



**Written Testimony of New York County District Attorney Cyrus R. Vance, Jr.
Before the U.S. House of Representatives Task Force to Investigate Terrorism
Finance**

**Washington, D.C.
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Good morning Chairman Fitzpatrick, Ranking Member Lynch, and Members of the Task Force to Investigate Terrorism Finance. Thank you for taking on this crucial issue, and for the opportunity to testify today. I would like to share with you the perspective of state and local law enforcement on nontransparent beneficial ownership, and the ease with which criminals and terrorists can operate anonymously in our jurisdictions.

Because of my Office's location in a global financial capital, I have a responsibility to combat terrorism financing and other financial crime. For decades, my Office has conducted investigations that rely on financial tracing and analysis to root out these crimes, as well as money laundering, sanctions violations, human trafficking, cyber crime, and other frauds. Like many in white-collar law enforcement, our *modus operandi* is to "follow the money," which in most cases means issuing subpoenas for records from financial institutions, and pursuing the leads that those records provide. But sometimes, those records lead nowhere.

I want to share an anecdote which should be shocking. Sadly, it is not. While I was preparing for my testimony here, an investigator in my office entered the phrase "incorporate Delaware company" into Google. She called an incorporation services vendor that appeared in her search results. Putting on her best accent, she stated that she lives in

France, that she wanted to incorporate a company in Delaware, but that she wished to remain anonymous because of “estate issues” in her country. She was told that this would not be a problem; a corporation could be set up in five minutes – she needed to provide only a name and e-mail address. This starkly demonstrates what my colleagues and I know all too well: criminals currently can and do make use of our lax incorporation procedures and the anonymity those procedures permit in order to carry out and conceal illicit conduct

On a near-daily basis we encounter a company or network of companies involved in suspicious activity, but we are unable to glean who is actually controlling and benefiting from those entities, and from their illicit activity. In other words, we can’t identify the criminal. This is not because the entities are incorporated in an offshore tax haven like the Cayman Islands. That country actually collects beneficial ownership information. Often, that entity is incorporated in the United States – and it’s incorporated in the United States precisely because we don’t collect beneficial owner information. In this important way, a prosecutor sitting in the Cayman Islands is better positioned to root out terrorism finance in her own markets than I am in ours.

Too frequently, an anonymous incorporation record spells the end of the road for our investigations. And when we are able, with much time and effort, to overcome that obstacle, we often find that criminals have purposefully relied on our lax incorporation requirements.

Recently, for example, a New York County Grand Jury indicted eight individuals in a sprawling “pump-and-dump” securities fraud scheme in which stock promoters and company insiders reverse-merged private companies with no publicly traded securities into existing public shell companies. They concealed their control of the shell companies by using nominees to purchase them, and to hold the publicly traded shares in their names. But the

scheme's mastermind appears nowhere in the incorporation documents, and held none of the companies' shares in his name. As in so many of our cases, disguised beneficial ownership is precisely what enabled the scheme.

The perils of anonymous incorporation go well beyond securities fraud. In 2011, Viktor Bout was convicted in New York of conspiring to sell millions of dollars' worth of weapons to the FARC, an OFAC-designated terrorist organization. The weapons were to be used to kill Americans in Colombia. By that time, Bout had earned the moniker "the merchant of death" following years of orchestrating arms shipments into conflict zones. Bout was able to do business largely thanks to a sprawling network of shell companies that he and his associates established. When OFAC designated 30 entities involved in his network in 2005, ten of them were U.S. companies, incorporated in Delaware and Texas. One of those U.S. entities provided weapons to the Taliban. Bout maintained absolute control over these accounts, but no links to Bout could be found in the entities' incorporation documents.

Indeed, shell companies doing business in New York can be used to disguise the activities of entire foreign governments. In 2006, my Office was investigating the Alavi Foundation, a non-profit organization which owned a 60 percent stake in a 36-story office building in midtown Manhattan. The remaining 40 percent was owned by the Assa Corporation, a New York-incorporated entity, and by Assa Company Limited, which was incorporated in the Channel Islands.

We ultimately determined that the Assa entities were merely shells being used to disguise the building's actual owner, a bank called "Melli." Bank Melli, as you may be aware, is wholly owned by the government of Iran. It was designated by OFAC as a key financier to Iran's nuclear and ballistic missiles program, and as a banker to the country's Revolutionary

Guard and Quds force. The building generated substantial rental income, which was diverted to the shell entities, and from there, to Bank Melli.

My Office routinely collaborates with foreign law enforcement to incapacitate cross-border threats. Time and again, we find that our international partners are better situated to assist *us* in thwarting terrorism and financial crime, than vice versa. It is detrimental to these partnerships when we have to tell international law enforcement that we can't assist them in taking down U.S.-incorporated terroristic enterprises, because information about the owners of entities *formed in our states* is beyond our reach.

Some might ask what good it would do to require that companies identify beneficial owners on incorporation documents, because, without verification, someone who intends to use a company for illicit purposes can just lie on the documents. That may be the case, but from the perspective of law enforcement, there is an enormous difference between a document that does not require certain information to be provided, and a document that falsely reports required information. The most obvious distinction is that the latter can provide law enforcement with a criminal charge: In New York, it is a felony to file a false business record.

In addition, the provision of false information goes a long way towards establishing criminal intent. It is of course true that the overwhelming majority of those who form corporations in the United States do so for perfectly lawful and respectable purposes. Listing a beneficial owner will not prove problematic for those individuals; it is only those who harbor illicit aims who would intentionally provide false information.

My Office has long supported the Incorporation Transparency and Law Enforcement Assistance Act (the "Act"). In testimony before the United States Senate Committee on Homeland Security and Governmental Affairs on June 18, 2009, my

predecessor, District Attorney Robert Morgenthau, called the bill “a no-brainer.” Citing investigations by our Office into boiler rooms, pump-and-dump stock schemes, illicit Iranian money movement, and a foreign bank accused of laundering millions of dollars in drug money through New York, he observed that “[g]oing back to the early 1990’s . . . the criminal actors in all of these cases benefited from systems lacking transparency.” The inescapable conclusion, he testified, is that “[s]ystems promoting opacity and secrecy are the best friend of the money launderer, the tax cheat, the fraudster, the corrupt politician, and indeed, the financier of networks of terror.”

There can be no doubt that the status quo promotes opacity, as well as a race to the bottom among the states. Absent federal action, this status quo will not change. States generally do not act against financial self-interest, and incorporation fees provide an important stream of revenue. No state can be reasonably expected to raise its standards unilaterally. A uniform minimal standard would level the playing field and end this pernicious race to the bottom. Only federal action can make it so.

I am also confident that the Act adequately safeguards the privacy of beneficial owners. The bill focuses on ensuring that law enforcement officials with a valid subpoena or summons may access beneficial ownership information, and it explicitly permits states to restrict the provision of beneficial ownership information to persons other than law enforcement.

A simple requirement to identify beneficial owners on state incorporation forms would vastly improve the capacity of American law enforcement to attack terrorism finance, and disrupt terror plots.

Thank you for the opportunity to testify today.