deference, in that area, I think it will be very helpful.

Chairman KELLY. Thanks, Mr. Byrne. I am hearing that from my bankers that I represent as well.

I am out of time. I would like to turn now to Chairman Royce.

Mr. ROYCE. Thank you, Chairwoman Kelly.

Let me just begin by asking the doctor: Do you have a view about Treasury's outreach?

You know, the Treasury Department is attempting to resolve some of the issues that you brought up in your testimony, trying to sit down with the community and work out a resolution of some of these sensitive areas. And I just wondered if you had a feeling of how that was going with the Treasury Department.

Mr. BUKHARI. I think that outreach effort is commendable. And that their encouragement and also the leadership of, too, our national Muslim organizations, AMPAC and ISNA.

Recently the Muslim community formed the National Council of American Muslims, nonprofit. It is a good development.

But I would like to go beyond that. And that is an issue, for example, of when the other relief organizations, three or four relief organizations, they were banned. And the assets and the bank accounts are frozen—millions of dollars. Among those there was Zakat money. That is a very much religious obligation.

We also got on some of these that want to make a pool of Muslim organizations and leave their Zakat money to be spent on their intended objectives.

But that was not approved. And that Zakat money was dried up. And their Zakat money was paid for the expenses of litigation and lawyers and all sort of these.

Other point is that here the American Muslim community, we are not only losing public diplomacy all over the world, but here, too. This Muslim community could become a partner.

Mr. ROYCE. And that is why we hope that the Treasury Department succeeds in resolving some of these issues.

At the same time, one of the questions I think is, as the United States government makes this assertion that some Islamic charities have been manipulated by individuals who have provided some form of support for organizations that are involved in jihadist activity. The question becomes a little more complicated.

And I think we understand one of the reasons why is because not everyone has the view, not all scholars have the same view, with respect to the definition of the obligation. And that is one of the things that is debated.

It is a minority view. But nevertheless, there are some scholars, and one in particular, Yusef Kardawi in Egypt, and he says that Zakat payments must be for the benefit of members of one of eight specific categories of recipients defined in the Koran. And you have defined that list.

And that is admirable, that the goal is to assist people in need.

But when he comes to the injunction to support those who are working in the cause of God, there is a little different interpretation, but it makes a big difference in terms of application by that standard.

And that is one of the things we are wrestling with, because if that is extended to, say, financial or material support should be given to groups that claim to fight on behalf of Muslims in, let us say, Chechnya or Iraq or the Palestinian territories or other conflict zones, then we are into a different category, a whole different area.

And you have a few of these Islamic scholars, such as the Egyptian cleric Yusef Kardawi that I mentioned, that have made these arguments. You have many scholars who have condemned the direct solicitation and the use of charitable funds for any violent purposes.

But those Muslims seeking to fulfill these requirements make donations to Islamic charitable organizations and relief agencies, and they fund religious education programs and yet you do have the consequence, as Yusef Kardawi says, that some interpret this as fighting for such purposes in those occupied territories is in the way of Allah for which Zakat must be spent.

And so I think that is what gives rise to the difficulty. And part of the dialogue is to figure out how the Treasury Department can work with the community in order to make this work, but with the reality that some, a minority, of scholars have reached a different conclusion. And that is what gives pause. That is what leads to concerns.

How have those who have a commitment to the original interpretation, that charitable purposes means charitable purposes, how do they work to counter these radical beliefs?

I know a number of people are countering those beliefs, and I thought I would give you an opportunity, Doctor, to expound on that.

Mr. BUKHARI. Thank you, Chairman Royce.

We can go a little bit back. For example, when—I am from Pakistan, also, originally from Pakistan, now American citizen. In the 1980s, when the Muslims were fighting jihad against Soviet Union, at that time everything was encouraged—means the funding was encouraged.

So probably that song is still singing. But I think, very respectfully I will say that a mechanism could be definitely defined and made here in America, because I think American Muslim community has a very unique position. As I said, this is a very highly professional, scholars and religious leaders are here, and we can work out. The unfortunate thing is that they are not the partner of the American policy-makers to convey the message.

So if some mechanism with any government agency, even Congress or any other government agency, with the Islamic charitable organizations, things could be worked out very easily. On the recipient end, any recognized institution will receive that funding. Nobody else will receive that funding, and that funding will go only for charitable purpose.

I think any mechanism in the Muslim community, the American Muslim community will welcome this type of intervention and we would like to facilitate this type of intervention.

Nobody wants that his money—absolutely no Muslim will like to have that his money will be spent in any type of terrorist activity.

So I think whatever the obligation other or whatever other leaders are saying, that the Muslim community is self-sufficient here, they can make a decision on that.

To some extent we have done our homework. But right now we need help from the Congress and from the Government agency to work out any mechanism.

Mr. ROYCE. As I said earlier—well, it is certainly the case that in the American Muslim community you have some of the highest percentages of advanced degrees of any communities, and there is an enormous gulf, as I said earlier, between Christianity and the Christian identity movement. To quote Mark Twain, "It is the difference between lightning and the lightning bug." And likewise, there is an enormous gulf between those who are assisting charities—charitable giving, good works—and those few individuals who have an alternative vision with respect to jihad.

I think it is important that the community work with Treasury to try to resolve and define these issues.

And I think for those who are speaking out in order to counter the radical voices that have this view that is not the traditional view, that is important work as well.

And so my hope is that Treasury can move forward with methodology and means that can help resolve this and find some solutions.

And I thank you for appearing as a witness today.

Chairman KELLY. I thank both of you.

Dr. Bukhari, I am very pleased that you are here, that you have shared some time with us. And I share my colleagues' concerns.

Mr. Byrne, I look forward to working with you on some of the issues you have raised. We thank you very much for appearing here today.

The Chair notes that some members who were not able to get back may have additional questions for this panel which they may wish to submit in writing.

So without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record.

Thank you very much.

This hearing is adjourned.

[Whereupon, at 4:51 p.m., the subcommittee was adjourned.]

A P P E N D I X

May 4, 2005

Opening Statement

Chairman Michael G. Oxley
Financial Services Committee

Starving Terrorists of Money:
The Role of Middle Eastern Financial Institutions

Financial Services Subcommittee on Oversight and Investigations
International Relations Subcommittee on International Terrorism and Nonproliferation

May 4, 2005

Good morning to our witnesses, Members and guests. I would like to thank Subcommittee Chairwoman Kelly of the Oversight and Investigations Subcommittee and Congressman Ed Royce, who is both a member of this committee and also Subcommittee Chairman of the International Relations Subcommittee on International Terrorism and Nonproliferation, for calling today's joint hearing.

I would also like to thank the Departments of State and Treasury their tireless efforts to expose and halt means and methods of terrorist financing.

As we all know, it is absolutely essential that this government and our international partners and allies continue to attack terrorists and their financial support.

Today, we will review Federal efforts to expose and break the domestic links between the few charitable entities in the Muslim community, which fund Islamic terror, and their surreptitious use of some financial institutions.

For instance, since the 9/11 attacks, the Department of the Treasury has shut down several large Muslim charities operating in this country because they were giving direct material support to terrorist activities abroad, activities this Committee has already explored in detail.

Even as our government seeks out and shuts down bad acting institutions, it is also important to protect legitimate charitable activities, no matter what their place of origin.

Further, our economic health requires a dynamic correspondent banking system as well as the presence of numerous centers for currency exchange. We need to avoid overly restrictive regulation of legitimate money service businesses even as we ensure our national security against terror.

The Federal government has many of the tools it sought to identify, isolate and interdict terrorist financing. We now need to invigorate our dialogue with the financial services industry about the balance needed as that sector exercises due diligence in its business dealings. This is especially true with the use of Suspicious Activity Reports (SARs) and the application of know-your-customer requirements.

I am also encouraged by the creation of the Middle Eastern North African Financial Action Task Force. This will provide a frontline effort in the continuing war to dry up sources and methods of terrorist financing, and permit the flow of money to those in real need.

Again, Madame Chairwoman and Mr. Chairman, my thanks for your efforts to examine our progress in this critical area of the war on terror.

I look forward to a lively and informative hearing.

Mrs. Kelly: I call this joint hearing of the Financial Services Committee Subcommittee on Oversight and Investigations and the International Relations Subcommittee on International Terrorism and Non-Proliferation to order.

This hearing was called to examine and assist efforts to reckon with the very difficult problem of charities being used to support terrorism and the spread of extremism.

Since the vicious attacks on our country, we have placed special focus on this issue, and despite the important progress we have made, this particular problem is not one that lends itself to simple solutions.

As we continue our push for progress, our approach must continue to reflect an understanding of the complexities inherent in this task.

We must consistently improve our understanding of the context which makes an honorable humanitarian impulse vulnerable to dangerous exploitation and misdirection.

And while it is improper to think that the cure to this particular problem can be found through a stronger

relationship with any one country, it is clear in this case that a key to greater success will involve improvements in our partnership with Saudi Arabia, which possesses a unique status as a beacon in the Muslim world and has historically been a leader in Islamic charitable activities.

There is good reason for us to be troubled with this aspect of the US-Saudi relationship in fighting terror finance. In that regard, I would like to enter for the record an exchange of letters that my colleague Congressman Royce and I had with Saudi Ambassador Bandar earlier this year.

Recently, attention has rightly focused on the Saudi relief committee for the Palestinians, one of the charitable committees run directly by the Saudi government.

Though it has provided legitimate relief aid, it also apparently provided a structured financial reward system for the families of Palestinian suicide bombers.

This abominable practice was advertised openly on a government-run website that was only taken down about two weeks ago.

Unfortunately we have seen reports that Arab Bank and other institutions may have been involved in this payment scheme.

Concerns related to this matter are amplified by actions taken by the Treasury Department in response to inadequate money-laundering controls at Arab Bank's branch in New York City.

The OCC said – quote – "The inadequacy of the branch's controls over its funds transfer business is especially serious in light of the high-risk characteristics of many of the transfers." - end quote.

The Oversight & Investigations Subcommittee is committed to learning more about these deeply troubling circumstances. The public has a right to know what has happened and how our government has responded. The committee's attention to this issue in the coming months will remain focused on finding out what has happened, and I will be holding another hearing on this matter. The public will learn more about the Saudi charitable committee, the role of institutions used as conduits for supporting terrorism, and the response of our government to these circumstances. The public, and particularly the victims of these attacks and their family members, deserve nothing less.

This must be pursued not only because of the critical importance of ensuring accountability for those who support terrorism, but also because of the disturbing precedent it ostensibly sets for other Saudi-run charitable committees which direct relief to other areas such as Kosova and Iraq.

While on a fact-finding trip to Saudi Arabia last month, I learned about some of the positive efforts undertaken by the Saudi government in dealing with these charitable committees. There are significant efforts underway that we must acknowledge.

But there is still more to learn about the controls for these government-run charities. Recent reports about the Saudi Arabian chief justice encouraging the donation of funds to insurgents in Iraq should intensify our interest in assessing the effectiveness of Saudi charitable controls.

In addition to these charitable committees, we must focus on international Islamic charities based in Saudi Arabia, such as the World Assembly of Muslim Youth (WAMY) and the International Islamic Relief Organization (IIRO), which are unaffected by new Saudi government regulations.

These organizations are alleged to have supported Al Qaeda, and are known to proselytize a form of Islam which has shown itself prone to spawning extremist, militant movements such as the Taliban.

These Saudi-based charities still operate throughout the world with minimal transparency or controls. To date, the Saudi officials have indicated that these charities operate largely outside their sphere of influence.

It is difficult to accept this argument.

There are deep interconnections - WAMY and IIRO were in fact created by the Saudi government, and are run currently by Saudi citizens. I note that even earlier this year, the Saudi embassy put out a media release heralding a donation made by IIRO [verify]. This suggests a deep, continuing relationship. I very much agree with Under Secretary Levey's statement in his written testimony which underscores the importance of placing these charities under the review of the charitable commission the Saudi government is in the process of establishing for monitoring charitable donations outside the kingdom.

These charities are currently not included in the commission's portfolio.

There must be an open, continuing dialogue with the Saudis about this issue. Based on my meetings in Riyadh last month, I believe Saudi officials would be willing participants in more frequent discussions with Congress, as they too bear the scars and burdens of an al Qaeda target. Officials in Riyadh expressed to me repeatedly their interest in working with our government and the Congress in fighting terrorism. We must engage this interest.

In our discussions, we must also be prepared to refine our own approach to this issue. We have to be mindful that we are directly addressing one of the five pillars of the Islamic faith: *zakat*, which guides Muslims to regularly donate a portion of their wealth to charitable causes.

U.S. complaints regarding Muslim charities are often perceived as lacking in respect for this fundamental obligation of the Islamic faith, thereby creating a serious complication for our hopes of resolving our national security concerns.

It's critical that we continue discussions not just with Saudi Arabia, but with all governments in the Middle East and North Africa on steps they can take to strengthen their ability to detect and stop terrorist money flows without impeding important, honorable humanitarian efforts.

An important step forward in this effort has been the establishment of the Middle East-North Africa Financial Action Task Force. MENA-FATF, as it is known, provides the ability for governments in the region to develop best practices and to share information on terrorists and their networks.

I am pleased that the US Department of the Treasury is an official observer delegation to MENA-FATF and has provided technical assistance to the organization and its members.

Most nations have laws on their books to fight money laundering and terror financing, yet there is no way to measure their effectiveness.

Banks, charities, and agencies of our own government are left to use their own resources to find out whether certain countries are trustworthy business partners.

While organizations like MENA-FATF can help, the U.S. government must take action to protect institutions that deal with nations that are not enforcing their anti-terror finance laws.

I have introduced HR 1952, along with Mrs., Berkley, Mr. Royce and Mr. Feeney to do just that.

A terror finance certification regime can eliminate uncertainty businesses and charities face working overseas while spurring other countries to enforce their own laws.

I look forward to working with the Treasury and my colleagues to move this bill forward in the near future.

The United States and its allies continue to fight a ruthless enemy that will use whatever weapon is at its disposal to defeat us, whether it is defaming its own religion, misleading banks and community lenders, or stealing aid meant for the poor and starving.

As we continue to take the necessary steps to defend ourselves, we must ensure that those who

are victimized because of Al Qaeda are not unduly hurt by those measures and are provided the means for making themselves as whole as possible.

NEWS FROM:

International Terrorism and Nonproliferation Subcommittee

U.S. Rep. Ed Royce, Chairman

FOR IMMEDIATE RELEASE
May 4, 2005
Contact: Julianne Smith, 202-225-4111

Royce Statement on Starving Terrorists of Money

Cutting off terrorist financing is key to winning the global war on terror

WASHINGTON, D.C. - - Today, the International Terrorism and Nonproliferation Subcommittee (ITNP) teamed up with the Financial Services Oversight and Investigations Subcommittee to hold a joint hearing on terrorist financing entitled "Starving Terrorists of Money: The Role of Middle Eastern Financial Institutions." ITNP Chairman U.S. Rep. Ed Royce (R-CA-40) issued the following opening statement at the hearing:

"I appreciate the fact that we are holding this hearing today jointly. As the Members know, this is unusual for us to come together like this, across committees. In fact, I can think of few times in which it has happened. That shows the paramount importance of the issue we are facing.

"The 9/11 Commission recommended that tracking terrorist financing 'must remain front and center in U.S. counter-terrorism efforts.' Terrorist organizations such as al-Qaeda have allegedly used a variety of methods to finance their operations that stretch across the globe, including: Islamic charities, wealthy donors, *hawalas*, financial institutions, drug trafficking, conflict diamonds and other commodities. Tracking terrorist financing has proven an effective way not only to disrupt terrorist plots and organizations, but also to glean intelligence on terrorist operatives. However, because of its complexity and variety of methods, terrorist finance has been a 'hard target' for the U.S.

"As we will hear today, there has been progress in the fight against terrorist financing. For instance, the Administration reports that funds flowing to Hamas have seen a 'substantial reduction.' However, there is a long road ahead, and terrorists are constantly changing their financing tactics.

"The larger challenge is checking the ideology fueling terrorism. Charities continue to provide a variety of important functions in the region. A major goal of some of these charities, however, is to spread radical Wahhabi beliefs and culture. Thus, Gulf State charities have funded *madrasas* in Africa, Europe and South, Southeast and Central Asia.

-- OVER --

Statement of ITNP Chairman Royce
"Starving Terrorists of Money: The Role of Middle Eastern Financial Institutions "
May 4, 2005
Page 2 of 2

"I have spoken with local leaders who have identified the local *madrasa,* backed by foreigners, as the source for radicalization of their young. It is these radical *madrasas* that are fueling the next band of *jihadists,* and perpetuating a generational struggle. Experts I have spoken with measure the amount of spending to support the building of *madrasas* worldwide in hundreds of millions, if not billions, annually. Much of this is our own petro-dollars. This has to be a part of our dialogue with countries in the region at every level. This is just as much an issue of public diplomacy as it is terror finance.

"Of course, those who are working to spread this ideology of terror are often depending on Muslims seeking to fulfill the *zakat* requirements of their faith. We need to do everything we can to shine the light on those who seek to prey on fellow Muslims who are simply seeking to fulfill their religious obligations. Protecting the charitable community from terrorist abuse is of paramount importance.

"Significant international cooperation, through bilateral relationships and multilateral institutions, will be key to stem the flow of money to terrorist groups and extremist causes. Countries in the region have taken some first steps. Yet, many still do not have terrorist financing laws or have established financial intelligence units. Some have put laws on the books, but enforcement remains in question.

"These issues will require our constant engagement. While progress has been made, I think there is little question that our enemies have a large lead."

Royce is a senior member of the House Financial Services and International Relations Committees. In 2004, along with Congresswoman Sue Kelly (R-NY), Royce co-founded the Congressional Anti-Terrorist Financing Task Force, which works to strengthen and build upon efforts in the fight against the funding of terrorism.

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Testimony

Joint Hearing
Committee on Financial Services
Subcommittee on Oversight and Investigations
and
Committee on International Relations
Subcommittee on International Terrorism and Nonproliferation
May 4, 2005, 2:00 PM, 2128 Rayburn House Building

Hearing entitled: "Starving Terrorists of Money: The Role of Middle Eastern Financial Institutions"

Dr. Zahid H. Bukhari
Director, American Muslim Studies Program (AMSP), Fellow, Center for Muslim-Christian Understanding, School of Foreign Service, Georgetown University

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Chairman Kelley, Chairman Royce and distinguished members of both the subcommittees. Thank you for giving me this opportunity to state the significance of Zakah in everyday Muslim life and also to express the concerns of the American Muslim community on the efforts of starving terrorists of money. I was asked to address three specific questions and I will do it one by one.

1. *What role does the Islamic charitable obligation, or "zakah," play in everyday Muslim life?*

Charity is an integral part of all religions. It is also a fundamental obligation of all Muslims to share their wealth with the poor and needy members of the society. Zakah (calculated at 2.5% of total savings/assets per year in the Sunni tradition) is one of the five pillars prescribed in Islam. The emphasis in Islam is not only on faith, but also on practice. Belief in God is not acceptable if one does not give charity to the poor or hungry people.

It is strongly recommended that Muslims should give as charity more than the obligatory Zakah. It is called Sadaqah. The difference between Zakah and Sadaqah is the nature of the giving. Sadaqah is a voluntary form of charity and can consist of anything from monetary gifts to acts of kindness, even a smile. The Islamic tradition discouraged to publicize the act of generosity. For that reason, Muslims give zakah and other sadaqat without any fanfare and only for their own salvation on the Day of Judgment.

As a spiritual and philosophical matter, the ownership does not exist in Islam. All wealth and properties belong to God. A person is a trustee of his/her wealth and property, and has the responsibility to spend/manage it well. In that sense, the poor have a right to part of it. On the Day of Judgment, each person will be asked about his/her acts of charity, including visits to the sick and responsibility to one's neighbors.

Among the Muslim communities all over the world, the Zakat has always been an effective tool for alleviating poverty, redistributing the wealth and resources among all sectors of the society, and establishing the system of social justice. The Islamic law has described a detailed set of rules and regulations for the collection and management of th e Zakah money. It has been managed by the governments as well as local and national communities in various parts of the Muslim world. Historically, the *Auqaf* (endowments or foundations), established by the Muslim philanthropists, have provided the majority of funding for the development of public good, activities such as schools, universities, libraries and hospitals.

According to the Quran (9:60), there are eight specific categories where the Zakah money could be spent:

1. For the Poor (*Fuqrah*): those visibly without the basics
2. For the Needy (*Miskeen*): those that are not so poor, but still live near the subsistence level
3. For employees involved in the collection and administration of Zakat
4. For freeing captives
5. For relieving those in debt
6. For those who are traveling
7. For the sake of God (*fi sabi lillah*); this is where the public goods, including education, health and infrastructure fall.
8. for winning the hearts and minds of others

In America, the potential of Zakah collection by the Muslim community is estimated by one economist at the Islamic Development Bank as $1 billion per annum. Zakatul Fitr (charity for the Ramadan Feast or Eid ul Fitr) is also estimated between $35-40 million each year.

At this point, let me also briefly talk about the American Muslim community. It is the most diverse and influential community in the world. Here we have Muslims from eighty different countries of the world. A small replica of the Muslim World is living in the USA today. We have representation of all religious schools of thought, intellectual trends, political ideologies, and Islamic movements. There are large number of highly qualified professionals, scholars and experts in all fields in the American Muslim community. Comparing with the national average, the community is much younger; more educated and have higher income level.

The American Muslim community is also becoming politically mature. In a national survey conducted in 2004 by the Project MAPS/Zogby, 58% of the Muslim respondents said that they were profiled or discriminated after the September 11, 2001. However, an overwhelming majority (more than 90%) also favored their participation in the American political process, interfaith activities, and giving money to non-Muslim charitable organizations.

2. *How have terrorists used this obligation and American-based charities to fund illegal and dangerous activities aimed at the United States? What do you believe the broader Muslim community can do to prevent or at least retard these activities in the future?*

I would like to take strong exception that the Muslim community charitable donations have any connection with the terrorist groups. American Muslim charities have performed commendable services in Bosnia, Kosova, several African countries, and for the Afghan refugees, and the victims of communal riots in India. All these services were performed with the collaboration and cooperation of reputed international relief organizations. The American Muslims have also been involved in establishing high standard educational institutions, especially for girls, as well as the most modern hospitals in the various parts of the Muslim world. Unfortunately, instead of any recognition, the important contribution of the American Muslim community has been stigmatized with the banner of terrorist activities.

To the dismay of the Muslim community, several Muslim charities have been shut down by the government after 9/11. Several million dollars of their assets and bank accounts have also been frozen. However, any direct relationship between the Muslim donors and any terrorist activities has yet to be established. The painful situation is that the several million dollars of Zakat money, part of the frozen assets and bank accounts, have been dried out by paying the administrative and legal fees and charges. A plea from the Muslim leadership to spend the frozen Zakah money by a pool of reputed Muslim organizations was also rejected by the administration.

The whole episode has a very negative impact on the Muslim community. The community is fearful and intimidated. We are not only losing the war of public diplomacy all over the Muslim world but also here in America with the Muslim community. This community could become the best buy for the American policy makers to build a bridge with the Muslim World? But then we have to start public diplomacy from our own home.

The dilemma is that the mainstream Muslim community leadership has to fight on two fronts: Against the excessive use of law enforcement agencies and their general perception of everything belong to Muslim charity as terrorism; and, on the other hand, the internal extremism of some sections of the Muslim community who advocate isolationist policies instead of Muslims' full participation in the American Public life.

I would strongly suggest that the present mindset of looking at the Muslim charities with suspicions should be changed with respect and cooperation. The present discriminatory behavior of the administration will have adverse effect on the Muslim community. I would suggest that the appropriate government agencies should establish direct relationship with the Muslim charitable organizations. The relationship should be developed with a sense of cooperation not with a shadow of suspicion.

3. *What behavioral changes has terrorist activity stimulated for the charitable traditions of Islam in America?*

In response to your third question, I would like to state again that the stimulation of a changed behavior did not come through the terrorist activities rather from the government crackdown on the Muslim charity organizations. Since 9/11, the American Muslims' charitable practices have been improved (instead of changed) in the following three areas:

More transparency and financial responsibility:
Establishment of the National Council of American Muslim Non-Profits

Focus on domestic social services programs:

Domestic programs
Food Drive, Free Medical Clinics, Feeding the Homeless in New York, Temporary housing for battered women, and feast of Abraham,
For the feast that occurs at the end of Hajj (Eid ul Adha), it is tradition that 1/3 of the sacrificed animal's meat is distributed to the needy.
In Houston last year, a project called Feast for Ibrahim was implemented in which 1 ton of meat was distributed to the local homeless shelters.
Training for faith based initiative
Next five to ten years will witness a tremendous growth of Muslims initiatives in the fields of social services and faith based activities in the United States

What should be done?
Visit them, encourage them, involve them, and make them partners in the public diplomacy efforts

White list of Muslim NGOs

Muslim accredited organization for Refugee settlement

Communicating and education the Muslim organization
Tsunami delegation or congressional delegation include Muslim scholars, businessmen or CEOs

Distinguish between criminal activities and terrorist acts.

They should be recognized and appointed at different levels of policy making process.

In the meantime, the US Muslims are learning from the past experiences of other ethno-religious groups and are fighting back to reclaim their rights and dignity, and to build a "kinder" and "gentler" America.

Testimony of

John J. Byrne

On Behalf of the

American Bankers Association

Before a Joint Hearing of the

House Financial Services Oversight and Investigations Subcommittee

and

The House International Relations International Terrorism and Nonproliferation Subcommittee

United States House of Representatives

May 4, 2005

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May 4, 2005

Subcommittee Chairwoman Kelly, Subcommittee Chairman Royce, Ranking Member Gutierrez, Ranking Member Sherman, and Members of the subcommittees, I am John Byrne, Director of the Center for Regulatory Compliance of the American Bankers Association (ABA). ABA appreciates this opportunity to discuss how the financial industry is addressing compliance with the USA PATRIOT Act and all of the laws covering financial institutions' anti-money laundering (AML) obligations.

ABA, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

ABA and our members continue to work with our government partners in training financial institution employees to effectively detect and report the myriad of financial crimes that involve money laundering and terrorist financing. We plan to address the expected interagency BSA-AML examination procedures later this summer. We have trained hundreds of thousands of bankers since the passage of the Money Laundering Control Act in 1986.[1] The industry's commitment to deterring money laundering continues unabated.

Among other things, ABA holds an annual conference with the American Bar Association on money laundering enforcement, produces a weekly electronic newsletter on money laundering and terrorist financing issues, offers online training on Bank Secrecy Act (BSA) compliance, and has a standing committee of more than 80 bankers who have AML responsibilities within their

[1] A 2003 survey by ABA Banking Journal and Banker Systems Inc. found that Bank Secrecy/AML/OFAC was the number one compliance area in terms of cost to the banking industry. It is also interesting to note that in banks under $5 billion in assets, 75.6 percent of the employees said that compliance was not their only job.

institutions. In addition, we provide telephone seminars on important and often confusing issues such as money services business (MSBs) relationships and compliance with Section 326 of the USA PATRIOT Act.

In May 2004, ABA repeated a series of recommendations regarding "needed areas of improvement to USA PATRIOT Act oversight." Since then, there has been clear movement and commitment for further action from the highest levels of the federal banking agencies. However, ABA remains concerned about the quality of communication that exists between these same agencies and their examiner forces. Although there are significant signs of improvement, we hope all communication problems will be remedied as soon as possible.

ABA and the 50 state banking associations stressed these themes in a January 10 letter to all federal banking agencies, as well as to the Department of the Treasury and the Financial Crimes Enforcement Network (FinCEN). This letter is attached. Please note that a response was received on April 18. We are hopeful that the major issues are being addressed.

To update Members on the various industry AML challenges, we offer the following observations and recommendations:

1. The detection of terrorist financing by banks or other financial institutions, whether through charities or any other entities, will not be successful without effective government intelligence and continued private sector involvement in organizations such as the Financial Action Task Force (FATF);

2. Whether in terms of BSA compliance or how banks work with MSBs, effective compliance with evolving AML requirements necessitates accompanying guidance. For example, it is counterproductive to label an entity "high risk" without also issuing guidance on how to mitigate that risk; and,

3. Until the financial sector receives improved guidance and a more balanced approach to examiner oversight, the volume of suspicious activity reports (SARs) that banks submit to regulators will continue to skyrocket, frustrating government efforts to accurately detect genuinely threatening activity.

Consistent Examination Procedures, Though Pending, Are Desperately Needed

ABA has previously emphasized to Congress that the banking agencies need to reach agreement on how the financial services industry will be examined for compliance under the PATRIOT Act and the other AML requirements. We are pleased to note that there is formal movement on coordination of examination procedures by the agencies and final procedures are now due out June 30. We will discuss one glaring problem – assessment of the adequacy of SAR programs, later in this testimony.

While we repeat our 2003 and 2004 calls for Congress to ask the regulatory agencies to report on and clarify their efforts in this area, ABA is pleased that the agencies are exhibiting a commitment to greater consistency in 2005. For example, not only has FinCEN Director William Fox expressed public support for uniform assessments, but he has also directed the Bank Secrecy Act Advisory

group (BSAAG) to form a subcommittee on examination issues. This subcommittee, co-chaired by ABA and the Federal Reserve Board, has met several times – as recently as April 29 – to discuss the pending interagency examination procedures.

Uniform exam procedures will assist with the industry concerns about examination inconsistency and the continued threat of "zero tolerance" by these same errant examiners. However, we strongly urge Congress to ensure that all banking agencies engage in industry outreach when the AML exam procedures are made public. The agencies appear committed to such outreach and we believe a nationwide series of "town meeting-type" events will ensure that both sides will know what to expect in this complicated compliance area.

MSBs and Banks: An Example of Regulatory Confusion

A major challenge facing the banking industry is how to fulfill its obligations regarding appropriate relationships with MSBs. The banking industry certainly understands and appreciates the need to analyze the levels of risk involved with maintaining MSB relationships. We know the importance of providing banking services to all segments of society. For some, the remittance services that MSBs frequently provide are an essential financial product. Remittance flows are an important and stable source of funds for many countries and constitute a substantial part of financial inflows for countries that have a large migrant labor force working abroad.

The problem, however, is how much analysis is sufficient. At times, banks appropriately exit relationships due to the risk inherent with a particular MSB. At other times, banks want to continue certain valued relationships.

Officially recorded remittances received by developing countries are estimated to have exceeded $93 billion in 2003. They are now second only to foreign direct investment (around $133 billion) as a source of external finance for developing countries. In 36 out of 153 developing countries, remittances were larger than all capital flows, public and private combined.

Remittance flows go through both formal and informal remittance systems. Because of the importance of such flows to recipient countries, governments have made significant efforts in recent years to remove impediments and increase such flows. At the same time, however, there has been heightened concern about the potential for remittance systems, particularly those operating outside of the formal banking system, to be used as vehicles for money laundering and the financing of terrorism. It is believed that the risk of misuse of remittance systems would be reduced if transfers were channeled through remittance systems that are subject to regulations by governments.

To address the risks, a two-pronged approach is evolving: One prong involves efforts by governments to encourage the use of formal systems (such as banks) by lowering the cost and increasing the access of users and recipients to the formal financial sector. Such efforts should concentrate on the reduction of artificial barriers such as unnecessary regulatory standards that impose costs ultimately borne by consumers.

The second prong includes initiatives by governments to implement anti-money laundering standards for entities such as MSBs. This has clearly been occurring in the United States and, as we have heard from other witnesses, the MSB regulatory infrastructure is robust and effective.

A challenge that underlies this situation is that there exists in most countries a large pool of "unbanked" individuals. Such individuals are often accustomed to using both formal (and regulated) financial institutions and very informal (and unregulated) financial services providers. Economic and social incentives that move this group towards "underground" financial services providers ultimately harm the interests of the unbanked, of law-abiding financial services providers, and of the general public. Moreover, the underground financial services providers may service both law-abiding unbanked persons, as well as criminals. Thus, governmental actions that discourage the unbanked from entering depository institutions may have the effect of also making anti-money laundering goals far more difficult to attain. These facts have helped make it clear that the MSB-bank environment needs radical change.

The necessary services that MSBs provide are being severely hampered by regulatory excess. The federal banking agencies issued an interagency policy statement on March 30 and sorely needed interagency guidance on April 26, but this guidance now must be clearly communicated to examiners.

On March 8, I had the opportunity to co-chair a meeting of BSAAG on the MSB problem. For eight hours, we heard dramatic examples from 44 witnesses of lost business, economic failures and rampant regulatory confusion. The theme of confusion was echoed by all of the banks. For example, Alex Sanchez, head of the Florida Bankers Association told us:

> *Financial institutions are closing legitimate accounts. Particularly in the area of [MSBs], financial institutions feel compelled to close their accounts. Most of these are the accounts of perfectly legitimate businesses. Many of them in Florida are businesses run by small entrepreneurs. They are gas stations, convenience stores, and grocery stores. They serve as a place where paychecks can be cashed. Some of them serve as agents of regulated money transmitters. These accounts are closed not because there is any evidence that they are engaged in improper activity, but because they fit into a regulatory profile.*

The Florida Bankers Association also surveyed its members and found that 58 percent have curtailed their activities with MSBs and 83 percent experienced a change of attitude or approach of examiners conducting examinations in this area.

Another banker emphasized the value of small MSBs:

> *One of the common types of small businesses in our community is the small grocery store or convenience store. These are the businesses that often serve the immigrant and less advantaged community. These businesses are the connecting point for many in our society to the economic system. They are legitimate businesses serving a genuine need. Under the current regulatory scheme, we can no longer serve them.*

FinCEN and the federal banking agencies are to be commended for working toward guidance to address this policy morass. We urge the agencies to act swiftly and inform examiners to adjust their reviews of MSBs that are associated with banks.

Lack of SAR Guidance Results in Unnecessary Filings

With the increased number of entities required to file SARs as well as the heightened scrutiny by regulators on SAR policies and programs, it is essential for the regulatory agencies, law enforcement, and FinCEN to assist filers with issues as they arise.

Government advisories and other publications are a critical source for recognizing trends and typologies for money laundering and other financial crimes. As the industry emphasized in the April 2005 issue of the interagency-authored publication, **SAR Activity Review**, there are a number of examples of activities that are characteristic of financial crimes and that can be used as teaching tools. This information is extremely useful for training purposes. As the private sector co-chair of the **SAR Activity Review**, I can assure you ABA supports the efforts of FinCEN and the participating agencies in crafting a publication that provides necessary statistical feedback to the SAR filing community. The **SAR Activity Review** has provided a variety of examples of suspicious activities that offer tell-tale signs of such diverse activities as identity theft, bank fraud, and computer intrusion.

We are pleased that the 2004 edition of the **SAR Activity Review** provided, for the first time, summary characterizations of all of the major suspicious activity categories. This should assist filers in advancing their understanding of the reporting requirements.

As stated above, there are several problems affecting banks in the AML exam process related to SARs. ABA has previously mentioned the many examples of examiner criticisms received by our members during reviews of their SAR programs. Whether it has been criticism of the number of SARs that the institution has filed or "second-guessing" by examiners as to why a SAR was not filed, this situation demands immediate attention.

Moreover, regulatory scrutiny of SAR filings (and the recent civil penalties assessed against banks for SAR deficiencies) has caused many institutions to file SARs as a purely defensive tactic (the "when in doubt, file" syndrome) to stave off unwarranted criticism or second guessing of an institution's suspicious activity determinations. In fact, the *American Banker* has reported that, in March 2005, the banking industry filed 43,000 SARs: a 40 percent increase from a year earlier.

As FinCEN Director William Fox stated so eloquently in the April **SAR Activity Review**:

> *While the volume of filings alone may not reveal a problem, it fuels our concern that financial institutions are becoming increasingly convinced that the key to avoiding regulatory and criminal scrutiny under the Bank Secrecy Act is to file more reports, regardless of whether the conduct or transaction identified is suspicious. These "defensive filings" populate our database with reports that have little value, degrade the valuable reports in the database and implicate privacy concerns.*

We would like to commend Director Fox for addressing our previous recommendation, which we outlined in testimony in May 2004, by creating a BSAAG subcommittee on SAR issues. We hope and expect that Congress will tackle the issue of SAR confusion head on. I would note that the first meeting is scheduled for later this month.

Our members share the concerns expressed by Director Fox, but without improved examiner training there are no other options to defensive SAR filings. Our hope is that the examination procedures and a mechanism for receiving interpretations on SAR issues will result in returning SARs to their original place – forms filed only after careful analysis and investigations with no second-guessing by regulators.

The Financial Action Task Force and Typologies on Charities

As Congress reviews how best to detect terrorist financing conducted through charities, it must be restated that the financial profile for this crime gives no direction to the financial sector on what can be done to prevent this activity in the absence of additional government information. This crime is difficult, if not impossible, to discern as it often appears as a normal transaction. We have learned from many government experts that the financing of terrorist activities often can occur in fairly low dollar amounts and with basic financial products (e.g., retail checking accounts). Guidance in this area is essential if there is to be effective and accurate industry reporting. The bottom line is that terrorist financing can only be deterred with government intelligence. A renewed commitment by law enforcement to real "information sharing" must become a priority, not a second thought.

The financial industry continues to struggle over how to assess what types of risks are relevant to spotting terrorist financing. To date, the only public examples are the typologies listed by the FATF for charities or "non-government organizations" (NGO's). The FATF "warning indicators" in this area do not, in our opinion, offer any real insight as to what types of activities are inherent to risky charities as opposed to risks in any other entities.

Consider this sample of FATF warning indicators, for example:

- "Incongruities between apparent sources and amount of funds raised or moved, such as situations in which large amounts of funds are apparently raised within communities that have a very modest standard of living;
- A mismatch between the pattern and size of financial transactions on the one hand and the stated purpose and activity of the NGO on the other;
- A sudden increase in the frequency and amounts of financial transactions for the account of an NGO or the inverse, that is, the NGO appears to hold funds in its account for a very long period;
- Large and unexplained cash transactions by NGOs; and,
- The absence of contributions from donors located within the country of origin of the NGO."

And so on. None of these examples are specific to charities; instead the factors are inherent to any suspicious activity. ABA believes that government organizations such as FATF could benefit from developing typologies after active consultation with the private sector, a goal that ABA is pursuing

through the International Banking Federation.[2] There appears to be progress in this area, but we urge Congress to recommend to FATF that there be a formal opportunity for the financial sector to be part of the FATF efforts in the areas of money laundering and terrorist financing.[3]

An Update to ABA's Call for Revamping the Outdated CTR System

As ABA has previously testified, the 35-year-old rules related to cash transaction reporting (CTR) have become redundant and lost their usefulness. ABA believes that the time has come to dramatically address this reporting excess by eliminating CTR filings for transactions conducted by seasoned customers through their bank accounts.

ABA notes that the purpose of Subchapter II of Chapter 53 of Title 31 establishing the BSA regulatory regime is to require certain reports or records when they have "a high degree of usefulness" for the prosecution and investigation of criminal activity, money laundering, counter-intelligence and international terrorism. ABA and its members strongly believe that the current CTR reporting standards have long departed from this goal of achieving a high degree of usefulness.

ABA members believe that CTR filing has been rendered virtually obsolete by several developments:

- formalized customer identification programs;
- more robust suspicious activity reporting; and,
- government use of the 314(a) inquiry/response process.

We believe that CTRs are no longer analyzed to identify unknown criminal agents. Rather they are used, at most, to try to match already known suspects to locate potential account activity. As noted above, section 314(a) is much more efficient for identifying account activity of known suspects because it has the value of capturing accounts involving more than just cash transactions.

We believe that combining improved monitoring conducted by institutions as part of their SAR processes with better mining of SAR data by law enforcement as well as judicious use of the 314(a) process yields a more effective approach to law enforcement investigation of patterns of fraud, money laundering and terrorism funding. Consequently, we believe the time has come to recognize

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[2] The International Banking Federation, or IBFed, was created in March 2004 "to increase the effectiveness of the financial services industry's response to multilateral and national government issues affecting their common interests." The banking associations of Europe, the United States, Australia and Canada make up IBFed and the countries represented by the Federation have more than 18,000 banks, including 700 of the worlds' top 1000 banks. For more information, see: http://www.ibfed.org/bba/jsp/polopoly.jsp?d=306&a=2279

[3] IBFed has met with FATF and while the organization was told that it does not qualify for "Observer" status within FATF because eligibility is confined to governmental groups, the FATF has expressed interest in having regular contact with the private sector to discuss open issues, current developments and to receive feedback on proposals and thoughts. This is a positive development that we hope will eventually lead to formal involvement in issues such as the one we discuss today.

the redundancy of CTR filings for seasoned customers with transaction accounts and to eliminate this inefficient use of resources by bankers and law enforcement.

Changing the thinking about mandating the collection of routine cash data would have the following benefits:

- The vast majority of the over 13 million CTRs filed annually would stop, saving many hours a year in filling out forms;
- Wasteful SARs would cease. These SARs amount to almost 50 percent of all BSA-required SARs. Rather than filing specious structuring reports, banks could focus their energies on detecting suspicious handling of currency regardless of artificial thresholds;
- Bank systems and resources could be redirected from CTR monitoring to support further improvement in suspicious activity reporting;
- Regulatory criticism of technical mistakes with CTR filings would cease;
- Issues surrounding the CTR exemption process would be eliminated; and,
- Law enforcement could redirect resources to better evaluating SARs.

While BSAAG has been reviewing the cash transaction system with an eye toward simply modifying elements such as the exemption process, ABA believes that a more comprehensive approach overall is needed.

Conclusion

ABA has been in the forefront of the industry efforts to develop a strong public-private partnership in the areas of money laundering and now terrorist financing. This partnership has achieved much success, but we know that more can be accomplished. We commend the Treasury Department, banking agencies, and FinCEN for their recent efforts to ensure a workable and efficient process. ABA will continue our support for these efforts.

Thank you and I would be happy to answer any questions.

January 10, 2005

Federal Deposit Insurance Corporation
Chairman Donald E. Powell
550 – 17th Street, NW
Washington, DC 20429

Federal Reserve Board
Chairman Alan Greenspan
Board of Governors
20th Street & Constitution Ave., NW
Washington, DC 20551

Office of the Comptroller of the Currency
Julie Williams
First Senior Deputy Comptroller and Chief Counsel
250 E. Street, SW
Washington, DC 20219

Office of Thrift Supervision
Director James E. Gilleran
1700 G Street, NW
Washington, DC 20552

Department of the Treasury
John W. Snow
Secretary of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Financial Crimes Enforcement Network
Director William J. Fox
P.O. Box 39
Vienna, VA 22183

Ladies and Gentlemen:

The ABA and the undersigned state banking associations have been long-time partners with the Treasury Department and the federal banking regulators in the effort to prevent money laundering and, more recently, terrorist financing. We are proud of the commendations our industry has received from a number of agency and Administration officials, such as Treasury Under Secretary for Terrorism and Financial Intelligence, Stuart Levey, who stated: "The financial industry has been tremendously helpful in combating terrorist financing and is eager and willing to do more." However, we are concerned that our industry's efforts are being complicated, and in some cases undermined, by a lack of clarity in regulatory examination and enforcement.

While we recognize that there are individual instances where financial institutions may have fallen short and needed to improve their AML (anti-money laundering) and BSA (Bank Secrecy Act) programs and procedures, the lack of consistency in examination oversight and compliance guidance is a major theme of regulatory complaints received by ABA and the state banking associations.

In general, our members report that no standard appears to exist for a proper AML compliance program. What we hear from the regulatory leadership in Washington is often at odds with the information banks receive from field examiners. During conferences, seminars, and examinations throughout the country, bankers have heard language that indicates a "zero tolerance policy" for AML deficiencies. With the millions of daily transactions in the banking industry, a zero tolerance

threshold is simply unachievable, as has been recognized by Administration and regulatory officials in Washington.

Certainly the federal banking agencies and the Treasury Department understand that there is a strong "culture of compliance" in the U.S. banking industry. Our bankers want to work with regulators to address deficiencies wherever they occur, although it is difficult to do this when the standards are unclear and moving. Our compliance professionals are well trained in a variety of regulatory areas, but they are being overwhelmed by the sheer volume of obligations for regulatory compliance.

It must be emphasized that this massive regulatory burden has been so exacerbated by mandates such as Sarbanes-Oxley and the unclear rules on BSA that it is literally driving some community banks to sell to larger institutions. In addition, the difficulty of attracting individuals to serve on bank boards of directors has been increasing due to concerns about regulatory costs and the potential for punitive enforcement actions. It is clear that guidance and communication are essential.

One major area in need of guidance is the filing of suspicious activity reports (SARs). SARs, a major tool for law enforcement to investigate crimes against banks, are in danger of becoming routine filings that simply dilute FinCEN's database. The increase can be attributed to "defensive filing" by banks that fear regulatory criticism or, worse, enforcement actions because of failing to file a SAR. FinCEN Director William Fox has also recognized this problem and urged that BSA compliance be handled correctly by bank examiners. [1]

To achieve that goal, Director Fox has directed the Treasury's Bank Secrecy Act Advisory Group (BSAAG) to look at methods to improve the current examination process. ABA co-chairs this subcommittee and continues to compile examples of what we believe to be erroneous interpretations of the BSA and AML requirements by bank examiners. These examples will be used by the BSAAG subcommittee. We are pleased to note that one crucial goal – to achieve consistent, common examination procedures – is currently being pursued by the bank regulatory agencies through interagency procedures, due mid-year 2005. We respectfully recommend that this process be completed as quickly as possible.

In addition, ABA and the undersigned associations urge the Treasury Department and the bank regulators, to also consider:

- joint industry/government training of bankers and examiners on BSA/AML obligations when the procedures are released;

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[1] Director Fox spoke to the American Bankers Association and American Bar Association in October 2004 and addressed defensive filing of SARs: "We all know this phenomenon is occurring – we have both empirical and anecdotal evidence we can cite. We have seen financial institutions file reports in ever increasing numbers – often upon the recommendation of their lawyers or risk management teams – when the facts as presented do not meet this standard. I suspect that this over compliance is occurring for a reason. It is occurring because financial institutions are – justifiably in my view – unwilling to accept the regulatory or reputational risk associated with an action by the government that would make it appear that the institution is soft on anti-money laundering or, even worse, on terrorist financing."

- a BSA staff commentary, FAQs and/or centralized regulatory guidance to achieve consistency in BSA/AML interpretations; and

- establishment of a BSAAG subcommittee to look at the variety of issues arising from the SAR process, particularly the problem of defensive filing.

The banking industry remains committed to work with the government in any way possible to further our joint goal of fighting money laundering and terrorist financing. The banking industry has always been a willing partner in stemming the flow of illegal funds through legitimate financial institutions. Continued joint efforts in this area must, and will, continue. However, we urge the Administration and the regulatory agencies to address the inconsistency and uncertainty that the industry is facing. Thank you for considering our concerns.

Sincerely,

American Bankers AssociationMontana Bankers Association
Alabama Bankers AssociationNebraska Bankers Association

Alaska Bankers AssociationNevada Bankers Association

Arizona Bankers AssociationNew Hampshire Bankers Association

Arkansas Bankers AssociationNew Jersey Bankers Association

California Bankers AssociationNew Mexico Bankers Association

Colorado Bankers AssociationNew York Bankers Association

Connecticut Bankers AssociationNorth Carolina Bankers Association

Delaware Bankers AssociationNorth Dakota Bankers Association

Florida Bankers AssociationOhio Bankers League

Georgia Bankers AssociationOklahoma Bankers Association

Hawaii Bankers AssociationOregon Bankers Association

Idaho Bankers AssociationPennsylvania Bankers Association

Illinois Bankers AssociationPuerto Rico Bankers Association

Indiana Bankers AssociationRhode Island Bankers Association

Iowa Bankers AssociationSouth Carolina Bankers Association

Kansas Bankers AssociationSouth Dakota Bankers Association

Kentucky Bankers AssociationTennessee Bankers Association

Louisiana Bankers AssociationTexas Bankers Association

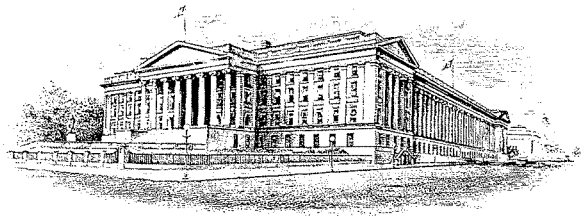
Maine Bankers AssociationUtah Bankers Association

Maryland Bankers AssociationVermont Bankers Association

Massachusetts Bankers AssociationVirginia Bankers Association

Michigan Bankers AssociationWashington Bankers Association

Minnesota Bankers AssociationWest Virginia Bankers Association
Mississippi Bankers AssociationWisconsin Bankers Association
Missouri Bankers AssociationWyoming Bankers Association



DEPARTMENT OF THE TREASURY
OFFICE OF PUBLIC AFFAIRS

EMBARGOED UNTIL 2:00 PM
May 4, 2005

Contact: Molly Millerwise
(202) 622-2960

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

Before the House Financial Services Subcommittee on Oversight and Investigations and the House International Relations Subcommittee on International Terrorism and Nonproliferation

Chairwoman Kelly and Chairman Royce, Ranking Member Gutierrez, Ranking Member Sherman, and distinguished members of these Subcommittees, thank you for inviting me to testify before you today about the progress the U.S. Government has made in its fight against terrorist financing in the Middle East. Your personal leadership and that of these subcommittees have been vital to our shared work to keep our nation safe and I am grateful for it.

As Under Secretary for the Office of Terrorism and Financial Intelligence, my highest priority is cutting off the flow of support to international terrorist groups. This has been the paramount focus of our office from day one, and we remain as fixated on it today as we were at our formation. Thanks to Congressional support, our office and our interagency colleagues grow stronger, more experienced, and more capable with each passing day.

I would like to take this opportunity to give you a sense of how we are doing. Scientific metrics are simply not available in our line of work. Al Qaida does not release financial statements, and we will never know precisely how much money intended for terrorists never reached their hands due to our efforts. We therefore find ourselves discussing proxies for the ultimate questions: how many donors and facilitators have been captured; how many channels for moving terrorist funds have been designated and blocked; or how many countries are equipped to monitor and interdict illicit financing channels. Each of these benchmarks points to only one aspect of the problem, though, and imperfectly at that. Most revealing, to my mind, is intelligence reporting that – although anecdotal – speaks to the difficulty with which terrorists are raising, moving, and storing money. The information available to us is encouraging. We are seeing terrorist groups avoiding formal financing channels and instead resorting to riskier and more cumbersome

conduits like bulk cash smuggling. And, most importantly, we have indications that terrorist groups like al Qaida and HAMAS are feeling the pressure and are hurting for money.

This progress is a direct result of the Bush Administration's unrelenting efforts. As the President said again just last week, we must stay on the offensive in cutting off terrorist funding. The first-rate interagency team has made great strides against terrorist financing, identifying, capturing, prosecuting, or otherwise incapacitating key financial operatives. We are applying pressure on our international partners, particularly in the Middle East, to implement global standards and carry out their own targeted actions.

Of course, we are threatened not only by known financiers but also by those we don't know and those who may join their ranks in the future. A key advantage that we enjoy in the financial arena, however, is that our targets have something to lose. In contrast to terrorist operatives who may be willing to die for their hateful cause, terrorist financiers typically live public lives with all that entails: property, occupation, family, and social position. Being publicly identified as a financier of terror threatens an end to all of this, lending our actions a real deterrent impact. Our reporting confirms this, indicating that once-willing donors are now thinking twice or balking altogether at sending money to terrorist groups.

We are tracking and disrupting the flow of funds to terror in every area of the globe. Today, however, I would like to focus on the work we are doing in the Middle East. In February, I headed a trip to the Middle East, intended to engage with and deliver a range of messages to leaders in Syria, Jordan, Israel, and the Palestinian Territories.

With respect to Syria, my proposed visit was intended to follow up on demands that we had made to the Syrian Government one year ago when we issued a proposed rule, designating the Commercial Bank of Syria (CBS) as a "primary money laundering concern" pursuant to Section 311 of the USA PATRIOT Act. This designation, premised on financial wrongdoing we observed at that bank including terrorist financing, has had a remarkable impact on an obstructionist regime. The bank represents Syria's gateway to the international financial system and its access to international currencies like the U.S. Dollar. In connection with the proposed rule, Deputy Assistant Secretary Daniel Glaser traveled to Damascus to deliver a series of demands to Syrian authorities, ranging from reform of their banking sector to immediate, effective action to cut the flow of funds and other support across the Syrian border to the Iraqi insurgency. We made clear that Syria would either take effective steps to address our long list of concerns, or we would cut it off from our financial system.

Over the past year, the Syrian Government has sought desperately to avoid finalization of this proposed rule and has taken some steps to address our concerns. At our urging, the Syrian Government joined us in recommending the designation of terrorist financier Sulayman Darwish at the United Nations, and placed his name on a Syrian wanted list. They have also worked to increase the oversight and transparency of their financial sector. In other respects, though, we have been nowhere near satisfied. The Syrian Government has released over $600 million of assets belonging to the Iraqi government to third parties, and thus far refused to return over $250 million of Iraqi assets that remain frozen.

Days before my planned February trip, I met with the Syrian ambassador to the United States and made clear that, above all, even if Syria met some of our requirements, the continued flow of money and personnel from Syria into the hands of terrorists and insurgents in Iraq was absolutely unacceptable. My dissatisfaction with the official Syrian response prompted me to cancel my planned visit. Our office continues its engagement, but we will not be satisfied until all of our requirements are met.

The remainder of the trip occurred as planned and was extremely productive. In Jordan, I met with the Prime Minister and other ministers to discuss regional terrorism and money laundering trends. As a key and valued ally in the war on terror, the Jordanians clearly appreciate the importance of these issues. In my meetings, I stressed the need for the Jordanians to ensure passage of an anti-money laundering law. The Jordanians recognize the importance of such a law in assuring investors of a transparent and secure financial system and they are working aggressively towards its passage. I also repeatedly emphasized to the Jordanians the need for rigorous oversight of their financial institutions to help prevent the type of serious deficiencies that have recently come to light. The Jordanians responded positively and we will continue to work with their government, the Central Bank of Jordan in particular, to assure that this oversight is as robust as it needs to be. Finally, the Jordanians agreed to work with FinCEN Director Bill Fox to create a Financial Intelligence Unit (FIU) in Jordan.

In Israel and in the Palestinian Territories, I met with high level officials to discuss the current status of regional terrorism and terrorist financing. In Israel, I was given an encouraging account of a substantial reduction of funds flowing to HAMAS, particularly from the Gulf region. In general, the mood on both sides is one of cautious optimism, with the political developments in the Palestinian Authority clearing the way for productive dialogue and the beginnings of trust.

In speaking with President Abbas and in several follow-up sessions with Finance Minister Fayyad, I noted serious commitment on their part to cutting off the flow of funds to terrorism, and welcomed the message that responsibility for accountable financial systems begins with the government.

A recurring theme in my meetings and a continual focus of our counter-terrorist financing efforts in the Middle East are charitable organizations. Terrorist groups have long exploited charities for several key reasons:

- The "legitimate" activities of these charities, such as the operation of schools, religious institutions, and hospitals, create fertile recruitment grounds, allowing terrorists to generate support for their causes and to propagate extremist ideologies.
- Charities attract large numbers of unwitting donors along with the witting, thus increasing the amount of money available to terrorists.
- To the extent that these charities provide genuine relief, which nearly all of them do, they benefit from public support and an attendant disinclination by many governments to take enforcement action against them.

- Charitable funds are meant to move in one direction only; accordingly, large purported charitable transfers can move without a corresponding return of value do not arouse suspicion.
- International charities naturally focus their relief efforts on areas of conflict, also prime locations for terrorist networks. Such charities provide excellent cover for the movement of personnel and even military supplies to and from high-risk areas.

Since September 11, the U.S. Government has confronted this problem head on. Our interagency efforts in this arena have been a team effort in every sense of the term. Two notable examples are the designations of the U.S. branches of the Al Haramain Islamic Foundation and the Islamic African Relief Agency (IARA), both al Qaida-linked charities operating in the United States. In February 2004, federal agents executed a search warrant on Al Haramain, pursuant to a joint investigation by IRS-CI, the FBI, and DHS/ICE. Simultaneously, Treasury's OFAC blocked the accounts of the organization pending investigation, freezing the organization's assets in place and ensuring that no money would flow through this group during further investigation.

A similar coordinated Treasury/law enforcement action was taken in October 2004 against the Islamic African Relief Agency (IARA) and its affiliates, including its U.S. alias, the Islamic American Relief Agency. Treasury designated this global network as well as five of its senior officials as Specially Designated Global Terrorists pursuant to E.O. 13224. On the same day, the FBI raided IARA's headquarters in Columbia, Missouri as part of a separate criminal investigation.

Thanks to the work of the State Department, we have persuaded other nations, including Saudi Arabia, to join us in bringing these and other charities to the United Nations Security Council for designation, and to shutter these dangerous organizations in their respective countries.

Persistent investigations by the intelligence and law enforcement communities have illuminated the illicit activities of multiple other charities, both at home and abroad. The Department of Justice and FBI-led Joint Terrorism Task Forces have taken action against several other U.S.-based charities, indicting organizations and their directors. Just last month, the Department of Justice secured the convictions of three brothers linked to the designated Holy Land Foundation on over twenty counts, including material support for HAMAS. These convictions, just the latest in a series of aggressive prosecutions coordinated by the Counterterrorism Section of the Justice Department's Criminal Division, are an enormous victory in the war on terrorism.

Treasury has designated dozens of other charities worldwide as supporters of terrorism. Some have criticized the use of designations against charities. I want to make clear that the designation process entails exhaustive research to ensure it is fair and fully supported by evidence. All judicial challenges to our designations have failed. Indeed, it has been the unanimous opinion of every judge to consider these claims, including the appellate judges of the District of Columbia and the Seventh Circuits, that Treasury has acted properly and within the law. See Holy Land Foundation for Relief & Development v. Ashcroft, 333 F.3d 156 (D.C. Cir. 2003); Global Relief Foundation, Inc. v. O'Neill, 315 F.3d 748 (7th Cir. 2002). We are grateful to the top-notch team in the Civil Division of the Justice Department for advocating our position in these cases so expertly.

From a different vantage point, we hear the criticism that designations are ineffective, particularly if they are not endorsed by the U.N. or other multilateral bodies. We do seek to enlist international support for our designations as a matter of course, recognizing that multilateral action is exponentially more effective than action by ourselves. At the same time, there are cases where joint action is not possible and in those instances we must and will proceed by ourselves. As the world's financial center, the impact of U.S. sanctions carries tremendous weight in and of itself, and in most cases prevents foreign designated entities from carrying out transactions in U.S. Dollars, the international currency of choice.

But the ramifications of our actions extend even further, as we are seeing private banks in other jurisdictions voluntarily adopting the United States list of designated parties as a screen to protect them against terrorists and criminals, even when not required by law. Indeed, in Kuwait, a delegation from our office watched as a bank demonstrated how it uses Treasury's Office of Foreign Assets Control (OFAC) list to determine whether to complete a transaction. Such practices give wide-ranging effect to our actions, and are a result of sustained engagement.

Designations and law enforcement actions are making an impact and are serving as a valuable deterrent. Anecdotal evidence suggests that prospective donors are avoiding suspicious international charities altogether and are being far more watchful with their donations in general. This is a major success in its own right, as the donor community is best-positioned to demand reform and accountability from charitable organizations. The Treasury Department is doing all we can to encourage the charitable sector to police its own institutions against abuse and to combat it. In a similar vein, Treasury is also working with private sector watchdog groups to promote awareness of terrorist financing issues in the charitable sector.

We are of course cognizant that well-intentioned donors have given money to some of the same charities abused by terrorist organizations. It is painful when funds and services donated with the intention of providing legitimate relief do not reach their intended and needy beneficiaries. But frustration with this situation must be directed at those who have corrupted the charities that have – either through willfulness or willful blindness – been used to support terrorism.

We recognize that enforcement actions have sometimes also cut off sources of relief to communities in need and inadvertently decreased the support of charities and donors that deliver funds to legitimate causes. Our goal is not to deter charitable giving but instead to protect the charitable sector such that donors' generosity is not abused and they feel safe in providing their contributions. Well-meaning donors in the United States are as eager to deliver aid to international populations in need as the disadvantaged are to receive it. This situation is significantly complicated in the Palestinian Territories, where the intermingling of charitable activity, militant political activism, and terrorism has been a defining characteristic of HAMAS and other terrorist groups. There is therefore a particularly urgent need in this region for safe channels of assistance that donors can be assured will not be subverted by terrorists. I have explored this idea with both Palestinian and Israeli officials and I was gratified to find agreement that it is in the interests of all involved. We are currently working with the Palestinian Authority to develop options through which such aid could be provided in a safe and effective manner and I am hopeful that we will be able to do so.

Apart from my recent trip, our office is involved in several other engagements in the Middle East, both multilateral and bilateral.

One of the most promising developments in the region is the emergence of the Middle East North Africa Financial Action Task Force (MENA FATF). A delegation led by my office just returned from the first plenary session of this body, hosted by Bahrain. Launched in November 2004, this FATF-style regional body of 14 member countries has taken on the charge of finding regional solutions to terrorist financing and money laundering based on the global guidelines set out by FATF. This important first session, attended by full delegations from each member country, was characterized by enthusiasm and optimism for the work which lies ahead of it. Lebanon currently holds the MENA FATF presidency and is leading it adeptly, based on its own progress in building anti-money laundering and counter-terrorist financing architecture at home. Strategies for dealing with the charitable sector made up a key portion of the 4-day conference, both within the working sessions themselves and as part of the 2-day IMF/World Bank seminar series. Kuwait, the UAE, Egypt, and Bahrain all took active leadership roles in the plenary, making presentations on the comprehensive nature of their anti-money laundering and counter-terrorist financing reforms, particularly in the charitable sector. The MENA FATF is addressing more than just the issue of charities. Alternative financing mechanisms such as hawalas and cash couriers are the subjects of three ad hoc working groups which were formed during the first plenary session.

The integration of the Middle East into a body like the MENA FATF serves the important purpose of setting standards and holding countries to those standards. We will continue to offer strong support to these initiatives as we attend these meetings in observer status, and we look forward to the second MENA FATF plenary in September of this year. We welcome the fact that countries are discussing standards and how to police themselves. But this is plainly just the beginning. Many of these countries have not passed their own money laundering and terrorist financing laws; many have not established Financial Intelligence Units (FIUs); many have no control over their informal hawala sectors; and many have failed to implement standards to stop the illicit flow of money through cash couriers. We see a long road ahead, but welcome the multilateral framework through which pressure to implement these standards can be applied.

Our office also recently led a delegation to Kuwait. We learned that Kuwait has taken measures to increase the oversight of its charitable sector. Earlier this year, Kuwait's Ministry of Labor and Social Affairs ordered five charities to remove unlicensed cash boxes which were collecting unregulated funds to evade government controls. Although Kuwait is taking steps in the right direction and we are told that processes are in place to protect charitable giving, Kuwait must do more to ensure that funds and extremist ideologies are not exported overseas in support of terrorist causes. Again, standards and guidelines may be in place, but what matters is what governments actually do with them. We have called upon Kuwait to intensify its battle against terrorist financing and will continue to do so.

Saudi Arabia, too, has worked with us to some extent to address vulnerabilities in its charitable sector. This progress is the result of focused interagency attention and cooperation, Treasury action, and Homeland Security Advisor Frances Townsend's consistent outreach directly to the

Saudis on her many trips there. The Saudis have taken proactive steps including the banning transfers of money from charitable accounts abroad. Additional measures include:

- Enhancing customer identification requirements for charitable accounts;
- Restricting charities to a single account with withdrawal access;
- Eliminating cash disbursements from charitable accounts and instead requiring that payments be made by check and deposited into a Saudi bank.

The adoption of these measures has been the subject of much previous testimony. What continues to concern me are the measures which have not yet been taken. The Government of Saudi Arabia announced that it would freeze all international transfers until it had established an oversight commission to regulate its charitable sector. While that would represent a satisfactory short-term solution if actually implemented, it is important that the announced commission take shape. It is particularly important that charities like the International Islamic Relief Organization (IIRO), the World Association of Muslim Youth (WAMY), and the Muslim World League (MWL) – expressly excluded from the commission – become subject to its oversight once it is finalized.

In addition to the export of terrorist funds from Saudi Arabia, we are extremely concerned with the export of terrorist ideologies that promote war and killing in the name of religion. These distorted ideologies are just as indispensable to terrorists as money, and possibly even more pernicious. We must do all we can to ensure that extremist, violent ideologies are not exported under the cover of religious organizations, charities, or schools.

We have also been advocating and eagerly anticipating the establishment of a Saudi FIU. The interaction of FIUs worldwide form the basis for cooperative action based on suspicious activity reports. When I testified here in August, I informed you that we had not seen progress on this front. And, despite some assurances of progress, Chairman Kelly recently confirmed that there still is no operational FIU in Saudi Arabia. Given the concentration of financial activity in Saudi Arabia and the grim reality of terrorist activity in its own cities, the lack of an FIU must be remedied, and we will continue to press for its establishment.

CONCLUSION

We have made real inroads in combating terrorist financing in the Middle East. Our actions with respect to charities, both targeted and systemic, have made a tangible difference. And, with the establishment of the MENA FATF, the Middle East is now subject to the leading counter-terrorist financing standards in the world. Enormous work remains, however. Perhaps our most important task in the region is ensuring implementation and enforcement. We do not measure success by the number of laws put on the books but by changes made on the ground. Real progress will come in the form of border stops, cash seizures, account blockings, and arrests. The challenges ahead are serious but we remain fully committed to combating terrorist financing in all of its forms wherever it may occur. We look forward to continuing our work with you on these issues, and I would be happy to answer your questions.

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Testimony by Paul Simons, Deputy Assistant Secretary of State for Economic and Business Affairs Before the HIRC Subcommittee on International Terrorism and Non-Proliferation and House Financial Services Subcommittee on Oversight and Investigations "Starving Terrorists of Money: The Role of Middle East Financial Institutions" Washington, DC May 4, 2005, 2:00 PM

Madam Chair, Mr. Chairman, Distinguished Members of the Subcommittees:

Thank you for the opportunity to discuss with you today the U.S. Government's efforts with Middle Eastern governments and financial institutions to starve terrorists of money. This is a vital task and a high priority for the Department of State. Your interest and attention to this key area is extremely valuable and very appreciated.

First, I would like to stress that our efforts to combat the financing of terrorism in the Middle East use many tools, among them efforts to strengthen anti-money laundering (AML) regimes. I will concentrate on how we draw on the full range of implements in the terrorist finance toolkit to staunch the flow of funds to terrorists. The mechanisms we use include technical assistance and training, international standard setting and enforcement, asset freezes and other unilateral and multilateral sanctions, and cooperation in the areas of law enforcement and intelligence. The foundation for progress across these areas is diplomacy aimed at strengthening political will in key Middle East countries to act against terrorist financiers.

SAUDI ARABIA

We are working on this approach with many countries, but I want to highlight for you the range of activities in Saudi Arabia, for example, where we have used each of these elements in a process steered by the NSC-led Terrorist Finance Policy Coordination Committee (PCC). We have instituted a regular high-level diplomatic effort to urge enhanced emphasis by the Saudis on combating terrorist finance. Over the past two years,

Homeland Security Advisor Frances Townsend has traveled regularly to Saudi Arabia with the inter-agency teams to engage with the highest-level Saudi authorities on this issue. The U.S. Ambassador to Saudi Arabia and his staff reinforce these messages in their daily dialogue with the full range of Saudi officials.

Our terrorism finance cooperation with Saudi Arabia is real-time, ongoing, and fully embedded into our day-to-day counterterrorism operations. We have jointly designated, with the Saudis, over a dozen Saudi-related entities and multiple individuals for asset freeze and travel ban under UNSCR 1267. As part of a State-led interagency assistance program, Federal banking regulators have provided specialized anti-money laundering and counterterrorist financing training to their Saudi counterparts.

Saudi Arabia is making important changes to its banking and charity systems to help strangle the funds that support al Qaida and other terrorist groups. These changes have been pushed and promoted since September 11th by concerned U.S. government agencies. Saudi actions should over time significantly reduce the flow of cash to al Qaida and other terrorist groups in the region.

The Saudi Government has continued to publicize counterterrorism efforts and to speak out against terrorism. The declaration from the February, 2005 International Counterterrorism Conference, hosted by the Saudi Government, in Riyadh stated that there can be no justification for terrorism and called for greater religious tolerance. Homeland Security Advisor Townsend led a large U.S. interagency delegation to the conference and spoke at the plenary session, emphasizing the need to block the financing of terrorism. State Department's Assistant Secretary Wayne and Treasury's Deputy Assistant Secretary Danny Glaser were some of the most active participants in the working group on terrorist finance. The Saudi Government plans to establish an international counterterrorism center in Riyadh which can further international efforts at curbing all aspects of terrorism, including terrorist finance. We plan to continue to work with the Saudis on ways to make this center most effective.

Saudi Arabia is working with us in the context of the new Joint Task Force on Terrorist Financing, led on the U.S. side by the FBI. As part of the State-led interagency counterterrorist financing assistance program, experts from the FBI and IRS have completed a training module designed to strengthen

the financial investigative capabilities of the Saudi security forces, with more advanced courses to follow. That being said, this remains a work in progress. We have reason to believe that the new task force on terrorist financing will be effective but we will need to see results. Saudi Arabian Government is implementing its new charity regulations, but there too, we continue to stress in our discussions with the Saudis the need for full implementation, including a fully functioning charities commission and appropriate regulatory oversight of organizations headquartered in the Kingdom such as the International Islamic Relief Organization (IIRO) and the World Assembly of Muslim Youth (WAMY). The recent Financial Action Task Force (FATF) mutual assessment of Saudi Arabia found that the Kingdom has taken essential steps - closer bank supervision, tighter banking laws, enhanced oversight - critical to curbing terrorist financing. While we find this to be encouraging news, there is more to do, and we will continue to press ahead with our efforts with the Saudi Arabian Government and with other governments in the region.

OTHER GULF STATES

The governments of the Arabian Peninsula are themselves on the front lines in the war on terrorism, and have become essential partners of the United States in countering the threat of terrorism in the region. We have developed highly cooperative and mutually beneficial relations with the Gulf States in the areas of law enforcement, intelligence sharing, and terrorist finance. However, there is still more that can be done. We will continue high-level engagement and will focus on sustaining the capacity of these governments to effectively address the terrorist threat.

- The United Arab Emirates (UAE) aggressively enforces anti-money laundering regulations and enacted legislation criminalizing money laundering. In April, the UAE hosted a third international conference where ways to prevent use of the hawala (informal money transfer) system by terrorist financiers was discussed. The U.S. sent an inter-agency delegation, and speakers to the conference.
- Kuwait formed a ministerial committee to develop strategies to combat terrorism and extremism, and forbade Kuwaiti ministries and other institutions from extending official invitations to 26 Saudi clerics who reportedly signed a statement in support of jihad in Iraq.
- In November 2004, Bahrain hosted the inaugural meeting of the Middle East and North Africa (MENA) FATF, which will promote

the implementation of the FATF recommendations to combat money laundering and terrorist finance. Bahrain also hosted MENA FATF's second Plenary last month. We are impressed by the commitment expressed by its members and are confident that MENA FATF will serve to strengthen the ability of the Gulf and North African regions to combat terrorist financing.

- Oman has implemented a tight anti-money laundering regime that monitors unusual transactions. Financial institutions plan to verify customer identities using sophisticated biometrics technology.
- Qatar has enacted laws to combat terrorist financing and to monitor all domestic and international charity activities.
- The Gulf States have made significant progress to improve their ability to counter terrorist financing and have worked closely with us in this area. These nations have diligently enforced financial sanctions from the UN 1267 Committee.
- We have conducted Anti-Terrorism Assistance (ATA) programs with all of the Arabian Peninsula states.

At the other end of the spectrum are our efforts to deal with state sponsors of terrorism in the Middle East. In Syria we have made use of the designations of the Commercial Bank of Syria as a 'primary money laundering concern' under Section 311 of the USA PATRIOT Act to improve banking controls and spur compliance with international anti-money laundering and terrorist finance standards. We are beginning to see improvements in the Syrian anti-money laundering and terrorist finance regime but more needs to be done.

SOUTH ASIA

South Asia, and especially Pakistan, is a priority region for counterterrorist financing, due to the presence of al Qaida and other terrorist groups, porous borders, and cash-based economies that often operate through informal mechanisms, such as hawala. All countries in the region need to improve their terrorist financing regimes to meet international standards, including the establishment of functioning Financial Intelligence Units (FIU). Both political will and more technical assistance are needed to make countries in this region more effective partners.

Turning to Pakistan specifically, we welcome the concrete actions it has taken in response to UN Security Council Resolutions, including the freezing of over $10 million of al Qaida assets. We are encouraged by

Pakistan's concern about the infiltration of terrorist groups into charitable organizations and would welcome the opportunity to provide technical assistance to help Pakistan meet international standards on preventing abuse of the non-profit sector. We have provided assistance on drafting an Anti-Money Laundering/Terrorist Financing Law that meets international standards, but this legislation has not yet been passed. As soon as a law that meets international standards is enacted, we will be able to accelerate and increase training efforts, including assistance for the establishment of an FIU.

FATF

The Financial Action Task Force (FATF) continues to provide critical guidance on the development of comprehensive regimes to attack the full range of financial crime, including terrorist financing. The FATF added a ninth Special Recommendation on Terrorist Financing (to those approved in 2001), addressing the problem of cash couriers. It also continued its efforts to clarify and refine these Special Recommendations by publishing interpretive notes and best practices guidelines to help regulators, enforcers, financial institutions and others better understand and implement the most technical recommendations.

The FATF also continued to work closely with the IMF and World Bank to develop a common methodology to incorporate FATF's recommendations into the financial sector reviews all three entities undertake. The FATF-style regional bodies (FSRBs) worked throughout the year to adapt the recommendations to their particular regional requirements. The FATF approved two new FSRBs in 2004, (bringing the total to eight FSRBs): the Eurasian Group (EAG) and the Middle East and North African Financial Action Task Force (MENAFATF). The EAG was inaugurated on October 6, 2004 by six member states: Belarus, China, Kazakhstan, Kyrgyz Republic, Russia and Tajikistan. Seven jurisdictions and nine international organizations were admitted as observers. The EAG held a plenary session in Shanghai in April. The fourteen founding members of MENAFATF are Algeria, Bahrain, Egypt, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, the UAE, and Yemen. The group was inaugurated on November 29, 2004, and held its inaugural plenary meeting the next day. As mentioned previously, it held a plenary session in Bahrain the week of April 11.

INCSR AND THE MIDDLE EAST/NORTH AFRICA COUNTRIES:

The 9/11 Commission praised the 2004 International Narcotics Control Strategy Report (INCSR) volume on Money Laundering and Financial Crime as a very good global guide to what individual countries were doing to combat terrorist financing, particularly, the specific actions each country has taken to develop the legal foundation and requisite institutions to establish a comprehensive anti-money laundering regime capable of thwarting terrorist financing. For each country, the INCSR also notes what specific actions are necessary for the country to take to remedy any deficiencies in its anti-money laundering/counter-terrorist financing regime. I would like to provide you with an overview of the progress countries in the Middle East, South Asia and North Africa have made in committing to the global effort to thwart terrorist financing and in developing the institutions that would enable them to honor their international commitments in that regard since 9/11.

From Afghanistan to North Africa, there has been significant progress achieved over the last few years in terms of capacity building in the area of anti-money laundering and terrorist financing. Prior to September 11, 2001, only two countries in the region had criminalized money laundering beyond drugs; no country had criminalized terrorist financing; no country had a Financial Intelligence Unit; and only one country had ratified the UN Convention for the Suppression of the Financing of Terrorism.

Following the events of 9/11, the State Department led an interagency effort to provide training and technical assistance to this region on a priority basis. Today, fifteen of the nineteen countries identified by NSC as being the most vulnerable countries to the financing of terrorism have criminalized money laundering beyond drugs; eleven have also criminalized terrorist financing; six have a financial intelligence unit; and seven have ratified the UN Convention for the Suppression of the Financing of Terrorism. Only Israel has criminalized money laundering beyond drugs, established a Financial Intelligence Unit (now a member of the Egmont Group), criminalized the financing of terrorism and ratified the UN Convention for the Suppression of the Financing of Terrorism.

CAPACITY BUILDING

On the technical assistance front, the Terrorist Finance Working Group (TFWG), chaired by the State Department, has over $11.5 million in Foreign Assistance funding to provide technical assistance and training to develop and reinforce counterterrorist financing/anti-money laundering regimes of frontline states. To date, over twenty U.S. Government offices and agencies participating in the TFWG, which include the Justice, Treasury and Homeland Security Departments, have provided assistance to eighteen countries on five different continents. These comprehensive training and technical assistance programs include legislative drafting, financial regulatory training, Financial Intelligence Unit development, law enforcement training, and prosecutorial/judicial development.

We have provided several countries in the Gulf and South Asia with different types of training related to sound counterterrorist finance practices, including the detection of trade-based money laundering (moving money for criminal purposes by manipulation of trade documents), customs training, counterterrorist finance techniques and case studies for bank examiners, and general financial investigative skills for law enforcement/counterterrorist officials. We continue to provide assistance in developing the institutional capacity to thwart terrorist financing to other vulnerable jurisdictions in other regions and continue to encourage others to join us.

For example, for the countries targeted in the President's East Africa Counter-Terrorist Initiative (Tanzania, Kenya, Uganda, Ethiopia, Eritrea and Djibouti,) we are working cooperatively with the United Kingdom, the E.U. and the United Nations Global Programme Against Money Laundering, that has placed a year-long mentor in the region to assist in developing robust anti-money laundering regimes capable of thwarting terrorist financing. Frankly, the work in this region progresses slowly but we are confident that we will ultimately be successful.

The UN, particularly its 1267 Committee, provides a global forum for our efforts to counter terrorist financing. The 1267 Committee has listed over 400 individuals and entities associated with the Taliban, Usama bin Laden, or al-Qaida who are subject to UN sanctions, including asset freezes. The U.S. is one of forty-nine governments that have proposed names for this list. In addition, the Committee has a Monitoring Team that has visited over thirty countries in 2004 and 2005 to both check on compliance with UN

requirements and offer guidance to governments which are having difficulty fulfilling their UN obligations.

CONCLUSION

These are just a few examples but they are illustrative of our use of coordinated interagency multidisciplinary strategies throughout the region to block the funding of terror. A key conclusion of the 9/11 Commission was that agencies need to break down the walls that divide them, share information more broadly among themselves and come up with integrated strategies to combat terrorism and terrorist finance. This is the approach we are taking, using the NSC-led Terrorist Finance PCC process, in the Middle East and worldwide, and the one that we believe is most likely to have maximum impact in cutting funding of terrorists.

Congress of the United States
Washington, DC 20515

February 14, 2005

Prince Bandar bin Sultan bin Abdulaziz Al-Saud
Ambassador of the Kingdom of Saudi Arabia to the United States
Royal Embassy of Saudi Arabia
601 New Hampshire Avenue, NW
Washington, DC 20037

Dear Ambassador Bandar:

The contributions Saudi Arabia has made in the global fight against terrorism are appreciated. Nevertheless, it is out of our deep concern with Saudi Arabia's evident failure to take substantive action on a number of important anti-terror finance initiatives, including reforms announced months or years ago, that we write you.

1) **Charity Reforms**. Announced initiatives to prevent Saudi-based charities from supporting terrorism appear to possess serious shortfalls:

- **2003 SAMA Charitable Organization Reforms**. Regulations enacted by the Saudi Arabian Monetary Agency (SAMA) in 2003 which prohibited charities from transmitting funds outside of the kingdom were essentially rendered moot by the inclusion of exemptions for a number of large international charities based in Saudi Arabia, including the Muslim World League (MWL), the International Islamic Relief Organization (IIRO), and the World Assembly of Muslim Youth (WAMY). *(SAMA Regulation 300-1-6-5, "Rules for Multilateral Organizations and their Direct Employees")* As you know, these prominent organizations transmit many millions of dollars in charitable donations annually in support of their international operations. Some of them are also alleged to have been involved in the financing of terrorism.

- **The Saudi Nongovernmental Commission on Relief and Charity Work Abroad.** The announced establishment in February 2004 of this organization as the exclusive channel for all private Saudi charitable donations abroad has not been followed up with any evidence of the commission's activities. Indeed, press reports indicate that Saudi charities that would presumably have been folded into the Commission continue to operate independently. Accordingly, it seems reasonable at this time to doubt that the Saudi government has established a commission to prevent charitable donations from supporting terrorist activities, despite the repeated claims of Saudi officials. We welcome any metric information about the commission's structure, staffing and activities which may challenge this doubt.

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- **Saudi Committee for the Relief of the Palestinian People** (*formerly the Saudi Committee for Aid to the Al Quds Intifada*). As you are aware, it has been alleged that this state-run charitable committee has provided cash payments to the families of suicide bombers. Disturbingly, these reports appear to be confirmed by an independent review indicating that the Committee made payments to the families of individuals who died while carrying out violent acts, including "martyrdom operations." Notably, this organization was slated to be absorbed by the charity commission referenced above.

2) Financial Intelligence Unit (FIU). Your embassy issued a media release in October 2002 claiming the creation of an FIU within the Ministry of Interior. A July 2003 media release from your embassy states that "a special Financial Intelligence Unit was established to ensure that funds are not misdirected into the hands of those who would use them to harm others." But there is a palpable absence of attendant metric information about the unit's structure, staffing, or funding levels. There is no available information that would indicate a relationship between a Saudi FIU and the U.S. Financial Crimes Enforcement Network (FinCEN), or the Egmont Group, the international network of FIU's. Saudi Arabia is absent from the Egmont Group's list of operational FIUs.

Based on the lack of data, it is a plausible conclusion that the Saudi government has not yet established a Financial Intelligence Unit, more than two years after claiming to have done so.

Again, we welcome any information which might challenge this conclusion. As you may know, the 10th Annual Plenary Session of the Egmont Group is scheduled to be held this year in Washington, D.C. We sincerely hope and expect that a fully-functional Saudi FIU will be participating in this important event.

3) Lack of Rigor with Terror Finance Suspects. You are familiar with a June 2004 report by the Independent Task Force on Terrorist Financing sponsored by the Council on Foreign Relations which stated, "Not only have there been no publicly announced arrests in Saudi Arabia related to terrorist financing, but key financiers remain free or go unpunished." Supporting this statement is the fact that individuals designated by the U.S. Government as Specially Designated Global Terrorists -- such as Yasin al-Qadi, Aqil al Aqil, Wa'el Hamza Julaidan, and Adel Abdul Jalil Baterjee -- are believed to be living freely in your country, untouched by any appreciable form of punishment or restraint. It has been suggested that substantive actions have in fact been taken by Saudi Arabia against individuals of concern. These actions, however, are not apparent to those outside the kingdom, nor are the merits of such an approach to a rigorous counterterrorism effort.

We also note our concern with the Saudi government's apparent unwillingness to fully disclose information specifying the totality of funds it has seized or frozen. This should be public information that could be used to demonstrate support for a common cause.

Given these concerns, in our view, Saudi actions in combating terror finance fall short of the cooperation expected from an ally in the global fight against terrorism. Last year you called for a "general mobilization for war in thought and in deed" by the Saudi people and government. Despite your bold comments, the aforementioned concerns regarding the Saudi structural and institutional response to terrorist finance linger. We urge you to address them immediately, either by correcting the identified weaknesses or by presenting detailed information which may lead one to arrive at conclusions different from the ones reached above.

Your prompt response is greatly appreciated.

Sincerely,

Sue W. Kelly
Member of Congress

Edward R. Royce
Member of Congress

سفارة المملكة العربية السعودية
في واشنطن

ROYAL EMBASSY OF SAUDI ARABIA
601 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20037

OFFICE OF
THE AMBASSADOR

February 25, 2005

The Honorable Sue W. Kelly
United States Congress
2182 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Kelly:

I am responding to your letter dated February 14, 2005 regarding the actions taken by the Kingdom of Saudi Arabia in the area of counter-terrorism financing.

I will respond to the points you raised in your letter in the sequence in which they were made.

1. Charity Reforms. The Kingdom of Saudi Arabia has put in place one of the most rigorous systems for controlling charities in the world. This was attested to in the Financial Action Task Force (FATF) Report of 2004, a copy of which is enclosed. No Saudi charity can collect cash contributions, or send funds outside the country. The charities you referred to (WML, IIRO, and WAMY) are multilateral organizations based in the Kingdom and we are working with the multilateral organizations they belong to to ensure strict oversight. What we are trying to do, however, would be similar to the United States trying to control UN organizations based in America. Blaming the Kingdom for the actions of such bodies is like blaming the United States for any transgressions by any arm of the United Nations. We are determined to resolve this matter, but perspective and balance is required.

   According to the 15th annual report of the Financial Action Task Force on Money Laundering (FATF) of the G-8: "Saudi authorities have focused heavily on systems and measures to counter terrorism and the financing of terrorism. Specifically, they have taken action to increase the requirements for institutions on customer due diligence, established systems for tracing and freezing terrorist assets and tightened the regulation and transparency of charitable

organizations." The report also states: "Saudi Arabia has put into force a significant set of restrictions on the financial activities of charities." The report adds that Saudi Arabia "meets almost all of the general obligations of the FATF 40 + 8 Recommendations." The FATF team also determined that the country's investigation and enforcement mechanisms were substantive and effective.

2. The non-governmental Saudi National Commission for Relief and Charitable Work Abroad is in the process of being set up. This is a complicated and time-consuming process that requires the involvement of legal, accounting and regulatory bodies. The international branches of Saudi charities are being separated from their main organizations and folded into the new entity. Until that is done, no funds from Saudi charities can be sent abroad. We are being very careful in setting up the new entity to ensure that it meets its desired objectives. I personally find it surprising that some in Washington fault us for not having it up and running, thereby implying that we are not controlling the flow of funds from the Kingdom, when no funds at all are currently allowed to leave the country. Many of our donors are pushing us to speed up the operation of this new entity to ensure that funds go to those who need them, but we will not rush until we are certain the entity can meet its objectives. Rather than criticism, I would have expected praise for this approach.

3. The Saudi Committee for the Relief of the Palestinian People, like all other charitable organizations or committees, is banned from sending any funds abroad until the new entity is established. All Saudi funds to the Palestinians are sent to the Palestinian Authority, as are funds from other countries, including the United States. And while we continue to hear from quarters not friendly to the Kingdom about Saudi funds going to other Palestinian entities, we have not received any evidence from the U.S. government in this regard, even though we have repeatedly asked for such evidence, should it exist.

4. With regard to the establishment of a Financial Intelligence Unit, I believe this matter is one of nuance and not substance. The role of such a unit is in place, and the desire to join the Egmont Group is there, but there are steps that need to be taken and schedules, over which we have no control, that need to be adhered to. I believe that we will overcome these shortly. Suffice it to say that the role of an FIU is in place and functioning in the Kingdom.

The FATF report, released in July 2004, stated the following:

"...Article 11 of the AML Law (2003), mandated the creation of the Saudi Anti-Financial Crime Unit (SAFCU) as the FIU for the KSA [Kingdom of Saudi

Arabia]. SAFCU is a law enforcement-style FIU and part of the Ministry of Interior. It has a budget of USD 2.13 million and has 27 permanent employees from a range of legal, financial and investigative backgrounds who work with a number of specialists who are to be seconded to the unit..."

5. The report of The Independent Task Force on Terrorist Financing sponsored by the Council on Foreign Relations is riddled with so many inaccuracies that it leads us to believe that its motivation was more political than practical. In any case, its conclusions, and many of its assertions, were refuted by the FATF report of 2004. And FATF is the world's premier body dealing with such matters, and it conducted a mutual evaluation of the systems we have put in place and found them to be sound.

With regard to actions taken against individuals suspected of financing terrorism, the Kingdom has frozen bank accounts, and filed charges against and convicted individuals. *The FATF report detailed the prosecutions we have made regarding terrorist financing:*

"...there have been 62 successful prosecutions for ML [money laundering]. Additionally, 5 cases had been initiated for TF [terror financing] with one successful conviction.... ML is treated as a serious crime and is dealt with by the General Court responsible for dealing with serious criminal acts. Article 16 of the AML Law (2003) ensures that persons who commit an offence under Article 2 of the AML Law (2003) can be subject to a prison sentence of up to 10 years and a fine of up to SAR 5 million. Article 17 of the AML Law (2003) allows these sentences to be increased to 15 years imprisonment and a SAR 7 million fine if the ML offence if committed under aggravated circumstances."

The fact that we do not publicize these actions is a cultural issue; we do not believe in naming and shaming individuals, because they have relatives who are decent law-abiding citizens and we do not want them to suffer as a consequence of the actions of renegade members of their families. We do not believe that guilt should transfer from the guilty to the innocent. This is a cultural matter on which we have to disagree.

6. Finally, we established a Joint Task Force with the United States on counter-terror financing in the fall of 2003, with the objective of closely coordinating our efforts in this area. We appreciate the assistance provided us by the United States and we believe that the Task Fore has done valuable work that has helped choke off funding for terror.

The Honorable Sue W. Kelly
United States Congress
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I hope the above clarifies the concerns you raised in your letter, and I want to assure you that the Kingdom is committed to fighting terrorism, those who support it and those who condone it. We are determined to go after the terrorists and their financiers, as well as the mindset behind it. After all, we are victims of this scourge.

I appreciate your concerns and the fact that you took the time to write me on this important matter. This shows a responsible attitude and a desire to bridge any misunderstandings between our two countries. We cannot afford to be leveling charges against each other when we are both in the crosshairs of the terrorists. This is a time when politics should be set aside and hands joined together to defeat this evil. There will be plenty of time to play political games when this war is won.

I would be pleased to arrange a meeting for you to discuss these matters in greater detail, or to arrange a visit for you to the Kingdom to see first-hand what our two countries are doing in this important area.

With best regards,

Bandar bin Sultan bin Abdulaziz
Ambassador

cc: The Honorable Ed Royce