

STARVING THE TERRORISTS OF FUNDING: HOW THE UNITED STATES TREASURY IS FIGHTING THE WAR ON TERROR

“Armed conflict cannot be waged until it has been financed.”¹

I. INTRODUCTION

“We will starve the terrorists of funding, turn them against each other, rout them out of their safe hiding places and bring them to justice.”² With these words President George W. Bush issued Executive Order 13224, empowering the United States government to impose financial sanctions against those “that support or otherwise associate” with terrorist organizations and freezing the assets of twenty-seven entities, including non-profit organizations, corporations, and terrorist groups.³ Treasury Secretary Paul O’Neil told senators, “for the first time we will systematically use all the information . . . at the disposal not only of our government, but co-operating governments . . . to begin a closing down of bank accounts, asking other governments to block accounts, and . . . to confiscate amounts that are in these accounts.”⁴ Specifically, “[o]ur objective is . . . to follow the money trail, and dismantle entire financial networks and channels from moving money to finance terror.”⁵

¹ SUN TZU, THE ART OF WAR 72-73 (Samuel Griffith trans., Oxford Univ. Press 1963). See also U.S. DEP’T OF THE TREASURY & U.S. DEP’T OF JUSTICE, 2003 NATIONAL MONEY LAUNDERING STRATEGY 53 (2003), available at <http://www.treasury.gov/offices/enforcement/publications/ml2003.pdf> [hereinafter 2003 LAUNDERING STRATEGY]; *Terrorism: Growing Wahhabi Influence in the United States: Hearing Before the Subcomm. on Terrorism, Technology and Homeland Security of the S. Comm. on the Judiciary*, 108th Cong. 9 (2003) [hereinafter *Hearing*] (statement of David D. Aufhauser, General Counsel, Department of the Treasury) (pointing out that terrorists have access to funding, at least in recent years, as evidenced by al Qaeda having the means to pay the Taliban twenty million dollars annually for safe harbor in Afghanistan). Also worthy of note: the terrorist attacks of 9/11 are believed to have cost al Qaeda less than \$400,000. *Combating Terrorism: Federal Agencies Face Continuing Challenges in Addressing Terrorist Financing and Money Laundering, Hearing Before the Caucus on International Narcotics Control, U.S. Senate*, 107th Cong. 4 (2004) (Statement of Loren Yager and Richard Stana).

² U. S. DEP’T OF THE TREASURY, CONTRIBUTIONS BY THE DEPARTMENT OF THE TREASURY TO THE FINANCIAL WAR ON TERRORISM, 2 (2002), <http://www.treas.gov/press/releases/reports/2002910184556291211.pdf> [hereinafter FACT SHEET].

³ Exec. Order No. 13,224, 3 C.F.R. 786, 790 (2002), reprinted as amended in 50 U.S.C.A. § 1701 (2003).

⁴ See CNN.com, *Bush: ‘Justice will be done,’* CNN.com, Sept. 20, 2001, available at <http://archives.cnn.com/2001/US/09/20/gen.america.under.attack/> (last visited Jan. 24, 2006).

⁵ *Financial War on Terrorism: New Money Trails Present Fresh Challenges: Hearing Before the S. Comm. On Finance*, 107th Cong. 5 (2002) [hereinafter *Financial War Hearings*] (statement of Hon. James Gurule, Under Secretary for Enforcement, Department of the Treasury).

It has proved significantly harder to detect the financial dealings of terrorists than to detect ordinary money laundering;⁶ a crime the United States Treasury (“Treasury”) is accustomed to fighting.⁷ Money laundering by definition involves transferring “dirty” money through the financial system in such a way that it appears “clean.”⁸ In contrast, terrorists are doing just the opposite; taking “clean” money and using it for “dirty” purposes long after the money has legitimately traveled through our banking system.⁹ So how does the Treasury determine which money is destined for terrorists?¹⁰ The Honorable Max Baucus, Chairman of the Senate Finance Committee, has summarized the problem as “looking for a needle in a pile of needles.”¹¹ Despite these hurdles, both the executive branch and the Congress have created some impressive weapons designed to curb the supply of money going to support terrorism. This note will look specifically at how the Treasury is aiding the war on global terrorism by starving the terrorists of funding.

II. THE PROBLEM: FINDING A NEEDLE IN A PILE OF NEEDLES

Lee Hamilton, Vice Chair of the National Commission on Terrorist Attacks (9/11 Commission) recently testified before the House Committee on Financial Services that “[i]n reality, stopping the flow of funds to al Qaeda and affiliated terrorist groups has proven to be essentially impossible.”¹² Terrorists finance their activities in a number of ways. In some parts of the world terrorists resort to “extortion, kidnapping, narcotics trafficking, counterfeiting, and fraud to support their terrorist acts.”¹³ However, a considerable portion of terrorist

⁶ *Id.* at 2 (opening statement of Hon. Max Baucus, Chairman, Committee on Finance).

⁷ See generally 2003 LAUNDERING STRATEGY, *supra* note 1.

⁸ Economist.com, *The Money Trail*, ECONOMIST.COM, Oct. 22, 2001, http://www.economist.com/agenda/PrinterFriendly.cfm?Story_ID=831312 (last visited April 15, 2006) (on file with author).

⁹ See *id.*; see also *Hearing Before the Comm. on Int'l Relations*, 109th Cong. 3 (2004) (testimony of Herbert A. Biern).

¹⁰ See Matthew Levitt, *Charitable Organizations and Terror Financing: A War on Terror Status-Check 2* (Mar. 19, 2004) (paper presented at the workshop “The Dimensions of Terrorist Financing,” University of Pittsburgh), available at <http://www.washingtoninstitute.org/templateC07.php?CID=104>. Levitt points out that no counterterrorism technique or effort, however extensive, international, or comprehensive, will put an absolute end to such attacks or uproot terrorism. There will always be people and groups with entrenched causes, an overwhelming sense of frustration, a self-justifying worldview, and healthy dose of evil, who will resort to violence as a means of expression. *Id.*

¹¹ *Financial War Hearings*, *supra* note 5, at 3 (Prepared Statements of Max Baucus).

¹² *The 9/11 Commission Report: Identifying and Preventing Terrorist Financing: Hearing Before the H. Comm. on Financial Servs.*, 109th Cong. 108 (2004) (prepared statement of Lee H. Hamilton, Vice Chair, National Commission on Terrorist Attacks).

¹³ *Hearing*, *supra* note 1, at 68 (testimony of David D. Aufhauser).

financing originates from petty crime, credit card theft, and illegal cigarette sales,¹⁴ relatively insignificant crimes that are often overlooked by investigators preoccupied with the search for large cash transfers.¹⁵ For example, the Federal Bureau of Investigation estimates the terrorist group Hizballah earned \$1.5 million in the United States from 1996 to 2000 “purchasing cigarettes in a low tax state for a lower price and selling them in a high tax state at a higher price.”¹⁶ In addition, as the current anti-terrorist financing regime becomes increasingly effective, terrorists are resorting to transporting cash in suitcases—often in amounts that would not raise suspicion even if detected.¹⁷

The heart of the problem is that unlike money laundering, terrorist financing often originates with legitimate organizations and travels through customary channels. While money laundering “depends on the existence of an underlying crime, terrorist financing does not.”¹⁸ It is often difficult, if not impossible, to determine whether funds are destined for a terrorist organization until they are actually delivered. This problem is readily apparent in the case of Muslim charities. Americans alone donate millions to Muslim charities each year.¹⁹ Worldwide, Muslim charities are funded in large part by *zakat*²⁰ (charitable giving):

¹⁴ *Financial War Hearings*, *supra* note 5, at 2 (statement of Hon. James Gurule).

¹⁵ See *Intellectual Property Crimes: Are Proceeds From Counterfeited Goods Funding Terrorism?* Hearing Before the H. Comm. On Int'l Relations, 108th Cong. 4 (2003) [hereinafter *Hearing*] (prepared statement of Larry C. Johnson, Chief Executive Officer, BERG Associates, LLC) Johnson mentions that, incidentally, as airports have increased “security measures there [has been] a dramatic increase in the number of people apprehended carrying stolen airline tickets, money, and drugs.” *Id.*

¹⁶ *Money Laundering: Current Status of Our Efforts To Coordinate and Combat Money Laundering and Terrorist Financing: Hearing Before the S. Caucus on International Narcotics Control*, 108th Cong. 17 (2004) (prepared statement of Loren Yager, Director of International Affairs and Trade, General Accounting Office, and Richard M. Stana, Director of Homeland Security and Justice, General Accounting Office).

¹⁷ Wolffe, Richard et al., *Who Did It and How? Huge Obstacles in Global Search for Terrorist Paper Trail*, Financial Times, Sept. 24, 2001, available at <http://specials.ft.com/aaa/FT3BKGH7ZRC.html>.

¹⁸ See also 2003 LAUNDERING STRATEGY, *supra* note 1, at 2, n. 1 (pointing out that “money laundering depends on the existence of an underlying crime, while terrorist financing does not”).

¹⁹ *Financial War Hearings*, *supra* note 5, at 34 (testimony of Hon. James Gerule).

²⁰ See generally <http://www.zpub.com/aaa/zakat-def.html> (last visited March 6, 2006).

The Zakat is a form of giving to those who are less fortunate. It is obligatory upon all Muslims to give 2.5 % of wealth and assets each year (in excess of what is required) to the poor. This is done before the beginning of the month of Muharram, the first of new year. Giving the Zakat is considered an act of worship because it is a form of offering thanks to God for the means of material well-being one has acquired. Zakat means grow (in goodness) or 'increase', 'purifying' or 'making

under Islamic law, every devoted Muslim should give 2.5 percent of annual income to the needy and destitute.²¹ Fouad Allam, former head of Egypt's security service, warns that inevitably some of the money collected by charities finds its way to Islamic militants.²² The Council on Foundations recommends that while charities should "not stop making grants abroad," they should carefully "document all their transactions."²³ A senior State Department official commented on the scope of the problem by saying "any money can be diverted if you do not pay attention to it."²⁴ Legitimate donations can be funneled, wittingly or unwittingly, to terrorist organizations in negligible sums long after the money has left traceable channels. In addition, the diversion of funds to support terrorism often occurs at the hand of low level workers, after the funds are in a country with unsophisticated money transfer systems, and in ways that fail to implicate the leaders of the organization.²⁵

Has the Treasury been wielding too big an axe? "How can [a charity] support any needy . . . families and guarantee that no money will go to someone involved in some [terrorist] action?"²⁶ asks Ingrid Mattson, professor of Islamic studies at Hartford Seminary. Steve Sosebee, president of the Palestine Children's Relief Fund, cites a program in Hebron which delivers powdered milk to malnourished mothers and children as an example of how desperately money is needed for immediate relief.²⁷ No one disputes that charities play an important role in the Muslim world.²⁸ Many Muslim charities argue the Treasury's

pure'. So the act of giving zakat means purifying one's wealth to gain Allah's blessing to make it grow in goodness.

Id.

²¹ Salah Nasrawi, *Muslim Charities Allegedly Financing Terrorist Groups*, HOUSTON CHRONICLE, Sept. 20, 2001, at A22.

²² Associated Press Story, Sept. 1, 2001 *Muslim Charities Eyed: Donations Going to Militant Groups*, available at <http://www.ci-ce-ct.com/article/showquestion.asp?faq=10&fldAuto=1546>.

²³ Christopher Quay, *Official Outlines Treasury's View of Charities, Terrorist Financing*, __ Tax Notes, 1227-28 (2004).

²⁴ *The Role of Charities and NGO's in the Financing of Terrorist Activities: Hearing Before the Subcomm. on International Trade and Finance of the S. Comm. on Banking, Housing, and Urban Affairs*, 107th Cong. 44 (2002) (quoting Francis X. Taylor, Coordinator for Counterterrorism, Department of State) (citation omitted).

²⁵ National Commission on Terrorist Attacks Upon the United States, 56 http://www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf.

²⁶ Jane Lampman, *US Muslims in a Quandary Over Charities*, Christian Science Monitor, Nov. 17, 2004, available at <http://www.csmonitor.com/2004/1117/p11s02-lire.html>.

²⁷ Stephanie Strom, *Charity Seeks to Transfer Money Frozen By Treasury*, NEW YORK TIMES, April 15, 2004.

²⁸ Christopher Quay, *Officials, EO Reps Discuss Terrorist Financing, 403(b) Regs*, __ Tax Notes 1109 (2004) (citing Chip Poncy, a senior technical advisor at Treasury, as saying that charities are "vulnerable" and that "shutting charities down harms U.S.

actions are needlessly hurting their fundraising efforts.²⁹ In its report, the 9/11 Commission raised concerns over the government's policy of shutting down charities and freezing funds without a formal determination of wrongdoing.³⁰ The Treasury recently responded by announcing that it would accept petitions for a release of frozen funds to a third party, who would distribute them for their intended purpose.³¹

So how is the Treasury going about starving the terrorists of funding without unnecessarily hindering legitimate humanitarian efforts or violating civil liberties?³² The legally acceptable scope of the Treasury's actions is just beginning to be determined in the courts. For example, on November 10, 2004, a coalition of charities filed a lawsuit challenging a rule requiring organizations that receive money from a federal employees' charitable drive to check each of their employees against Treasury terrorist watch lists.³³ The group, led by the American Civil Liberties Union, contends the requirement is vague, difficult to comply with, and violates the law.³⁴

interests because charitable assistance helps poor Arab communities, making them less prone to the effects of poverty, which is one of the factors that leads to terrorism").

²⁹ See generally Montgomery E. Engel, Note, *Donating "Blood Money": Fundraising for International Terrorism by United States Charities and the Government's Efforts to Constrict the Flow*, 12 CARDOZO J. INT'L & COMP. L. 251, 295 (2004) (arguing that "the use of blocking orders should be minimized wherever possible" because of due process concerns and to better "win the battle for hearts and minds" in the Muslim world).

³⁰ See Report of the 9/11 Commission at http://www.9-11commission.gov/report/911Report_Ch12.htm (under "Targeting Terrorist Money").

³¹ Jane Lampman, *US Muslims in a Quandary Over Charities*, Christian Science Monitor, Nov. 17, 2004, available at <http://www.csmonitor.com/2004/1117/p11s02-lire.html>.

³² On October 19, 2001, Congressman Ron Paul from Texas took the floor of the House to quote *Matthew 20:15*, "Do not I have the right to do what I want with my own money?" available at <http://www.house.gov/paul/congrec/congrec2000/cr101900money.htm>. Congressman Paul went on to discuss the "Nazification of America" pointing out that

[i]f you are fortunate enough to fall into the estimated group of six million millionaires worldwide . . . you automatically may be a criminal suspect . . . because Citibank views these wealthy people . . . as potential criminals . . . [and they] each are watched every minute of every day to see if the engage in money laundering or other financial crimes.

Id.

³³ Chris Strohm, *Groups Challenge Terrorist Screening Rule in Federal Charity Campaign*, Government Executive, Nov. 10, 2004, available at <http://www.govexec.com/dailyfed/1104/111004c1.htm>.

³⁴ Tim Kauffman, *CFC Terror Watch List Doesn't Scare Away Charities*, FEDERAL TIMES, Aug. 9, 2004, at 6 available at <http://www.ombwatch.org/npa/acluvfc-complaint.pdf> (reporting that the ACLU is the only charity that withdrew from the campaign while other charities believe that "[c]ertifying that they do not hire terrorists or contribute funds to terrorist organizations is a small price to pay to remain in the campaign") (citing Anthony De Cristofaro, vice president of public affairs for Global Impact, a nonprofit charity organization based in Alexandria, Virginia).

While an inquiry into the normative questions regarding the Treasury's activity is beyond the scope of this note, where applicable, we will mention current legal challenges as we look specifically at how the Treasury is starving the terrorists of funding.

III. THE TREASURY'S STRATEGY TO STARVE TERRORIST OF FUNDING

Prior to the terrorist attacks of September 11, 2001, the Treasury's anti-terrorist actions were limited primarily to its anti-money laundering regime. For example, the Bank Secrecy Act (BSA)³⁵ required anyone moving over \$10,000 in cash in or out of the United States to report the transfer to the Treasury.³⁶ In addition, financial institutions were required to inform the Treasury of suspicious transactions in excess of \$5000.³⁷ However, this authority proved too limited to fight a global war on terror. For example, *hawala*, an informal value transfer system popular with Muslims, were not considered to be "financial institutions" and thus were not required to comply with the BSA.³⁸ On October 26, 2001, President Bush signed into the law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorist Act of 2001 (Patriot Act).³⁹ Title III of the Patriot Act, entitled, International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, (referred to as the "smart bomb" of terrorist financing)⁴⁰ included amendments to the BSA⁴¹ intended to aid in the "prevention, detection, and prosecution of international money laundering and terrorist financing."⁴² Additionally, Section 311 of the Patriot Act authorizes the Treasury to designate a "foreign jurisdiction, institution, class of transaction, or type of account" as a "primary money laundering concern."⁴³ Section 311 further provides the Treasury with authority to prohibit transactions originating with any entity so designated.⁴⁴ These amendments, in addition to Executive Order

³⁵ Bank Secrecy Act of 1970, Pub. L. No. 91-508, 84 Stat. 1114 (codified as amended in scattered sections of 12 U.S.C., 15 U.S.C., 18 U.S.C., and 31 U.S.C.) [hereinafter Bank Secrecy Act].

³⁶ 31 U.S.C. Part 103 See Bank Secrecy Act-31 C.F.R. Part 103 available at <http://www.occ.treas.gov/fr/fedregister/69fr19098.pdf>.

³⁷ See Bank Secrecy Act, *supra* note 35.

³⁸ National Drug Intelligence Center, National Drug Threat Assessment 2005, available at <http://www.usdoj.gov/ndic/pubs11/12620/money.htm>.

³⁹ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 [hereinafter USA PATRIOT ACT] (codified as amended in scattered sections of U.S.C.).

⁴⁰ *Hearing, supra* note 1, at 78 (statement of David D. Aufhauser).

⁴¹ Bank Secrecy Act of 1970, *supra* note 35.

⁴² Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts, 67 Fed. Reg. 37,736 (May 30, 2002).

⁴³ 2003 LAUNDERING STRATEGY, *supra* note 1, at 12-13.

⁴⁴ See USA PATRIOT ACT Section 311(5).

13224,⁴⁵ expanded the Treasury's authority by requiring "hawalas to register as 'money services business' or 'MSBs' which subjects them to money laundering regulations including the requirement that they file Suspicious Activity Reports."⁴⁶

Pursuant to its new authority, the Treasury expanded its anti-money laundering operations, established new departments, and added investigative teams designed specifically to target terrorist finances.⁴⁷ The Treasury's strategy can be broken down as follows: (1) targeted intelligence gathering;⁴⁸ (2) freezing of suspect assets;⁴⁹ (3) diplomatic efforts and outreach;⁵⁰ (4) outreach to the financial sector;⁵¹ and (5) capacity building for other governments and the financial sector.⁵² The following subsections will look at the Treasury's specific actions in light of the five categories above.

A. Targeted Intelligence Gathering

The Treasury is scouring the global financial system for suspicious activities with greater precision than ever before thanks in large part to amendments to the Bank Secrecy Act (BSA) passed as part of the Patriot Act. As mentioned in the previous section, prior to September 11, 2001, the BSA was primarily designed to combat traditional money laundering.⁵³ Title III of the Patriot Act expanded the BSA to require financial institutions to perform "enhanced due diligence" on private accounts, expanded the BSA to include foreign financial institutions with assets within the borders of the United States, and expanded the United State's "courts' long-arm jurisdiction over individuals and foreign banks suspected of being involved in money laundering."⁵⁴ The government was given an opportunity to prosecute under the "long arm money

⁴⁵ Exec. Order No. 13,224, 3 C.F.R. 786, 790 (2002), *reprinted as amended in* 50 U.S.C.A. § 1701 (2003).

⁴⁶ FACT SHEET, *supra* note 2, at 15.

⁴⁷ *Financial War Hearings*, *supra* note 5, at app. 32 (Testimony of Hon. James Gurule).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *The Financial War on Terrorism and the Administration's Implementation of the Anti-Money Laundering Provisions of the USA Patriot Act: Hearing Before the S. Committee on Banking, Housing, and Urban Affairs*, 107th Cong. 2 (2002) [hereinafter *Anti-Money Laundering Provisions Hearing*].

⁵⁴ Alicia L. Rause, *USA Patriot Act: Anti-Money Laundering and Terrorist Financing Legislation in the U.S. and Europe Since September 11th*, 11 U. MIAMI INT'L & COMP. L. REV. 173, 175 (2003).

laundering law” when a “Panamanian gold and jewelry merchant who did no business and had no presence or bank account in the United States, but took millions of drug dollars saying she did not know their source” was charged with money laundering.⁵⁵ In *United States v. Speed Joyeros, S.A.*,⁵⁶ Yardena Hebroni fell under U.S. money laundering laws even though she “did not run a bank or financial institution of any kind, [and] . . . did not have a bank account in the U.S.”⁵⁷ She was, however, subject to the jurisdiction of the U.S. money laundering legislation because a large portion of the Columbian drug money she received was in the form of checks drawn on U.S. bank accounts.⁵⁸ Closer to home, Broadway National Bank, located in New York City, pleaded guilty to failing to report \$123 million in suspicious deposits that moved through over 100 accounts.⁵⁹

The Patriot Act has been determined to have altered the BSA in other ways. For example, in the recent case of *United States v. Wray*,⁶⁰ a court held that the Patriot Act⁶¹ expanded the BSA’s definition of “within the United States” to include “the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, a territory or possession of the United States, or a military or diplomatic establishment.”⁶² In *Wray*, United States Custom officials found \$120,000 in cash concealed in a suitcase carried by Wray as he attempted to enter the Virgin Islands.⁶³ The BSA prohibits knowingly concealing more than \$10,000 while in transit “from a place outside the United States to a place within the United States.”⁶⁴ Wray unsuccessfully argued the phrase “within the United States” did not extend to include the Virgin Islands.⁶⁵

Perhaps most controversially, the BSA authorizes the Treasury to require financial institutions to spy on their customers.⁶⁶ In the words of one privacy group, the BSA authorizes the Treasury to:

⁵⁵ *Id.* at 176. This case summary is taken almost entirely from this law review article.

⁵⁶ *United States v. Speed Joyeros, S.A.*, 204 F. Supp. 2d 412 (E.D.N.Y. 2002).

⁵⁷ Rause, *supra* note 54, at 176.

⁵⁸ *Id.*

⁵⁹ 2003 LAUNDERING STRATEGY, *supra* note 1, at 45.

⁶⁰ *United States v. Wray*, No. CR.2002-53, 2002 WL 31628435 (D.V.I., 2002).

⁶¹ 31 U.S.C.A. § 5312(a)(6) (2005).

⁶² Rause, *supra* note 54, at 178.

⁶³ *Id.*

⁶⁴ 31 U.S.C.A. § 5332(a)(1) (2005).

⁶⁵ Rause, *supra* note 54, at 178.

⁶⁶ *See generally* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, BANK SECRECY ACT EXAMINATION PROCEDURES FOR CUSTOMER IDENTIFICATION PROGRAMS, available at <http://www.federalreserve.gov/boarddocs/srletters/2004/sr0413a1.pdf> (last

require financial institutions to maintain records of personal financial transactions that “have a high degree of usefulness in criminal, tax and regulatory investigations and proceedings.” It also authorizes the Treasury Department to require any financial institution to report any “suspicious transaction relevant to a possible violation of law or regulation.”

.....
 This is done secretly, without the consent or knowledge of bank customers, any time a financial institution decides that a transaction is ‘suspicious.’ The reports are made available electronically to every U.S. Attorney’s Office and to 59 law enforcement agencies, including the FBI, Secret Service, and Customs Service. A law enforcement agency does not have to be suspicious of an actual crime before it accesses a report, and no court order, warrant, subpoena, or even written request is needed.⁶⁷

In addition to the civil liberty issues raised by using this information to starve terrorists of funding, there are allegations of abuse.⁶⁸ For example, Newsweek reports that in “Operation G-String,” the FBI used the Patriot Act to view the financial records of Las Vegas officials believed to have accepted bribes from “the city’s biggest strip-club baron.”⁶⁹

The Treasury argues the additional powers granted to them in the Patriot Act are necessary, as does Lee Hamilton, Vice Chairman of the 9/11 Commission.⁷⁰ Hamilton recently told the House Financial Services Commission that “enforcement of the Bank Secrecy Act rules for financial institutions, particularly in the area of suspicious activity reporting, is key to tracking and disrupting the activities of terrorist groups” because “financial institutions are in the best position to understand and identify problematic transactions or accounts.”⁷¹

visited Dec. 17, 2004) (outlining the Bank Secrecy Act requirements for financial institutions).

⁶⁷ Privacilla.org, The Bank Secrecy Act, <http://www.privacilla.org/government/banksecrecyact.html> (last visited Jan. 24, 2006); see also *Legislative Proposals to Implement the Recommendations of the 9/11 Commission: Hearing Before the H. Comm. on Financial Serv.*, 108th Cong. 352 (2004) [hereinafter *Legislative Proposals Hearing*] (testimony of Hon. Stuart A. Levey, Under Secretary, Terrorism and Financial Intelligence, U.S. Department of the Treasury).

⁶⁸ Michael Isikoff, *Show Me the Money: Patriot Act Helps the Feds in Cases With No Ties to Terror*, NEWSWEEK (Dec. 1, 2003) available at <http://msnbc.msn.com/id/3540572/>.

⁶⁹ *Id.*

⁷⁰ Sarah Borchersen-Keto, *Bank Secrecy Act Provisions Central to War on Terrorist Financing, Commission Says*, CCH FOCUS (August 23, 2004) available at <http://www.busines.cch.com/bankingfinance/focus/news/20040823.asp>.

⁷¹ See also *Hearing Before the Comm. on International Relations*, 109th Cong. 3 (2004) (testimony of Herbert A. Biern) (concluding that “banking organizations have to

However, Hamilton did admit the Treasury's use of the International Emergency Economic Powers Act against United States citizens and organizations "raises 'significant' civil liberties concerns because it allows the government to shut down an organization on the basis of classified evidence, subject only to a deferential after-the-fact judicial review."⁷² The BSA has changed how virtually every financial organization ensures compliance and remains of the most visible expansions of the Treasury's power. Although it is difficult to quantify, the amendments to the BSA passed as part of the Patriot Act constitute significant weapons in the Treasury's attempt to starve the terrorists of funding.

B. Freezing of Suspect Assets

When President Bush signed Executive Order 13224, he authorized the Treasury to freeze or impose financial sanctions on any individual or entity that meets the following five criteria:

- (1) foreign individuals or entities listed in the [executive order];
- (2) foreign individuals or entities that "have committed or . . . pose a significant risk of committing acts of terrorism that threaten the [national] security . . ." of the United States;
- (3) individuals or entities that either are "owned or controlled by" or "act for or on behalf of" [the parties above];
- (4) individuals or entities that [support] parties [designated as terrorist organizations];
- (5) individuals or entities that are "otherwise associated" with [the parties listed above].⁷³

As of January 2004, the Treasury, along with the international community, has used these criteria to freeze at least \$139 million in terrorist assets, including at least \$36.7 million from within the United States,⁷⁴ from 351 individuals and entities.⁷⁵ This number does not include the approximately \$3.3 billion of Iraqi assets recovered after the

take reasonable and prudent steps to combat illicit financial activities such as money laundering and terrorist financing").

⁷² Sarah Borchersen-Keto, *Bank Secrecy Act Central to War on Terrorist Financing According to 9-11 Commission*, COMPLIANCEHEADQUARTERS.COM, Aug. 2004, http://www.complianceheadquarters.com/AML/AML_Articles/8_24_04.html (last visited Jan. 24, 2006); see also Engel, *supra* note 29, at 295.

⁷³ U. S. DEPT OF THE TREASURY, TERRORISM AND FINANCIAL INTELLIGENCE: DESIGNATIONS, <http://www.treas.gov/offices/enforcement/designations.shtml> (last visited Jan. 24, 2006).

⁷⁴ Press Release, Office of Public Affairs, U. S. Dep't of the Treasury, Bush Admin. Announces Budget Increase to Help Fight Terrorist Financing and Financial Crime (Jan. 16, 2004), <http://www.treas.gov/press/releases/js1100.htm> (last visited Jan. 24, 2006).

⁷⁵ U. S. DEPT OF THE TREASURY, TERRORISM AND FINANCIAL INTELLIGENCE, 3 available at <http://www.treas.gov/offices/enforcement/> (last visited Dec. 17, 2004).

fall of Saddam Hussein.⁷⁶ Freezing terrorist assets remains the Treasury's "primary objective" because it does more than deprive terrorists of their money. Rather, it has the added benefit of being a "highly visible weapon" which often "prevents the collecting, receiving, consolidating, managing, and moving of assets" by deterring those who would use the financial system to fund terrorism in the future.⁷⁷ The Treasury warns that "[o]nly a small measure of success in the campaign is counted in the dollars of frozen accounts . . . [t]he larger balance is found in the wariness, caution, and apprehension of donors."⁷⁸

As mentioned earlier, some of the Treasury's more controversial actions have involved charities. Effective November 11, 2003, Section 501(p) of the Military Family Tax Relief Act of 2003,⁷⁹ which is an "extension of the authority granted the Executive Branch under the Patriot Act, empowers the President to indefinitely suspend the tax-exempt status of any organization, designated by Executive Order, which is suspected of supporting terrorist activities."⁸⁰ Upon receipt of this authority, the Treasury immediately suspended the tax exempt status of the Benevolence International Foundation, Inc., the Global Relief Foundation, Inc., and the Holy Land Foundation.⁸¹ Nearly two years earlier, in December 2001, the Treasury had "blocked suspect assets and records" of the United States offices of the three large charities for supporting terrorism.⁸² The Treasury's actions received extensive press coverage and were seen as an attack on legitimate fund raising efforts, particularly in the Muslim world where the charities are well known. The Treasury counters that "the problem underlying this concern is the abuse of charities by terrorist organizations. It is this abuse, not the consequential freezing actions taken by [the Treasury], which undermines donor confidence."⁸³ Incidentally, during raids in March 2002 on eight Bosnian organizations affiliated with Benevolence International, one of the three large American charities targeted, law enforcement officials uncovered "firearms, a ski mask, numerous

⁷⁶ *Id.*

⁷⁷ 2003 LAUNDERING STRATEGY, *supra* note 1, at 6-7.

⁷⁸ *Hearing Before the S. Banking, Hous., and Urban Affairs Comm.*, 108th Cong. 4 (2003) (testimony of David D. Aufhauser).

⁷⁹ Military Family Tax Relief Act of 2003 (Pub.L. 108-121, Nov. 11, 2003, 117 Stat. 1335).

⁸⁰ Nancy Kuhn, *U.S. Charities Supporting Terrorism? All Are Caught in the Net*, NONPROFIT LEADER, Feb. 2004, http://www.nonprofitleader.org/04_02/article4.html.

⁸¹ See Engel, *supra* note 29, at 295 (giving a detailed procedural history and outlining the government's case against the charities).

⁸² Jane Lampman, *US Muslims in a Quandary Over Charities*, CHRISTIAN SCIENCE MONITOR, Nov. 17, 2004, available at <http://www.csmonitor.com/2004/1117/p11s02-lire.html>.

⁸³ *Hearing, supra* note 1, at 72 (testimony of David D. Aufhauser).

military manuals on topics including small arms and explosives, and a fraudulent passport,” but most interestingly, “photographs of Arnaout (the CEO of Benevolence International) handling rifles, a shoulder-fired rocket, and an anti-aircraft gun.”⁸⁴ Arnaout later pleaded guilty to racketeering.⁸⁵

The Treasury continues to take steps to block charities that would channel funds to terrorists. On October 18, 2004, Treasury Secretary John Snow posted a list of twenty-seven charities worldwide that the Treasury has designated as financiers or supporters of terrorism.⁸⁶ On the same day, the United States Justice Department rejected calls by Muslim groups to provide a list of charities to which Muslims could safely donate as “impossible.”⁸⁷ Stating, “[o]ur role is to prosecute violations of criminal law. We’re not in a position to put out lists of any kind, particularly of any organizations that are good or bad.”⁸⁸

The Treasury is also working with other governments to shutter charities around the world that fund terrorism. For example, on March 11, 2002, the United States and Saudi Arabia “jointly designated” Al Haramain, a Saudi NGO, as a supporter of terrorism.⁸⁹ To date, the Treasury has worked with dozens of countries to designate twenty-seven charities worldwide as financiers or supporters of terrorism.⁹⁰

C. Diplomatic Efforts and Outreach

A senior Treasury official testifying before Congress stated that “[t]ogether with other agencies, we are using our diplomatic resources and regional and multilateral engagements to ensure international cooperation, collaboration and capability in dismantling terrorist financing networks.”⁹¹ Stuart Levey, Under Secretary of Terrorism and

⁸⁴ *Financial War Hearings*, *supra* note 5, at 29 (statement of Hon. Michael Chertoff).

⁸⁵ CNN.com, *Muslim Charity Director Pleads Guilty To Racketeering*, available at <http://www.cnn.com/2003/LAW/02/10/charity.director.plea/> (last visited April 17, 2006).

⁸⁶ Anwar Iqbal, *U.S. Forbids Ramadan Charity to ‘Terrorists.’* WashingtonTimes.com, Oct. 19, 2004, available at <http://washingtontimes.com/upi-breaking/20041019-050521-6847r.htm>.

⁸⁷ Wayne Parry, *U.S. Rejects Muslims’ Plea for a List of Approved Charities*, Boston Herald, Oct. 18, 2004, available at [http://news.bostonherald.com/national/view.bg?articleid=49697&format=.](http://news.bostonherald.com/national/view.bg?articleid=49697&format=)

⁸⁸ *Id.*

⁸⁹ *Hearing*, *supra* note 1, at 71 (testimony of David D. Aufhauser).

⁹⁰ Jane Lampman, *US Muslims in a Quandary Over Charities*, CHRISTIAN SCIENCE MONITOR, Nov. 17, 2004, available at <http://www.csmonitor.com/2004/1117/p11s02-lire.html>.

⁹¹ *Financial War Hearings*, *supra* note 5, at app. 32 (statement of Hon. James Gurule).

Financial Intelligence at Treasury, recently testified that the Treasury has “led the initiative to make the battle against terrorist financing a priority in the world” and has done this by engaging in “numerous international fora, including the United Nations, G7, G8, G20, the Financial Action Task Force (FATA), the Egmont Group, and other international financial institutions” as well as regional organizations such as “APEC, the OAS, the OSCE, and the Manila Framework Group.”⁹² Treasury reports that the Financial Crimes Enforcement Network’s (FinCEN) “leadership in the Egmont group has spurred a rapid expansion of financial intelligence units (FIUs), with 94 such FIUs now operating around the world.”⁹³

The U.S. government has taken on a visible leadership role at an international level. For example, the U.S. is “co-chairing the FATF Terrorist Financing Working Group, which is developing international best practices on how to protect charities from abuse or infiltration by terrorists and their supporters.”⁹⁴ Based in Paris, France, the FATF is a multilateral organization consisting of thirty-three countries founded in 1989 to combat “money laundering and terrorist financing.”⁹⁵ Because of the Treasury’s work with FATF, “scores of countries are now being called upon to: regulate informal banking systems like *hawala*; include originator information on cross-border wire transfers; freeze and seize terrorist-related funds; overtly criminalize terrorist financing; and increase vigilance over the non-profit sector.”⁹⁶

D. Outreach to the Financial Sector

The Treasury is enlisting the financial sector for help in fighting terrorist financing.⁹⁷ Section 314(a) of the Patriot Act empowers the Treasury to take an active role to encourage information-sharing⁹⁸. Specifically:

encourage further cooperation among financial institutions, their regulatory authorities, and law enforcement authorities, with the specific purpose of encouraging regulatory authorities and law enforcement authorities to share with financial

⁹² *Legislative Hearing, supra* note 43, at 39 (testimony of Stuart A. Levey).

⁹³ *Id.*

⁹⁴ *Financial War Hearings, supra* note 5, at app. 32 (statement of Hon. James Gurule).

⁹⁵ FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, ABOUT FATF, 1 available at http://www.fatf-gafi.org/AboutFATF_en.htm (last visited Dec. 17, 2004).

⁹⁶ *Legislative Hearing, supra* note 43, at 5 (testimony of Stuart A. Levey).

⁹⁷ See also 2003 LAUNDERING STRATEGY, *supra* note 1, at 18

⁹⁸ See USA PATRIOT ACT Section 314.

institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected based on credible evidence of engaging in terrorist acts or money laundering activities.⁹⁹

The Treasury is actively encouraging cooperation between the business sector and law enforcement.¹⁰⁰ The Treasury reports that “the willingness of the financial community to [cooperate] . . . has been remarkable.”¹⁰¹ The Financial Crimes Enforcement Network (FinCEN) has been charged with the task of implementing Section 314(a).¹⁰² Established in 1990, FinCEN has “worked to maximize information sharing among law enforcement agencies and its other partners in the regulatory and financial communities.”¹⁰³ FinCEN “enables law enforcement agencies . . . to reach out to 33,510 points of contact at more than 15,000 financial institutions to locate accounts and transactions of persons that may be involved in terrorism.”¹⁰⁴ In response to privacy concerns, FinCEN points out that 314(a) does not act as a substitute for a subpoena.¹⁰⁵ Use of information derived under authority of Section 314(a) is specifically limited to “identifying and reporting on” suspected financial activities.¹⁰⁶ FinCEN reports that from February 1, 2003 to September 28, 2004, its efforts “resulted in the discovery and/or issuance of . . . 1,888 new accounts identified, 1091 Grand Jury Subpoenas, and 77 arrests.”¹⁰⁷

There is evidence that the Treasury’s efforts to build information sharing relationships with financial institutions are working. In the following example, Citigroup approached the Treasury with information

⁹⁹ USA PATRIOT ACT, *supra* note 39, at Pub. L. No. 107-56, §314(a)(1), 115 Stat. 272, 307.

¹⁰⁰ *Financial War on Terrorism: New Money Trails Present Fresh Challenges: Hearing Before the Subcomm. On Fin.*, 107th Cong. 32 (2002) (testimony of Hon. James Gurule).

¹⁰¹ *Anti-Money Laundering Provisions Hearing, supra*, note 53, at 2 (testimony of David D. Aufhauser).

¹⁰² Press Release, Office of Public Affairs, Testimony of Stuart A. Levey, Under Secretary Terrorism and Financial Intelligence, <http://www.ustreas.gov/press/releases/js1869.htm> (last visited Mar. 11, 2006).

¹⁰³ U.S. DEP’T OF THE TREASURY, About FinCEN/Overview, http://www.fincen.gov/af_overview.html (last visited Jan. 24, 2006).

¹⁰⁴ U.S. DEP’T OF THE TREASURY, FINCEN’S 314(a) FACT SHEET 1 (2004), <http://www.fincen.gov/314afactsheet.pdf>.

¹⁰⁵ U.S. DEP’T OF THE TREASURY, FINCEN’S 314(a) FACT SHEET 1 (2005), <http://www.ots.treas.gov/docs/r.cfm?480156.pdf>

¹⁰⁶ USA PATRIOT ACT, *supra* note 39, at Pub. L. No. 107-56, § 314(a)(5), 115 Stat. 272, 308.

¹⁰⁷ U. S. DEP’T OF THE TREASURY, FINCEN’S 314(a) FACT SHEET 1 (2005), <http://www.ots.treas.gov/docs/r.cfm?480156.pdf>.

regarding potential terrorist financing activity. Saudi Prince Alwaleed Bin Talal Alsaud, the fourth-richest man in the world, owned \$9.4 billion of Citigroup stock.¹⁰⁸ Additionally, he owned a large stake in Samba, the second-largest bank in Saudi Arabia.¹⁰⁹ Citigroup had been running Samba under a management contract for over twenty years.¹¹⁰ In 2000, the Saudi Arabian government ordered all banks in Saudi Arabia, including Samba, to create an account to channel funds to “martyrs” of the Palestinian *intifada* against Israel.¹¹¹ Citibank alerted the Treasury who entered talks with Saudi Arabia who ultimately agreed to phase out the plan.¹¹²

E. Capacity Building for Other Governments and the Financial Sector.

The Treasury is engaged in capacity-building initiatives with other governments and the private sector with respect to terrorist financing. Since September 11, 2001, 173 countries have frozen terrorist funds and 84 countries have established Financial Intelligence Units (FIUs) to facilitate international cooperation.¹¹³ However, more work remains to be done, particularly among the worlds poorest countries.

¹⁰⁸ Robert Lenzar et al., *Terror, Inc.*, FORBES, Sept. 18, 2004, at 52, available at <http://www.forbes.com/business/global/2004/1018/016.html> (taken substantively from this article).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² CNN.com, *Saudi Princes Seek Immunity Against 9/11 Lawsuits*, CNN.COM, Oct. 17, 2003, <http://www.cnn.com/2003/LAW/10/17/saudis.lawsuit/> (last visited Jan. 24, 2006).

Saudi Defense Minister Prince Sultan bin Abdul Aziz and Prince Turki al-Faisal, formerly head of Saudi Arabia's intelligence agency, have been sued by hundreds of relatives of the victims, who allege that they knowingly contributed money and support to al Qaeda through Islamic charitable organizations.

The \$1 trillion lawsuit says members of the Saudi royal family paid protection money to Osama bin Laden's group to keep it from carrying out terror attacks in Saudi Arabia.

The lawsuit claims the money was paid soon after the Khobar Towers bombing in Saudi Arabia that killed 19 U.S. airmen in 1996. The suit does not specify the amount of money involved in the payoff.

The 15-count suit was filed in U.S. District Court for the District of Columbia by more than 900 family members, plus some firefighters and rescue workers.

Id.

¹¹³ UNITED STATES DEPT OF THE TREASURY, PROGRESS IN THE WAR ON TERRORIST FINANCING available at <http://www.ustreas.gov/press/releases/reports/js721.pdf> (last visited April 17, 2006).

1. Other Governments

The world's financial markets are inseparably interconnected. Thus, the United States needs international cooperation and assistance to starve the terrorists of funding. While many countries have initiated legislation designed to fight terrorist financing and comply with international standards, these countries are often unsophisticated in their efforts.¹¹⁴ Even sophisticated countries, such as the European Union, differ on what constitutes a terrorist organization.¹¹⁵ The Treasury is assisting these countries on a bi-lateral basis by "delivering anti-money laundering and counter-terrorist financing technical assistance, including legislative drafting, FIU (Financial Intelligence Unit) development, judicial and prosecutorial training, financial supervision, and financial crime investigatory training."¹¹⁶ For example, the Treasury is currently assisting the Philippines, Turkey, Serbia, and Montenegro in drafting anti-money laundering legislation designed to increase transparency and intercept terrorist finances.¹¹⁷ To date, the Treasury has met with officials from over 111 countries.¹¹⁸ The Treasury's influences are seen as far away as the streets of Kuwait where it is now illegal to make a cash donation to a charity.¹¹⁹ On October 14, 2004, following a visit from a delegation from the Treasury, Kuwait announced that only approved charities may accept donations; charities must get governmental approval before transferring money abroad; and donations may only be made with special coupons authorizing deductions from the donor's bank account.¹²⁰ The Treasury has worked jointly with "Italy, Switzerland, Luxembourg, and the Bahamas," to shut down "an insidious network of financial houses and

¹¹⁴ Press Release, Office of Public Affairs, U.S. Dep't of the Treasury, Combating International Money Laundering, <http://www.ustreas.gov/press/releases/ls432.htm> (last visited Mar. 11, 2006).

¹¹⁵ Still other countries disagree on how to handle organizations that admittedly carry out terrorist activities. For example, while the European Union prohibits providing financial support to the military wing of Hamas, it continues to support the humanitarian wing, even in the face of evidence that money is diverted from humanitarian projects for use in military actions. *U.S. Policy Toward the Palestinians in the Post Arafat Era: Hearings Before the Subcomm. on the Middle East and Central Asia*, 109th Cong. 57 (2005) (Testimony of the Honorable David M. Satterfield, Acting Assistant Secretary, Bureau of Near Eastern Affairs, U.S. Department of State).

¹¹⁶ LAUNDERING STRATEGY, *supra* note 1.

¹¹⁷ *Id.*

¹¹⁸ FACT SHEET, *supra* note 2, at 19.

¹¹⁹ IslamOnline.net & News Agencies, *Kuwait Restricts Charitable Donations in Ramadan*, ISLAMONLINE.NET, Sept. 16, 2004, available at <http://www.islamonline.net/English/News/2004-10/14/article05.shtml> (last visited Jan. 24, 2006).

¹²⁰ *Id.*

investment firms” and has even taken action against a “network of honey shops and bakeries in Yemen that funded al Qaida’s operations.”¹²¹

On a multi-lateral level, the Treasury is working to ease the financial burden on poorer countries who cannot afford to comply with international standards. Toward the end of facilitating donor countries assisting poorer countries, the Treasury established the Counter-Terrorism Action Group (CTAG)¹²² and is co-chairing a Financial Action Task Force (FATF) Working Group on Terrorist Financing.¹²³ These entities are collaborating with donor states, the International Monetary Fund, the World Bank, and the UN Counter-Terrorism Committee in coordinating the delivery of technical assistance to those governments.¹²⁴

Congress has authorized the Treasury to take action against other governments or entities that fail to cooperate with its anti-terrorism programs. Section 311 of the Patriot Act allows the Treasury to designate a “foreign jurisdiction, institution, class of transaction, or type of account” as a “primary money laundering concern.”¹²⁵ Section 311 provides the Treasury with authority to take “special measures” with respect to transactions originating with this entity.¹²⁶ The Treasury has used these measures against both Nauru and Ukraine.¹²⁷ Both countries subsequently took the requested remedial actions and passed legislation bringing their counter-terrorist financing regimes up to international standards.¹²⁸

When President Bush issued Executive Order 13224, greatly expanding the Treasury’s authority to impose financial sanctions against those that “support or otherwise associate” with terrorist organizations, he sent a message to the rest of the world that the United States was

¹²¹ *Hearing, supra* note 1, at 74 (testimony of David D. Aufhauser).

¹²² Press Release, White House, Office of the Press Secretary, Action to Enhance Global Capacity to Combat Terror, <http://www.state.gov/e/eb/rls/fs/21148.htm> (last visited Mar. 11, 2006).

¹²³ Press Release, Office of Public Affairs, U.S. Dep’t of the Treasury, Testimony of Jimmy Guralé Under Secretary for Enforcement U.S. Department of the Treasury Before the U.S. Senate Finance Committee, <http://www.ustreas.gov/press/releases/po3518.htm> (last visited Mar. 11, 2006).

¹²⁴ *Id.*

¹²⁵ 2003 LAUNDERING STRATEGY, *supra* note 1, at 12-13.

¹²⁶ *Id.* at 3.

¹²⁷ Mike Allen, *Ukraine, Nauru Face U.S. Sanctions: Countries’ Banks Targeted in Terror War*, WASHINGTON POST, Dec. 20, 2002, at A06; *see also* Press Release, Office of Public Affairs, U. S. Dep’t of the Treasury, Fact Sheet Regarding the Treasury Department’s Use of Sanctions Authorized Under Section 311 of the USA PATRIOT ACT, <http://www.ustreas.gov/press/releases/po3711.htm> (last visited Jan. 24, 2006).

¹²⁸ 2003 LAUNDERING STRATEGY, *supra* note 1, at 13.

serious about starving terrorists of funding.¹²⁹ Because of the Treasury's broad power in this area, the government's ever-expanding list of organizations that support terrorism is taken "very seriously, not only in the United States, but all over the world."¹³⁰

2. The Financial Sector

Prior to September 11, 2001, the Treasury already had in place a sophisticated anti-money-laundering regime as it relates to the banking system. However, as it develops its anti-terrorist financing regime, the Treasury has expanded into two specific areas within the financial sector: (1) Informal Transfer Value Systems; and (2) Bulk Cash Smuggling.

A. Informal Transfer Value Systems

The Patriot Act expanded the Treasury's regulatory authority to include informal transfer value systems.¹³¹ Section 359 of the Patriot Act expanded the definition of "financial institution" to include any "person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside the conventional financial institution system."¹³² The Treasury defines an informal transfer value system as "any system, mechanism, or network of people that receives money for the purposes of making the funds or an equivalent value payable to a third party in another geographic location."¹³³ Informal transfer value systems preferred by Arabs are generically referred to as "*hawala*," from the Arabic word meaning "trust."¹³⁴ The amount of funds moving through *hawala* is hard to estimate because the funds often move outside the regulated financial sector. However, the Treasury's web site quotes Pakistan officials as estimating that \$7 billion crosses that nation's border annually through *hawala* channels.¹³⁵ The Treasury reports that terrorists use informal value transfer systems to transfer

¹²⁹ Exec. Order No. 13,224, 3 C.F.R. 768, 790 (2001), *reprinted as amended in* 50 U.S.C.A. § 1701 (2003).

¹³⁰ Rause, *supra* note 54, at 181.

¹³¹ FINANCIAL CRIMES ENFORCEMENT NETWORK, U.S. DEPT' OF THE TREASURY, FINCEN ADVISORY 2 (2003), *available at* <http://www.amlft.com/FinCEN%20Advisory%2033%20Informal%20Value%20Transfer%20Systems.pdf> [hereinafter FINCEN ADVISORY].

¹³² 31 U.S.C.A. § 5312(a)(2)(R) (2005).

¹³³ FINCEN ADVISORY, *supra* note 131, at 1.

¹³⁴ *Hearing*, *supra* note 1, at 75 (testimony of David D. Aufhauser).

¹³⁵ FACT SHEET, *supra* note 2, at 15.

funds.¹³⁶ On November 7, 2001, the Treasury blocked the assets of a *hawala* based in the United States, the al-Barakaat network, which the Treasury estimates moved “tens of millions of dollars” annually; “a portion of which was siphoned off to terrorist organizations.”¹³⁷

Congress and the Treasury have made *hawala* a priority since the attacks of September 11, 2001, and the discovery that *hawala* were used to fund at least two of the highjackers: Mohammad Atta and Marwan al-Shehhi.¹³⁸ Additionally, *hawala* are known to have been used to finance terrorist activities in Columbia, India, Kenya, and Tanzania.¹³⁹

Since passage of the Patriot Act, the Treasury has required that all *hawala* comply with all Bank Secrecy Act requirements;¹⁴⁰ over 10,000 have registered with the government.¹⁴¹ The first successful prosecution under the Patriot Act occurred on April 30, 2002 when Mohamed Hussein was convicted in U.S. federal court of running an unlicensed *hawala*.¹⁴² The prosecution of Hussein was successful in part because the Patriot Act changed the old rule which required the government to show the defendant knowingly broke the law.¹⁴³ Hussein received eighteen months in prison for operating a *hawala* without a state license.¹⁴⁴

B. Bulk Cash Smuggling

Title III of the Patriot Act “makes the act of smuggling bulk cash in or out of the United States a criminal offense and authorizes the forfeiture of any cash or instruments of the smuggling offense.”¹⁴⁵ “Money launderers may be sophisticated, but they’re not proud. They

¹³⁶ *Financial War on Terrorism: New Money Trails Present Fresh Challenges: Hearing Before the Subcomm. On Fin.*, 107th Cong. 5 (2002) (testimony of Paul H. O’Neill) (discussing relationship between al Qaeda and *hawala*).

¹³⁷ *Hearing*, *supra* note 1, at 76 (testimony of David D. Aufhauser).

¹³⁸ James J. Savage, *Executive Use of the International Emergency Economic Powers Act: Evolution Through the Terrorist and Taliban Sanctions*, 10 CURRENTS: INT’L TRADE L.J. 28, 39 (2001).

¹³⁹ Walter Perkel, *Money Laundering and Terrorism: Informal Value Transfer Systems*, 41 AM. CRIM. L. REV. 183, 184 (2003).

¹⁴⁰ United States Department of the Treasury Financial Crimes Enforcement Network, 33 FINCEN ADVISORY 2, <http://www.fincen.gov/advis33.pdf>.

¹⁴¹ *Hearings*, *supra* note 5, at app. 35 (Testimony of Hon. James Gurule).

¹⁴² Rause, *supra* note 54, at 176-77.

¹⁴³ *Id.* at 177.

¹⁴⁴ *Id.*

¹⁴⁵ GEORGIA BANKERS ASSOC., INTERNATIONAL MONEY LAUNDERING AND ABATEMENT AND FINANCIAL ANTI-TERRORISM ACT OF 2001, Pub. L. No. 107-56, Title III §§ 371-72, 115 Stat. 296, 336-39 (2001) (to be codified at 18 U.S.C. §§ 981, 982 and 31 U.S.C. §§ 5317, 5332), (2001) available at <http://www.gabankers.com/issuesfederal.patriot.summary.htm> (last visited Dec. 17, 2004).

will use any available method to launder their dirty money.”¹⁴⁶ The Treasury reports that “over \$30 billion a year is smuggled in, out and through the United States each year by drug dealers, organized crime and terrorist organizations. This money moves by planes, trains, automobiles, ships and even by mail.”¹⁴⁷ Treasury Under Secretary Stuart Levey recently stated that “[a]s the formal and informal financial sectors become increasingly inhospitable to financiers of terrorism, we have witnessed an increasing reliance by al-Qaida and terrorist groups on cash couriers.”¹⁴⁸ For example, on December 25, 2003, an official of the African branch of Lebanese Hezbollah was reportedly killed when Flight 141 crashed en route to Beirut.¹⁴⁹ The official was reportedly couriering \$2 million dollars in contributions raised in Africa to fund the Lebanese Hezbollah.¹⁵⁰ The movement of money via cash couriers is now one of the principle methods that terrorists use to move funds.¹⁵¹ At a recent meeting in Paris in October of 2004, the Financial Action Task Force lamented that “[g]overnments worldwide must do more to stop the smuggling of cash across borders.”¹⁵² Bulk cash smuggling is also harmful to the war on terror in a more subtle way. Terrorist cells funded by cash leave “few identifiable footprints in the banking system,” where much of the Treasury’s anti-terrorist financing regime is focused.¹⁵³

Related to cash smuggling is the “emerging issue” of counterfeiting. Terrorists engage in counterfeiting because counterfeiting “offers an attractive, profitable method for making good money while avoiding the penalties associated with high risk activities such as smuggling or drug trafficking.”¹⁵⁴ It is estimated that there is in excess of \$130 million in

¹⁴⁶ Press Release, Office of Public Affairs, U. S. Dep’t of the Treasury, Treasury Deputy Assistant Secretary David Medina House Banking Subcommittee on Financial Services and Consumer Credit (May 15, 2000), <http://www.treas.gov/press/releases/l5623.htm> (last visited Jan. 24, 2006).

¹⁴⁷ *The Administration’s National Money Laundering Strategy for 2001: Hearing Before the S. Comm. on Banking, Hous., and Urban Affairs*, 106th Cong. 1 (2001) (testimony of the Honorable Marge Roukema).

¹⁴⁸ Press Release, Office of Public Affairs, U.S. Dep’t of the Treasury, Testimony of Stuart A. Levey, Under Secretary, Terrorism and Financial Intelligence, U.S. Department of the Treasury (Sept. 22, 2004) <http://www.treas.gov/press/releases/js1940.htm> (last visited Mar. 11, 2006).

¹⁴⁹ Levitt, *supra* note 10, at 8 (example taken substantively from this paper).

¹⁵⁰ *Id.*

¹⁵¹ *Hearing, supra* note 43, at 40 (testimony of Stuart Levey).

¹⁵² Friederike Tiesenhausen Cave, *Terror Taskforce Seeks Curbs on Cash Smuggling*, FINANCIAL TIMES, Oct. 25, 2004, at 4.

¹⁵³ Press Release, *supra* note 146.

¹⁵⁴ *9/11 Commission Report, supra* note 12, at 69 (prepared statement of Larry C. Johnson).

counterfeit U.S. currency in circulation worldwide.¹⁵⁵ Recently, one particular “family of counterfeiting” believed to have origins in North Korea, has caused concern because the “sophisticated techniques utilized” are “evidence of a well-funded, on-going criminal enterprise, with a scientific and technical component.”¹⁵⁶ Terrorists counterfeit more than cash.¹⁵⁷ Terrorists will counterfeit anything they can use to finance their activity, even toasters.¹⁵⁸ “Most people know what terrorism is, but few understand the scope and scale of product counterfeiting. Moreover, why would a terrorist want to sell a counterfeit toaster? The answer is simple and direct—money. All terrorist groups . . . need money to plan, organize and conduct terrorist attacks.”¹⁵⁹

IV. CONCLUSION

“Money may not be the root of all evil but it is a critical resource for any group that wants to carry out international terrorist attacks.”¹⁶⁰ Due in large part to the efforts of the Treasury, “[t]he U.S. government is getting increasingly better at using the intelligence revealed through financial information to understand terrorist networks, search them out and disrupt their operations.”¹⁶¹ According to the 9/11 Commission, “[w]hile definitive intelligence is lacking, these efforts have had a significant impact on al Qaeda’s ability to raise and move funds, on the willingness of donors to give money indiscriminately, and on the international community’s understanding of and sensitivity to the issue.”¹⁶² Much work remains to be done. Lee Hamilton, vice chairman

[S]elling counterfeit products . . . is a relatively risk free activity. Even if caught in the act a merchant probably will suffer nothing worse than the loss of the money he spent to purchase the goods and having the counterfeit products confiscated. A merchant rarely is jailed for selling or distributing counterfeit merchandise.

Id.

¹⁵⁵ Barbara Hagenbaugh, *It's Too Easy Being Green*, USA TODAY, May 13, 2003, available at http://www.usatoday.com/money/industries/banking/2003-05-12-newmoney_x.htm. Although the Secret Service, rather than the Treasury, is officially charged with combating counterfeiting, it is relevant to the topic here.

¹⁵⁶ *Hearings*, *supra* note 43 (testimony of Stuart A. Levey).

¹⁵⁷ *Intellectual Property Crimes: Are Proceeds From Counterfeited Goods Funding Terrorism? Hearing Before the H. Comm. On Int'l Relations*, 108th Cong. 1 (2003).

¹⁵⁸ *Id.*

¹⁵⁹ *9/11 Commission Report*, *supra* note 12, at 69 (prepared statement of Larry C. Johnson).

¹⁶⁰ *Id.*

¹⁶¹ *Hearing on Int'l Relations*, *supra* note 9, at 2. (opening statement by Chairman Michael G. Oxley).

¹⁶² National Commission on Terrorist Attacks Upon the United States, 16 http://www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf.

of the 9/11 Commission recently admitted to the House Financial Services Commission that “[a]lthough the trend line is clear, the U.S. government still has not determined with any precision how much al Qaeda raises, or from whom, or how it spends its money.”¹⁶³

Daryl Shetterly

¹⁶³ *Id.*