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NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

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First public hearing of the National Commission on Terrorist Attacks Upon the United States

Statement of Lee S. Wolosky to the National Commission on Terrorist Attacks Upon the United States April 1, 2003

Thank you for inviting me to testify before you today on the subject of terrorist financing. This Commission has been invested with profound responsibilities. It is my honor and privilege to be able to assist you in discharging your responsibilities on behalf of the American people.

BACKGROUND

Unlike state-sponsored terrorist groups, al-Qaeda is financially robust. Having developed multiple sources of support, it is free from the control of any government. As such, it historically has been able to operate from failed or dysfunctional states. Indeed, when it was

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headquartered in both Sudan and Afghanistan, the al-Qaeda terrorist organization provided important financial support to its host state—instead of the other way around.

The construction of al-Qaeda's financial support network constituted a primary source of Osama Bin Laden's personal influence. Unlike other terrorist leaders, Bin Laden was not a military hero, nor a religious authority, nor an obvious representative of the downtrodden and disillusioned. He was a rich financier, both a scion of one of Saudi Arabia's most influential families and a challenger to Saudi Arabia's existing system of governance, distinguished by his ability to organize an effective network.

He built al-Qaeda's financial network from the foundation of a system originally designed to channel resources to the mujahideen fighting the Soviets. It was that network that sustained the organization when bin Laden was forced to move from Saudi Arabia to Sudan, and then again when al-Qaeda was forced to uproot its infrastructure and relocate to Afghanistan.

Al-Qaeda's financial network continues to support the organization today, even after being driven from its Afghan base, and allows it to maintain its capacity to attack Americans at home and abroad.

Thanks to the hard work of the Bush administration over the past 18 months, al-Qaeda's financial network has certainly been disrupted. But it has not been destroyed, and is unlikely even to have been permanently diminished. A great deal of work, therefore, remains to be done. As long as al-Qaeda retains access to a viable financial network, it remains a lethal threat to the United States.

THE NETWORK

The U.S. government has for several years

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worked to build a comprehensive "theory of the case" concerning al-Qaeda's financial network. Through diplomatic, intelligence, regulatory, and law enforcement channels, the United States has gained information about how al-Qaeda's funds are raised, from whom and where; how al-Qaeda's assets are saved, invested, and moved, by whom, and through where; how al-Qaeda's money is distributed to cells in the field; and how al-Qaeda's financial network and operations overlap with those of other Islamic terrorist organizations such as Hamas and Hezbollah.

As a result of this work, we know that al-Qaeda's financial network is characterized by layers and redundancies. Like al-Qaeda itself, al-Qaeda's financial network is notably and deliberately decentralized, compartmentalized, flexible, and diverse in its methods and targets. If al-Qaeda were financed only by Osama bin Laden's personal inheritance, or only by a small number of state sponsors, and if it were only limited in scope to a small area of the globe, or weren't continuously replenishing its coffers, the problem would be much easier to solve. There is not one big pile of al-Qaeda's loot somewhere, waiting to be discovered and confiscated.

Al-Qaeda raises money from a variety of sources and moves money in a variety of manners. It runs businesses operating under the cloak of legitimacy and criminal conspiracies ranging from the petty to the grand. The most important source of al-Qaeda's money, however, is its continuous fundraising efforts.

Al-Qaeda's financial backbone was built from the foundation of charities, nongovernmental organizations, mosques, web sites, fundraisers, intermediaries, facilitators and banks and other financial institutions that helped finance the mujahideen throughout the 1980s. This network extended to all corners of the Muslim world. It included everyone from wealthy gulf Arabs, who could be solicited directly to give huge sums themselves, to the masses, who would make

regular charitable donations as part of their religious obligations, the zakat.

This religious duty-for all Muslims to give at least 2.5 percent of their income to humanitarian causes-is one of the pillars of Islam. But sadly and cynically, al-Qaeda and other Islamic terrorist groups have taken advantage of this enormous source of funds for their own ends. In many communities, the zakat is often provided in cash to prominent, trusted community leaders or institutions, who then commingle and disperse donated moneys to persons and charities they determine to be worthy. These widely unregulated, seldom audited, and generally undocumented practices have allowed unscrupulous actors such as al-Qaeda to access huge sums of money over the years.

Some whose donations go to al-Qaeda know full well the violent and illicit purposes their money will further. In other cases, donors believe their money will help fund legitimate humanitarian efforts, but the money is nonetheless diverted to al-Qaeda. For years, individuals and charities based in Saudi Arabia have been the most important source of funds for al-Qaeda. And for years, Saudi officials have turned a blind eye to this problem.

This is hardly surprising since Saudi Arabia possesses the greatest concentration of wealth in the region; Saudi nationals and charities were previously the most important sources of funds for the mujahideen; Saudi nationals have always constituted a disproportionate percentage of al-Qaeda's own membership; and al-Qaeda's religious and political message has long focused on issues of particular interest to elements of Saudi society.

Once raised in these manners, al-Qaeda's money is moved through a similarly diverse set of mechanisms. The first, and most simple, is the ubiquitous and highly efficient global

financial system, including the interconnected network of banks and other financial institutions that undergird the global economy. For years, al-Qaeda has been particularly attracted to operating in under-regulated jurisdictions, places with limited bank supervision, no anti-money laundering laws, ineffective law enforcement institutions, and a culture of no-questions-asked bank secrecy.

Al-Qaeda also abuses the Islamic banking system, an entirely legitimate form of investment and finance that abides by sharia, or Islamic law, which prohibits the earning or payment of interest. Many prominent Islamic banks operate under loose regulatory oversight, in part because they are based in jurisdictions without proper controls, but also because their religious nature often allows them a greater degree of autonomy owing to obvious domestic considerations. Islamic banks regularly commingle funds from depositors to place them within group investments by fund managers, creating ready opportunities for anonymous money transfers and settlement. Moreover, al-Qaeda and other terrorist groups that use Islam to justify their activities are also more likely to find willing collaborators within the Islamic banking system. There is no reason to believe that al-Qaeda does not find other Islamic financial services, such as insurance or investment management services, to be similarly attractive vehicles for holding and transferring its assets.

Significantly, al-Qaeda also makes good use of the ancient hawala (or hundi) underground banking system, which allows money transfer without actual money movement, or any wire transfer. There is nothing inherently illegitimate about the hawala system-it offers critically needed financial services in many remote corners of the globe, and is used extensively by millions of law-abiding persons. In Pakistan, for instance, government officials estimate that \$7 billion enters the country each year through the

hawala system; the true number is likely to be significantly higher. But its nature also makes it particularly susceptible to abuse by terrorists and other criminals.

Indeed, the hawala system, long dominated by South Asians and serving customers throughout the Middle East, appears custom-made for al-Qaeda. It is a cash business that leaves behind few, if any, written or electronic records for use by investigators in following money trails. It operates out of nondescript storefronts and countless bazaars and souks. It reaches both small villages throughout the region and large cities around the world. It is quick, efficient, reliable, and inexpensive. It draws from a long tradition of providing anonymous services. It is staffed primarily by members of families that have been in this business for generations. And it is almost entirely unregulated around the world-including in the United States. The hawala system often interacts with similar alternative banking systems operating in other parts of the globe, such as fei ch'ien, phoe kuan, hui k'uan, ch'iao hui, and nging sing kek.

And finally, whenever these other methods are unavailable, al-Qaeda can and does rely on the oldest method of moving money: physically transporting it from one place to another. Cash smuggling is rampant throughout the Middle East, abetted by weak border controls and a cash-based culture very unlike the Western credit- and electronic-based economy. Al-Qaeda also moves its assets in the form of precious metals and gemstones, which can be easily and virtually anonymously transferred to cash in countless souks across the region. The gold trade and the hawala system are especially symbiotic, flourishing in the same locales, and offering complementary services to those who are looking to move assets across borders.

RESPONSES

One of the first actions taken by the Bush

administration in the wake of the September 11 terrorist attacks was to target aggressively Islamic terrorism's financial infrastructure, expanding work begun by the previous administration. The responses can usefully be divided into two categories: tactical actions to disrupt individual nodes in the terrorist financial network, and strategic initiatives to change the environment within which terrorists raise and move their funds.

The tactical actions focused mainly in three areas. First, intelligence activities, which had previously been a leading component of U.S. efforts to combat terrorist financing, were stepped up. Second, unprecedented law enforcement efforts were made both at home and abroad, made possible by a newfound degree of cooperation between foreign intelligence and law enforcement agencies. Third-and certainly the most visible aspect of the tactical response-additional public designations under the International Emergency Economic Powers Act (IEEPA) were made of persons, businesses, and financial institutions associated with the al-Qaeda financial network, and that of other terrorist organizations.

These designations meant that specific terrorist-related assets in U.S. banks were blocked and that persons subject to U.S. jurisdiction were barred from doing businesses with designated organizations and individuals. The United Nations followed with similar public designations and UN Security Council Resolution 1390, and many foreign governments followed with similar blocking orders.

The sanctions associated with the designations-and the explicit threat of additional measures to follow-also provided the U.S. government with significant leverage to push foreign governments to investigate or disrupt terrorists' financial networks. In many cases, when confronted with such leverage, foreign governments and foreign institutions have taken

actions that they otherwise would not have been willing to take in respect of suspect organizations, including their closure or consent to comprehensive on-site audits by U.S. government personnel.

Further strategic initiatives were undertaken to help change the environment that facilitates terrorist financial networks. These initiatives were undertaken by Congress, the administration, and the international community.

Congress passed sweeping new anti-money laundering laws as part of the Patriot Act, many of which were quickly and diligently implemented by the Treasury Department. These new laws and regulations established, among other things, new due diligence, recordkeeping, and reporting requirements for domestic financial institutions. The Patriot Act also gave the government new international anti-money laundering tools. The centerpiece of these new legal instruments are the so-called "special measures" enabling the Executive Branch to restrict or prohibit access to the U.S. financial system for states and individual foreign financial institutions that lack adequate anti-money laundering controls. By complicating the access of such states and institutions to the U.S. financial system, this powerful new tool was intended to give the U.S. government additional leverage to persuade foreign countries and foreign financial institutions to improve their anti-money laundering regimes and otherwise cooperate with U.S. efforts to curtail terrorist financing.

The administration has worked with the international community to press forward with various long-term institution-building efforts. These efforts have included multilateral initiatives through the UN Counter-Terrorism Committee (CTC), the International Monetary Fund (IMF), the World Bank, and the Financial Action Task Force (FATF)-a twenty-nine-

member intergovernmental organization established by the G-7 in 1989 to set international anti-money laundering standards. Within the UN system, implementation efforts associated with Security Council Resolutions 1373 and 1377 are helpfully focused on measures intended to assure the technical ability of member states to comply with their international obligations relating to the suppression of terrorist financing.

Some initiatives, such as the FATF's successful "naming and shaming" of international money laundering havens, were up and running before the September 11 attacks. Others, such as FATF's publication of an additional Eight Special Recommendations on Terrorist Financing came immediately thereafter. Further multilateral efforts have recently begun to consider international best practices for the regulation of charities (under FATF auspices) and how to bring the hawala system out from the shadows (initial principles were enunciated in the Abu Dhabi Declaration on Hawala, dated May 2002).

As a result of these multilateral initiatives, a number of countries that had serious problems with terrorist financing have in recent years improved their anti-money laundering regimes by passing new laws and issuing new regulations-in many cases for the very first time.

OBSTACLES TO PROGRESS

Tactical

For outside observers, the tactical actions that have been taken are difficult to evaluate, as much of the subject matter is highly classified. There is substantial reason to conclude that, as a general matter, the United States has received markedly improved cooperation from many key foreign governments, both on law enforcement and intelligence matters. At that same time,

some problems may remain, as, for example, in respect of public designations of individuals and organizations jointly undertaken with Saudi Arabia, which key elements of the Saudi government have publicly criticized and which reportedly may not be being enforced in an effective manner.

Similarly, the general willingness of most foreign governments to cooperate with U.S.-led efforts to block the assets of designated persons and businesses with ties to terrorist financing has been welcome and unprecedented. However, in this area obstacles have emerged and the coalition may be fraying. Some countries have expressed public opposition to U.S. designations, and certain countries have had difficulties implementing blocking orders owing to deficiencies in their technical capabilities or regulatory infrastructure.

America's closest allies in Europe are now publicly complaining that the United States is unwilling to share intelligence on many designated individuals or organizations. As a result, they are refusing to block bank accounts in some cases. Many observers have noted a widening divide between the United States and Europe on the basic salience and parameters of global terrorism. This has repercussions on the financial campaign, and many U.S. allies, as a matter of policy, apply the blocking orders inconsistently. The European Union (EU), for instance, forbids fundraising only for the "military wing" of Hamas-Izzedine al-Qassam Brigades—even though funds raised by other branches of Hamas for purportedly humanitarian purposes are known to be used for terrorist attacks. The European Union does not forbid the Iran-backed terrorist organization Hezbollah from fundraising at all. (The policy divide is even greater in the Middle East, where almost no country characterizes Hamas or Hezbollah as terrorist organizations. Many allow, and even encourage, those terrorist organizations to fundraise on their soil.)

At the same time, the U.S. government has not made full use of all relevant legal and policy tools at its disposal. IEEPA designations-among the most powerful tools in the U.S. legal arsenal-have become less frequent, and have focused primarily on the "low-hanging fruit" in countries like Yemen and Somalia. In late 2002, the new "special measures" provided to the secretary of the Treasury in the Patriot Act to restrict or prohibit access to the U.S. financial system were used for the first time - against Nauru and Ukraine. Neither country is a source of transit country for terrorist finances.

Any weaknesses in the U.S. government's tactical responses to terrorist financing have been exacerbated by the lack of interagency coordination within the U.S. government on these issues. This problem is compounded by the multifaceted nature of the terrorist financing problem, which requires information to be shared both among and between the U.S. diplomatic, intelligence, law enforcement, and regulatory communities.

After September 11, for example, officials from the Treasury Department, the Central Intelligence Agency, and other agencies wrangled over the president's direction to form a Foreign Terrorist Asset Tracking Center. The center was intended to serve as the lead organization within the U.S. government on issues pertaining to terrorist financing. Despite the fact that \$6 million was appropriated and spent to construct facilities for the center within the Treasury Department, after months of bureaucratic infighting the group ended up at the CIA, and the facility constructed to house the center at the Treasury Department stands empty. Relevant law enforcement functions are divided between the Federal Bureau of Investigation (FBI) and enforcement agencies of the Treasury Department, such as Customs. FBI officials complain that they are not adequately apprised of Treasury-led initiatives (such as the

Customs-led "Operation Green Quest"), and vice versa. And coordination problems exist within particular agencies. Since the September 11 attacks, the American public has learned about some of the structural, cultural, and technological barriers within the FBI that prevented certain parts of the organization from getting access to important information held by other parts.

But perhaps most significantly, no official of the U.S. government has been provided with the right mandate and authority to effectively disrupt terrorist financing. Following September 11, a reinvigorated interagency Policy Coordination Committee (PCC) on terrorist financing began operating under the leadership of the General Counsel of the Treasury Department. This organizational arrangement continues today, and for a variety of reasons may not be the best way to direct and coordinate the various diplomatic, law enforcement, intelligence, regulatory, and policy measures that will be required to assure a sustained and effective U.S. response. Intelligence and diplomatic functions, for example, are functions that are not appropriately coordinated by the Treasury Department. And even the most competent General Counsel has pressing statutory and institutional responsibilities unrelated to the suppression of terrorist financing.

The distinguished bipartisan membership of the Council on Foreign Relations' Task Force on Terrorist Financing recommended the appointment of a senior White House official, acting with the mandate and authority of the President, to implement U.S. policy. Underlying this recommendation lay the firm conviction that the task of providing coordination that takes account of a range of concerns and has the imprimatur of the president naturally is done best from the White House rather than from any other agency.

Strategic

Turning to the strategic initiatives to combat terrorist financing, obstacles to effective action appear increasingly insurmountable, at least given the current approach.

Far too many key countries-including virtually all in the Middle East and South Asia-still have in place ineffective or rudimentary bank supervisory and anti-money laundering regimes. In those cases where laws are on the books, implementation has often been weak or nonexistent. The relevant governmental institutions are not well developed, and international law enforcement cooperation has been slow, made inordinately difficult, or simply refused altogether. In no country-including the United States-are either Islamic charities or the underground hawala system effectively regulated.

Progress in these areas has simply not been made a high enough priority. Judging from White House briefings and reported accounts, it has unfortunately become uncommon for the president or the vice president to raise these subjects in bilateral discussions with counterparts from key states. Rather, these discussions have recently been left to working level subordinates, a clear signal of their relative importance to the United States.

Even in those cases in which laws have been passed in recent years, effective implementation in key states has generally not followed-with no adverse repercussions. In 1999, for instance, Saudi Arabia approved amendments to its existing money laundering laws intended to bring it into compliance with international standards, but to date these amendments have not been implemented, according to the most recent State Department reports. Pakistan only recently announced plans to introduce amendments to its Anti-Terrorism Act of 1997 that would, consistent with international

standards, criminalize the laundering of terrorist funds and fundraising by terrorists.

The punitive provisions of the Patriot Act were intended to provide critical leverage over recalcitrant states to assure sustained compliance in these areas. But inexplicably, they have not been used against states or foreign financial institutions that are source or transit countries for the financing of terrorism. In recent years, similar leverage has been obtained by promulgation of a FATF "blacklist" of noncooperative countries in the international fight against money laundering. Within one year of the first such FATF designations in 2000, for example, eight of the fifteen states included on the FATF blacklist took steps to bring themselves into substantial compliance with international standards.

It is unfortunate that the United States has recently avoided full use of these powerful levers of influence. As noted above, the United States has used the punitive "special measures" of the Patriot Act only against Nauru and Ukraine, and has recently abandoned the confrontational approach of FATF "naming and shaming."

Aside from compromising enforcement capabilities, the failure to build institutional capacities has resulted in the neglect of nascent international efforts to develop, analyze, and share financial intelligence. In 1995, international efforts resulted in the formation of the Egmont Group, which was intended to knit together like-minded nations focused on preventing financial crimes through the work of Financial Intelligence Units (FIU) in each member nation. Each FIU would develop and analyze financial intelligence with respect to its jurisdiction and share that information with other member nations, enabling each to develop better intelligence in respect of financial flows beyond its jurisdiction. However, a lack of resources and technical capacity in most

member nations of the Egmont Group has prevented this effort from realizing its theoretical potential. Indeed, America's FIU-the Treasury Department's Financial Crimes Enforcement Network (FinCEN)-is vastly under-resourced and lacks the capacity to serve as the FIU for the U.S. government. Implementation of the Patriot Act will significantly increase the burdens on FinCEN, making resource restraints and effectiveness concerns even more acute.

It would be wrong to say that no progress has been made in building many countries' institutional capacities to cooperate in the global war against terrorist financing. But it would be equally wrong to overstate the progress that has been made-a fault that is too often made by U. S. government spokespersons. In recent years, for instance, it is true that Saudi Arabia has taken several important steps to improve its capability to cooperate on these matters with the United States, for which it should be commended. A hundred more steps and Saudi Arabia may be where it needs to be.

Fundamentally, U.S. efforts to curtail the financing of terrorism are impeded not only by a lack of institutional capacity abroad, but by a lack of political will among U.S. allies. Some have a history of "turning a blind eye" to the problem, some simply do not ascribe the same priority to the issue-or perceive correctly or incorrectly that U.S. attention to the subject has waned. Some fear the domestic political repercussions of taking action, and some simply disagree with the U.S. view of the nature and severity of the problem.

Confronted with this lack of political will, the administration appears to have made a policy decision not to use the full power of U.S. influence and legal authorities to pressure or compel other governments to combat terrorist financing more effectively.

War with Iraq

I support the war in Iraq. At the same time, I am concerned about the possible effects of the war on the nature and extent of counterterrorism cooperation that the United States can expect to receive from other countries.

Even supporters of the war must concede that the United States has not effectively justified the war to many members of the international community. Traditional allies remain unconvinced, much less the Arab street. The Azores summit - in the middle of the ocean with two states smaller than the state of Texas - was symbolic of American isolation.

This state of affairs stands to set back ongoing U.S. efforts to fight terrorism. I hope that these remarks have helped to demonstrate the extent to which terrorist financing is a transnational problem requiring transnational solutions. In almost all cases, the money trail leads or originates overseas. Curtailing terrorist financing therefore requires comprehensive law enforcement and intelligence cooperation with foreign liaison services. Political commitment defines the nature and scope of that cooperation. An internationally unpopular war with Iraq will make the necessary commitment more difficult.

Sustaining the necessary diplomatic, intelligence and law enforcement cooperation with foreign states may prove to be an underestimated challenge. The death and destruction attending Saddam's removal may radicalize millions of young Muslims. It may complicate the ability of moderate Arab regimes - and even our traditional allies -- to cooperate with the United States on matters such as the financing of terror.

At the same time, the diplomatic imperatives of fighting a war in Iraq have bumped terrorist

financing down the bilateral agenda with critical front-line states. By all external indications, the Saudis and other front-line states have not taken sufficient steps to change the strategic environment that funds extremism. Appropriate regulation of charities, hawala and the formal banking system, along with the reigning in of the madrassa system, among other things, requires a fundamental commitment to long-term structural reform. While laws, regulations and decrees are difficult to come by, there is no credible evidence that comprehensive structural reform is taking place.

And yet we do not appear to be holding the Saudis' feet to the fire. Rather than speaking out loudly and forcefully about their and other states' continued failure to take steps necessary to assure U.S. national security, the United States remains publicly silent - no doubt captive to the near-term diplomatic prerogatives of assuring the basing and overflight rights, and the petroleum production commitments, that are necessary or desirable to fight the war.

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Mr. Wolosky served at the White House under Presidents Bill Clinton and George W. Bush as Director for Transnational Threats on the National Security Council staff. The Office of Transnational Threats coordinated U.S. government policy relating to terrorism, international crime (including financial crime), domestic preparedness and critical infrastructure protection.

At Boies, Schiller, Mr. Wolosky represents a range of public and private companies in mergers and acquisitions, private equity transactions, commercial disputes and crisis

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Prior to his service at the White House, he served as the Deputy Director of Council on Foreign Relations' Economic Task Force on Russia, was associated with the international law firm of Paul, Weiss, Rifkind, Wharton & Garrison and served as a member of a team of Harvard University advisors to Mikhail Gorbachev. In 2002, he served as co-director of the Council on Foreign Relations' Task Force on Terrorist Financing.

Mr. Wolosky is a cum laude graduate of Harvard Law School and a magna cum laude graduate of Harvard College. At Harvard Law School, he was an Editor of the Harvard International Law Journal and a recipient of the Frederick Sheldon Traveling Fellowship. At Harvard College, he was a recipient of the John Harvard Scholarship and the Harvard College Scholarship.

He is a member of, and Director of Strategy for, the Center for Emerging National Security Affairs (CENSA), a founding member of Next Generation Democrats and a member of the Alliance for American Leadership (AAL). He is a regular foreign affairs analyst on Fox News and other news programs, including CBS Evening News, MSNBC's "Hardball with Chris Matthews," BBC World Service and CNBC's "Capital Report." His articles have appeared in Foreign Affairs, Los Angeles Times, and the International Herald Tribune, among other publications.

National Commission on Terrorist Attacks Upon the United States
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