S. HRG. 108–765

NOMINATIONS OF JOHN O. COLVIN, STUART LEVEY, AND JUAN C. ZARATE

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF

JOHN O. COLVIN, TO BE JUDGE, U.S. TAX COURT, THE JUDICIARY; STUART LEVEY, TO BE UNDER SECRETARY FOR ENFORCEMENT, U.S. DEPARTMENT OF THE TREASURY; AND JUAN C. ZARATE, TO BE ASSISTANT SECRETARY FOR TERRORISM FINANCING, U.S. DEPARTMENT OF THE TREASURY

MAY 19, 2004

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE

95–478—PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
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NOMINATIONS OF JOHN O. COLVIN, TO BE JUDGE, U.S. TAX COURT, THE JUDICIARY; STUART LEVEY, TO BE UNDER SECRETARY FOR ENFORCEMENT, U.S. DEPARTMENT OF THE TREASURY; AND JUAN C. ZARATE, TO BE ASSISTANT SECRETARY FOR TERRORISM FINANCING, U.S. DEPARTMENT OF THE TREASURY

WEDNESDAY, MAY 19, 2004

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

The hearing was convened, pursuant to notice, at 11:16 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the committee) presiding.

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

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

The CHAIRMAN. We have three nominees here today. First, we have John O. Colvin, who is being re-nominated to the U.S. Tax Court. Judge Colvin, we are very glad to have you. We are going to take you first, and then go on to the other nominees.

Judge Colvin, I want to, first, express how pleased I am to see you before us and re-nominated to the Tax Court. We have a long tradition in the Tax Court that Tax Court judges who have served the Nation well would be re-nominated, and you obviously fall into that category or you would not be here.

You have served admirably in that position and I am delighted that the administration, after some second thoughts, decided to agree with some of us and send your nomination back up here.

I am going to ask three standard questions that we ask all nominees, and then ask you to answer them.

But before I do that, Judge Colvin, do you have family that you would like to introduce?

Judge COLVIN. Yes. Thank you, Mr. Chairman. My wife, Ava, is in the second row on your right.

The CHAIRMAN. All right. Thank you, Mrs. Colvin.

Did you have any statement you wanted to make before I ask you the three standard questions that we ask you?

Judge COLVIN. If I may, a very short statement.

The CHAIRMAN. Go ahead.

STATEMENT OF JOHN O. COLVIN, TO BE JUDGE, U.S. TAX COURT, THE JUDICIARY, WASHINGTON, DC

Judge COLVIN. First, I want to express my appreciation to the President for nominating me for a second term as a Tax Court judge. Second, I was Chief Counsel here in 1985 and 1986 when Senator Packwood chaired the committee, and I will always be grateful that he gave me the privilege of working for this exceptional committee.

Third, and most important, thank you for all of the time and attention you have taken on several matters relating to the Tax Court. This committee recently approved the Tax Court Modernization Act, which is very important to our court. We appreciate your work, Mr. Chairman, Senator Baucus, Senator Hatch, and Senator Breaux, and the entire committee on that project.

Over the years, you have routinely expedited the confirmation of persons nominated to serve as judges on our court, both initial appointments and reappointments. You did this again last year with the quick confirmation of our five newest judges, Judges Haynes, Goetke, Warey, Kropa, and Holmes, and your inclusion of me in this panel today fits that generous tradition.

Our court could not ask for better consideration than you have shown us, and we could not ask for more knowledgeable and professional staff members than those assigned to matters affecting our court, such as Dean Zerbe, Mark Prater, Pat Heck, and Anita Horn-Rizek. I deeply appreciate everything each of you has done for the Tax Court. Thank you, Mr. Chairman.

The CHAIRMAN. Now, answer these questions. And you understand from your work on this committee these are standard questions we ask every nominee.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Judge COLVIN. No, Mr. Chairman.

The CHAIRMAN. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Judge COLVIN. No, Mr. Chairman.

The CHAIRMAN. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly-constituted committee of Congress, if you are confirmed?

Judge COLVIN. Yes, I do, Mr. Chairman.

The CHAIRMAN. I would like to take this time to ask you to tell us what issues you see coming before you in the Tax Court that you believe should be the subject of further study or consideration by the Finance Committee. Judge Colvin?

Judge COLVIN. Well, your good work on the Tax Court Modernization Act has put that in a position to be enacted this year. For that, we can only say thank you.

Internally, we have just completed an electronic courtroom, which will be a benefit to parties presenting larger cases, and also

allow more video conferencing, which will be helpful because our parties can be found throughout the United States.

We are embarking on a project to introduce electronic filing, which will be important for all of our parties. Taxpayers and the IRS are still identifying issues relating to some of the provisions enacted in 1998 that affect tax procedures, so those novel issues are still occupying some time at our court.

Maybe the most basic point I could make, is even though we are a trial court and we hold trials in 70 cities in the country, we are also a very collegial court, perhaps uniquely among the Federal trial bench.

Our judges review each other's cases before they become public, and our chief judge can decide that a case would be voted on by all of our judges before it is filed. The purpose of that process is so that we produce a consistent body of law consistent with our statutory purpose.

The CHAIRMAN. Senator Kyl or Senator Hatch?

Senator KYL. I have no questions.

Senator HATCH. I have no questions. Just, congratulations, Mr. Colvin. You are a very fine judge and we appreciate having you on the bench. I am very happy to support your nomination.

Judge COLVIN. Thank you very much, Senator Hatch.

The CHAIRMAN. Judge Colvin, you may leave now if you want to. You can stay if you want to, too.

Judge COLVIN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

I have introduced the two nominees in my opening statement. I have repetitive things to say here, so I am not going to go through those now.

I want to welcome Mr. Levey and Mr. Zarate to the committee and congratulate you on your nomination. I would ask you, before you make your respective statements, if you have family you would like to introduce.

Mr. LEVEY. Thank you, Mr. Chairman, I do. My wife Annette is here, as well as my nephew Brian, my mother, Karen Nackes, my stepfather, Emmanuel Nackes, and my mother-in-law, Lotte Hamburger are all here with me.

The CHAIRMAN. All right. Welcome to all of you. Congratulations for your family.

Mr. Zarate?

Mr. ZARATE. Mr. Chairman, thank you very much. I have with me my wife Cindy and my parents, Isabel and Alfredo, as well as my brother, Alfredo, Jr., as well as some very close friends and staff. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Now, Mr. Levey and Mr. Zarate, if you have a short statement we would be glad to receive it, and then I will ask you questions.

STATEMENT OF STUART LEVEY, TO BE UNDER SECRETARY FOR ENFORCEMENT, U.S. DEPARTMENT OF TREASURY, WASHINGTON, DC

Mr. LEVEY. Thank you, Mr. Chairman.

Mr. Chairman, Senator Hatch, Senator Kyl, thank you for the opportunity to appear before you today. It is truly an honor for me

to be here in this capacity as the nominee to be Under Secretary for Enforcement and proposed head of the new Office of Terrorism and Financial Intelligence at the Treasury Department.

I am enormously grateful to the President, Secretary Snow, and Deputy Secretary Bodman for the confidence they have shown in me by selecting me as the nominee.

I also want to thank Mr. Winer and Mr. Myers for their very thoughtful testimony here today. I hope that, if I am fortunate enough to be confirmed, I will still be able to call upon them for their advice, which is substantially valuable.

Most important of all, I want to thank my family, and particularly my wife Annette, for the sacrifices she has made to allow me to pursue opportunities in public service. She is the perfect wife, my best friend, a fantastic mother to our two children, and on top of that is a very dedicated public servant at the National Institutes of Health.

I would also like to thank my parents for their lifetime of support and encouragement. I am very happy to have my mother and stepfather here today with me.

I am very, very much mindful of the enormous responsibility that would be before me if I were to be confirmed for this position. Almost every morning, a group of us gets together with the Attorney General, Deputy Attorney General, and Director Mueller to go over what has happened in the last 24 hours in the war on terror.

We go over the most significant threats facing us at home and abroad. Even after doing this for so many months, I still find it chilling every morning to hear about people who spend every waking hour trying to figure out how they can kill as many innocent people as possible.

It is chilling, but in a sense it is motivating, too, because I never have to think, when I wake up in the morning, why am I going to work. There really is so much at stake in fighting this war on terror, and that brings it home to me every morning.

Of course, one of the must urgent tasks we have before us is to stop the money going to terrorist organizations. Terrorists obviously need money to operate. They need it to communicate, they need it to travel, they need it to bribe corrupt public officials, and, of course, they need it to carry out attacks. Whenever we cut off their supply of money, we make them less effective.

On another level, as we have heard from the panelists today, the intelligence that we get from the money trail is sometimes the most valuable thing about the financial efforts that we make against terrorism.

There are times when watching where the money comes from and where it goes is our most valuable strategy, more valuable than taking immediate public action to stop it.

We have to adapt our strategy in each circumstance to do what is best for the overall counter-terrorism mission. We have to understand that the terrorist financing mission is part of the overall war on terror. That is one reason why a coordinated, interagency approach to the terrorist financing effort is so important to our success.

Within that coordinated effort, the Treasury Department has a unique leadership role to play in the financial war on terror. Work-

ing with other agencies around the government, the Treasury Department has made substantial progress, as we have heard, on the war on terror since September 11th.

That is a testament, I think, to the great team they have working on these issues there, including Juan Zarate. They are among the most dedicated and talented public servants that you will ever meet. If I am confirmed, I will be joining a very talented team.

I think that team would be the first to tell you, however, that there is much, much more work that needs to be done, and I agree with many of the observations made by Mr. Winer and Mr. Myers in that respect.

If I am confirmed, I hope I can reenergize the terrorist financing mission at the Treasury Department. It needs to be reenergized because our enemies remain as committed as ever to killing innocent people, and as this committee has pointed out, we are no longer able to concentrate on low-hanging fruit in this financial war on terror. It is getting harder and harder as we go along, but all the more important.

I am aware that there are substantial challenges before us. If I am confirmed, I look forward to working with you on these important issues and would be happy to answer any questions that you have.

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

The CHAIRMAN. Mr. Zarate?

STATEMENT OF JUAN C. ZARATE, TO BE ASSISTANT SECRETARY FOR TERRORISM FINANCE, U.S. DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. ZARATE. Chairman Grassley, Ranking Member Baucus, Senator Hatch, Senator Kyl, it is an honor for me to be before you today. It is, indeed, a privilege to have been nominated by the President for the position of Assistant Secretary for Terrorist Financing at the Treasury Department, and I thank him, Secretary Snow, and Deputy Secretary Bodman for their confidence in me.

Mr. Chairman, the positions for which Mr. Levey and I have been nominated form an important part of our country's long-term strategy in the war on terror. This administration has waged an unprecedented campaign against terrorism and the financing that fuels these horrendous acts.

This is not just an American problem born on September 11. From the railway bombings in Madrid and Moscow, to the commercial center attacks in Istanbul and Casablanca, we have seen that terrorism does not discriminate among race, religion, or national origin.

Mr. Chairman, when I came to Washington as a Federal prosecutor, I was immersed quickly into the threat of al Qaida and the threat to our country. One of my first assignments was to assist in the prosecution of those responsible for the American embassy bombings in East Africa.

I further confronted the unabated viciousness of al Qaida as a prosecutor in the investigation of the murders of 17 of our countrymen and women on the *USS Cole*.

Just days after I began work at the Treasury Department on August 27, 2001, our world and our mission changed forever. Since

September 11, I have been privileged to form part of the U.S. Government effort to attack the financial underpinnings of terrorism.

Mr. Chairman, I am particularly honored to have worked with Mr. Levey on these issues over the past several months, and am grateful, if confirmed, for the opportunity to work more closely with him, and for him.

We have achieved important successes at home and abroad in the mission to bankrupt terrorism, Mr. Chairman. It is now harder, costlier, and riskier for al Qaida and other like-minded terror groups to raise and move money around the world.

We have frozen and seized terrorist assets, exposed and dismantled known channels of funding, deterred corrupt donors, arrested key facilitators, and built higher hurdles in the international financial system to prevent abuse by terrorists. These efforts have tightened the financial noose around al Qaida's neck.

Mr. Chairman, I am very proud that this work has been undertaken while our other efforts to combat money laundering, attack financial crimes, and enforce sanctions have also intensified.

I would like to share with you, if possible, just a few of our actions over the past several days which serve as good examples of the steady and important work that Treasury continues to produce.

Just yesterday, in furtherance of our efforts to expose Saddam Hussein's financial web, we designated an additional six individuals and two companies that served as agents and fronts for Uday Hussein.

Since March 2003, when Secretary Snow launched our campaign to find, freeze, and repatriate Iraqi assets stolen by the Hussein regime, we have worked with our international partners to freeze approximately $6 billion around the world and return to the Iraqi people over $2.7 billion.

On Friday, Treasury shared, through our Asset Forfeiture Office, over $2.5 million with the governments of Australia, Canada, and Switzerland for their assistance in money laundering investigations led by the IRS and the Bureau of Immigration and Customs Enforcement.

Last Thursday, the Treasury's Financial Crimes Enforcement Network, along with the Office of the Comptroller of the Currency, levied a record fine of $25 million against Riggs Bank for failure to comply with provisions of the Bank Secrecy Act.

Last Tuesday, the Secretary of the Treasury designated the Commercial Bank of Syria as a primary money laundering concern under Section 311 of the PATRIOT Act.

As a result, the Secretary ordered a closing of their correspondent accounts because of that bank's complicity in dealing with the Hussein regime, its weak money laundering practices, and suspicions of terrorist financing through the institution. This is but a mere snapshot of the important work the Treasury accomplishes every day.

The need for this type of intensive and consolidated work in the long term is why this administration, in concert with Congress, decided to create the Office of Terrorism and Financial Intelligence.

TFI, as it will be called, brings under one umbrella the intelligence, enforcement, diplomatic, policy, and regulatory resources of

the Treasury. This will allow us to best utilize Treasury authorities in the advancement of our National security interests.

Mr. Chairman, this is important because we know that we are in the midst of a real and protracted struggle against terrorism. We will not tire in our mission to find and incapacitate those who underwrite terror.

We will continue to use all of our authorities, relationships, and expertise to attack the sources, conduits, and proceeds of such crimes. TFI will allow us to sustain these efforts for the long term.

Finally, Mr. Chairman, as I introduced earlier, I am very grateful to have with me my family. It has been both a dream and an expectation of my parents, who emigrated from Mexico and Cuba in the 1950's in search of freedom and opportunity, that my siblings and I serve this country.

If confirmed, I hope to continue to serve this President and Secretary Snow with an unwavering commitment and a deep passion for these issues, and to work with this committee and other committees of Congress to advance our National interests.

Thank you.

The CHAIRMAN. Thank you.

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

The CHAIRMAN. Each of you respond to these specific questions: is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated? Mr. Levey?

Mr. LEVEY. No, sir.

The CHAIRMAN. Mr. Zarate?

Mr. ZARATE. No, Mr. Chairman.

The CHAIRMAN. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated? Mr. Levey?

Mr. LEVEY. No, sir.

The CHAIRMAN. Mr. Zarate?

Mr. ZARATE. No, Mr. Chairman.

The CHAIRMAN. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly-constituted committee of Congress, if you are confirmed? Mr. Levey?

Mr. LEVEY. Yes, I do, sir.

The CHAIRMAN. Mr. Zarate?

Mr. ZARATE. Yes, sir.

The CHAIRMAN. In regard to that last point, I find a lot of problems getting answers to letters from bureaucracies, not pointing out just yours, and it always seems like we have to have three or four follow-up letters to get the information we sought in the first letter. So, any way you could respond in the first letter to every question we ask you, I would appreciate it.

Mr. Levey, combatting terrorism financing cuts across all sorts of agencies of government. Who is in charge of the war on terrorism financing? Who is the leader who wakes up every day and thinks about stopping terrorism financing?

If this leader is going to be at the National Security Council at the White House, where is the focus? If we do not, we may have

to legislate some leadership, and one option would be to put Treasury at the top. So, would you address those three points? Be quick.

Mr. LEVEY. I would be happy to, Mr. Chairman. As I mentioned in my opening statement, I think it is important to remember that terrorism financing is part of the overall war on terror, so there needs to be coordination with the overall effort, not simply the financial effort.

I also think that, no matter how we structure this, as you mention in your question, terrorism financing is going to remain a team effort, is going to be an interagency effort.

Having said that, I do believe that the Treasury Department is well placed to be the leader on the financial side of the equation. It has all the authorities that Juan Zarate mentioned in his opening statement and it can bring those things to bear on the terrorism financing equation. There obviously needs to be better work done in terms of exercising those authorities.

Having said that, though, I think it is critical that we remember that, in order to exercise leadership on the terrorist financing equation, it is critical that whoever is in the lead be viewed as, and actually act as, an honest broker. I liked Senator Kyl's allusion to the purple force, which I think makes a lot of sense.

If the Treasury Department is to lead this effort and they are viewed as favoring their own authorities rather than doing what is best for the overall war on terror, then they will not be able to lead the overall effort because they will not have the credibility.

I think Mr. Myers made a perhaps somewhat facetious point about the need to make sure that the Treasury Department does not, because they have a hammer, view every problem as a nail.

I think the serious point underlying that, is that we need to make sure that we are doing what is best for the overall mission, whether it be exercising a Treasury authority or some other agency's authority.

The CHAIRMAN. We have been, through this committee, trying to understand what happens to Treasury's contribution of fighting terrorism financing at the Policy Coordinating Committee.

We do not have a clear picture of what is happening, partly because the administration stands behind executive privilege of the process, keeping things secret. It makes it difficult for us to oversee the war on terrorism financing.

If we cannot find out what is happening, we may have to legislate some reporting requirements. I would prefer not to do that. But I would really encourage both of you to think about ways Treasury can report on what happens to this information at the committee, and tell the National Security Council we need to know more about it.

Is it possible for you to do that and respond accordingly if you can do something in that direction, or if you see that as a possibility?

Mr. LEVEY. Well, Mr. Chairman, I would be happy to examine the problem. I think you do highlight one of the concerns about issues being discussed within the National Security Council and the difficulty that the Treasury Department has unilaterally to discuss what issues are taken up in meetings there.

But having said that, I would be happy to work with you and your staff to come up with a way to be able to give you as much information as possible in this regard.

The CHAIRMAN. There might have to be something that is kept secret, but not everything has to be secret.

On another point, this committee has been investigating potential terrorism financing of the Saudi embassy, of Riggs Bank, et cetera. This situation is alarming.

Obviously, the fine last week emphasizes the alarming aspect of it. It is because we have a respected bank in our backyard that allows very suspicious activity not just to happen, but to go on for a long period of time.

I commend the Treasury Department for the fine. I would like either of you, or both of you, to address this point. As bad as the Riggs Bank is, it was only the middle man. The source of money and where it goes are the key issues.

So, first, what is being done to track down the various alarming pieces of information in the Suspicious Activities Report that Riggs eventually filed? This information has strong indications of potential support of terrorism, both groups as well as individuals. What is Treasury's role in tracking it down?

A second overall question. The Riggs episode exposed the dangers of relying on bank self-reporting. What is Treasury doing to monitor the financial activities of foreign entities, especially embassies, inside the United States?

Third, and last, what is Treasury going to do, along with the bank regulators, to make sure problems like this do not go on for so long into the future?

Mr. Zarate?

Mr. ZARATE. Mr. Chairman, with respect to ongoing efforts and investigations with respect to the accounts in Riggs, I am not in a position to discuss those activities. But what you have mentioned were wholesale, systematic failures at the bank with respect to monitoring embassy accounts and reporting the suspicious activity attendant to those.

I think it bears mentioning, Mr. Chairman, that those reports are mere leads. They are certainly not proof of malfeasance or criminal activity in and of themselves, but they are certainly important lead information that the law enforcement community is looking at.

The CHAIRMAN. The point is, are you following up on those?

Mr. ZARATE. Yes. Yes, we are, Mr. Chairman. We are working with the FBI. Again, I am not sure it is appropriate in this setting to discuss the details of that.

With respect to what we are doing with the regulators, we are, in fact—and as Deputy Secretary Bodman pledged to the Senate Banking Committee a couple of weeks ago—working with the regulators to determine if the current system, and the current system in terms of auditing as well as oversight with respect to banks, is appropriate and whether or not we are, in fact, engaged as aggressively as we need to be.

We have certainly engaged the functional regulators over the past 2 years since 9/11 and they have done a very good job, and

we think the banks have done a very good job internally, expending quite a bit of resources to deal with this issue.

But the question still remains, can there be more done? That is something that the Deputy Secretary has taken upon the Treasury, as well as the larger interagency community, to look at.

Finally, Mr. Chairman, I just wanted to note that with respect to the politically exposed person issue which Mr. Winer ably addressed earlier, we are, in fact, looking at finalizing a rule for Section 312 by the end of June.

That is an extremely complicated rule, one that I would dare say is probably the most complicated out of the series that we have put out since 9/11 and since the passage of the PATRIOT Act. But I think that will go a long way in terms of setting forth what due diligence is required for those types of accounts that are held by embassies.

The CHAIRMAN. Mr. Levey, do you have anything to add to what he said in regard to the three questions I asked?

Mr. LEVEY. The only thing I would add, Mr. Chairman, is that I do think it is important to look at examples of non-compliance like this and take them very seriously. One of the things that is important in this overall effort, is that we go abroad and demand from other countries that they not just pass laws, but they enforce them.

In order for us to have credibility in that respect, we need to make sure we are doing our own work at home. So, I commend all the things that are already happening, and we have to make sure we are doing as good a job as we can.

The CHAIRMAN. Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

I do not know who to ask this question of, whether Mr. Zarate or Mr. Levey. But how do you triage your assets? I mean, how do you set priorities? What are the priorities with the resources that you have? What goes where?

Mr. ZARATE. Senator Baucus, I think the first priority, without a doubt, at the Treasury Department on these issues is dealing with terrorist financing, disrupting and dismantling the sources of terrorist financing.

I know, Senator, that you mentioned in your remarks the resources applied at OFAC. Forty percent of the resources at OFAC are devoted to terrorist financing. That includes looking at al Qaida and other terrorist groups around the world.

Thirty-five percent are devoted to the state-based programs and enforcement sanctions that OFAC is charged to administer. Now, with the new Syrian sanctions there will be 28 sanctions programs, everything from Burma, all the way to Zimbabwe. So, we have quite a bit of triage to do.

Senator BAUCUS. Was I accurate when I said several weeks ago, or a couple of months ago with others, that by far most of your OFAC personnel are devoted to Cuba rather than to Osama bin Laden or Saddam Hussein's money?

Mr. ZARATE. Senator, I think the numbers that were used to provide that conclusion were a bit skewed because they did not have incorporated all of the numbers and all of the FTEs and resources devoted to terrorist groups. We have just provided to the Chair-

man, and to you as well, a breakdown of the resources that apply to terrorism.

Senator BAUCUS. What terrorism activity have you found in Cuba?

Mr. ZARATE. Well, as you know, Senator Baucus, Cuba is a state-sponsor——

Senator BAUCUS. I am asking, what have you found, what evidence? What have you found?

Mr. ZARATE. Well, certainly historically there have been activities supported by the Castro regime in Central America and in South America. Specifically, I can mention support for the Basque terrorist group ETA.

Senator BAUCUS. I am talking about recently. What dates within the last year? What evidence do you have of terrorism within the last year? Evidence.

Mr. ZARATE. The Castro regime continues to harbor ETA members. That is a Basque terrorist group.

Senator BAUCUS. That is a conclusion. I am talking about evidence. What evidence do you have?

Mr. ZARATE. Well, Senator, I——

Senator BAUCUS. Do you have dollars? Do you have numbers? Do you have dates? Do you have people?

Mr. ZARATE. There are people, Senator. We would be happy to provide that for you. I do not have that at hand.

Senator BAUCUS. Would you? I would like it, because frankly I think this is too ideological. Your resources are based on ideological reasons, not on ways to help actually fight terrorism where terrorism occurs.

Mr. ZARATE. We would be happy to provide that for you, Senator.

[The information appears in the appendix.]

Senator BAUCUS. So you say that is not the case?

Mr. ZARATE. No. As I mentioned, Senator, in terms of the resources at OFAC—and it bears mentioning that OFAC is only one of the components and resources that we use.

Senator BAUCUS. No. But how much resources do Cuba, how much do other efforts out of the 40 percent that you mentioned?

Mr. ZARATE. Forty percent is——

Senator BAUCUS. No, the 40 percent aside. I am talking about the rest, the 35 percent you talked about. How is the 35 percent allocated?

Mr. ZARATE. I think the 35 percent—I would need to go back and look, Senator. But I think——

Senator BAUCUS. Oh, you must have some sense.

Mr. ZARATE. Well, absolutely. The Cuba sanctions require quite a bit of resources, given the proximity of Cuba, given the nature of the travel rules and the remittance rules that we are charged to enforce. So, certainly that is a major bulk of the 35 percent in the state programs.

Senator BAUCUS. Well, I think your assets are very disproportionate and I think, honestly, it is based on ideology, not on terrorism. I would like to see the evidence. I would like to see you submit to our committee evidence of terrorism.

I mean evidence, not just your ideological belief. Evidence of terrorism against this country. We certainly know Osama bin Laden

is a terrorist. We certainly know that al Qaida is terrorists. I have not seen any terrorism activities reported with respect to Cuba, have you?

Mr. ZARATE. In fact, with respect to the Basque terrorist group, I have, Senator. That is public information.

Senator BAUCUS. The Basque terrorist group in Spain?

Mr. ZARATE. In northern Spain, the Basque terrorist group ETA. Exactly.

Senator BAUCUS. Well, then what about towards the United States?

Mr. ZARATE. I would have to——

Senator BAUCUS. Are you aware of any? It sounds like you are not, towards the United States.

Mr. ZARATE. Senator, again, I would have to get back to you. The State Department certainly has some information on that.

Senator BAUCUS. But you apparently do not have any.

Mr. ZARATE. Well, Senator, again, I think the larger sanctions issue with respect to Cuba is not just based on terrorism, and I think that bears mentioning with respect to all of the country-based programs. We are not just talking about terrorism, we are talking about national security interests, not only with respect to Cuba, but with respect to Burma, Zimbabwe, and others.

Senator BAUCUS. All right. All right. I am out of time here.

What should the benchmarks be? I asked a previous panel how well we are fighting terrorism. What should the benchmarks be?

Mr. LEVEY. Senator Baucus, this is a difficult question and one that I have thought a lot about. I would agree with what Jody Myers said in the earlier panel.

The most valuable way to measure our success in terrorism financing is intelligence information that tells us what impact we are having on the terrorist organization that we are targeting. That is obviously hard to come by. They do not publish—I do not mean to be glib—financial reports, so we have to go on snippets of information.

But, absent that information, then we have to turn to benchmarks that are not nearly as valuable. What I am concerned about here is, if we judge the Treasury Department's performance on this issue by statistics, we do not want to create skewed incentives to build up——

Senator BAUCUS. Well, Mr. Chairman, I suggest sometime, maybe working with the Department, we develop those benchmarks so we all know what they are, but something definite so we can measure progress. We cannot do it this moment, but I would suggest, Mr. Chairman, that maybe the Department could send some ideas to the committee and the committee could then look them over somehow.

The CHAIRMAN. As Chairman of the committee, I would be glad to follow up on that. Yes.

Senator BAUCUS. I have more questions, Mr. Chairman, but my time is up. I hope there is another round.

The CHAIRMAN. There will be another round.

Senator Graham?

Senator GRAHAM. Thank you, Mr. Chairman. Let me say, I thought Senator Kyl had a very good suggestion relative to having

a closed session where we can go into some of these issues such as those that Senator Baucus has just talked about, as well as others.

The CHAIRMAN. I will have my staff follow up with your staff, Senator Kyl's staff, Senator Baucus's staff, and try to delineate what we need along that line to have sort of a members' briefing. We could have that.

Senator GRAHAM. And I would suggest, since the result of such a briefing might well be some ideas about, what is the appropriate allocation of Federal resources to deal with this issue, that if we could do it before we got into the appropriations process so that we might be able to influence the appropriations process, that would be good.

The CHAIRMAN. And we had our first panel suggest more resources being needed as well.

Senator GRAHAM. I was concerned by one thing that the first panel suggested, and that is that the stripping out from the Treasury Department of some of its Customs and Secret Service activities had reduced the capacity of the Treasury Department to be as effective as it might otherwise be in following terrorist financing.

Would you concur with that concern, and if so, or if not, do you have any recommendations as to what should be done organizationally within the Treasury Department to ensure that it continues to have the capabilities that are necessary for following terrorist financing?

Mr. LEVEY. Senator Graham, I will take that one on. I think that, by and large, the mission of the Treasury Department—I perhaps should start by saying this is a viewpoint from the Justice Department, where I am currently an official.

I am not at the Treasury Department, so I do not have sort of an inside feel. But, by and large, I do not think that the Treasury Department's mission on terrorism financing has been harmed, at least not in a permanent way, by the Homeland Security reorganization.

Having said that, I do think—and I have followed the dialogue between this committee and obviously read the Chairman's and Senator Baucus's letter to the President on this issue—we need to look to make sure that we are using what resources we have as effectively as possible.

Are there creative ways to work with the IRS through some sort of strike force/task force arrangement, as alluded to by the prior panel, to get targeted law enforcement attention on particular issues? Or it may not even be law enforcement. It may be regulating that needs to be done. It does not need, necessarily, to be a person carrying a gun, is what I am getting at.

But before we turn to the solution of adding more resources, I think we owe it to everyone to make sure we are doing what we can, as best we can, with what we have got.

Senator GRAHAM. Could you do an assessment of whether—not the resource changes—but the organizational changes that have taken out some of the enforcement capability that previously resided in the Treasury, does that require some additional reorganization within the Treasury itself so that we do not end up creating a big rip in your ability to conduct effective terrorist financing investigations?

Mr. LEVEY. I think it does. I think that is part of what this new office is intended to do. The most salient point of this new office, is the Assistant Secretary that is not yet nominated, at least most salient in response to this question.

Senator BAUCUS. Intelligence. Intelligence.

Mr. LEVEY. Intelligence. Exactly. We are going to create an intelligence office that will integrate the Treasury Department into the intelligence community in a way that it never has been before.

I know that is an issue that you are intimately familiar with, Senator Graham. That is really the best way to keep the Treasury Department on track in fulfilling its mission. That is a reorganization, I think, that is aimed precisely at adjusting to the new array of law enforcement agencies.

Senator GRAHAM. Let me just conclude with a compliment to the Treasury Department. As I had indicated in an earlier question, there had been a lot of difficulty with the FBI getting information on Riggs Bank.

From my sources, they say that it was when the Treasury became involved in that inquiry that we began to generate the sort of information which has now led to a $25 million fine against that bank for its failure to comply with the requirement of reporting of unusual transactions.

I want to commend the Treasury for its good work in that area. I think that indicates the importance of the Treasury as a key governmental agency in creating a deterrent against funding of terrorists, and then when that deterrence has failed and there has been such support, finding it out and holding people to serious account.

The CHAIRMAN. Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman. I do not have any questions. I know Mr. Levey very, very well. I have tremendous confidence in him and know how honest and decent he is, and how very effective and knowledgeable he is.

I also know of Mr. Zarate and have a very high opinion of him as well. I think we have two good people here for their respective positions, and I just hope this committee will unanimously approve them.

Thank you.

The CHAIRMAN. Senator Baucus and I have a couple more questions, and maybe other people do, too.

I raised with our first panel the issue of Treasury's voluntary guidelines of best practices for U.S.-based charities. I would ask you both how you view this issue, and whether having voluntary guidelines is the best long-term fix or whether we need to have established principles on which charities would be required to comply.

In addition, I would ask for your views on how serious a problem that is, or potentially is, of charitable dollars being used for inappropriate activities like we are talking about today, terrorism.

Mr. ZARATE. Thank you, Mr. Chairman. I think, to address your last question first, I think it frames the issue quite well. In our designations of now 368 individuals and entities under the President's Executive order, we have designated well over 25 non-government organizations or charities that we have shown and seen to be supporting al Qaida and other terrorist groups.

So, the threat is real and it is one that we have been addressing, both from an enforcement standpoint, but as well from a regulatory standpoint.

With respect to regulation, I think it bears mentioning that the charities are already regulated, both from a Federal standpoint and a State and local standpoint.

Federally, they are subject to the 501(c)(3) processes administered by the IRS. Post-9/11, the IRS has undertaken quite intensive efforts to look at the overseas elements of their regulations, in fact, revising their 1023 forms and 990 forms with respect to overseas issues. They are looking at revising their guidelines on overseas grant making, precisely because of the risk that Mr. Winer and Mr. Myers identified. So, that has been important.

Another key component of this, frankly, Mr. Chairman, has been the engagement with the private sector, and part of that has been issuing the guidelines, which are voluntary and, in essence, best practices, but frankly have been treated as regulatory guidance by the charities.

In fact, we get quite a few letters of complaint from the large foundations and the large charities because of the very expansive nature of the guidelines.

So, I think all those measures put together, in addition to increased enforcement activities, which we have seen, are the right vehicle. As Mr. Levey indicated, part of this, as well, is the international element.

We have pushed, both through the Financial Action Task Force and other vehicles, for other countries—in particular, Saudi Arabia—to look at the abuse of charities within their jurisdictions and to see exactly what they are doing to monitor and to regulate. That has been an incredibly important part of our efforts post-9/11.

The CHAIRMAN. Yes. Mr. Zarate, I want to get back to Saudi Arabia for just a minute. It involves these infamous 28 pages in the Joint Intelligence Committee report that was not declassified.

From that point, it feeds suspicion in the United States that we are not pursuing all leads, and it can send the wrong message to the world that we might not be serious about fighting terrorism.

I am also not convinced that we have enough information to verify that the Saudi government is doing what it promised to curtail, terrorism financing.

First, why can we not have full disclosure about any involvement of Saudi persons or entities in terrorism? Second, if the Saudi government is helping us, but still allowing some of its powerful citizens to support terrorism, even indirectly, how do we balance what we should be doing?

Mr. ZARATE. Mr. Chairman, with respect to the 28 pages, I was not part of the decision, nor am I aware of the issues with respect to the disclosure to the Congress, so I apologize that I cannot address that issue.

But with respect to the Saudi government, let me echo what Mr. Myers said on the prior panel, which is, the issue of terrorist financing is, front and center, in terms of the agenda and the engagement with the Saudi government.

From our perspective at the Treasury, there is no more important issue with respect to Saudi Arabia than dealing with the threat of terrorist financing.

I think it bears mentioning that post the May/November bombings in Riyad, we have seen a marked shift in the attitude of Saudi Arabia in dealing with these issues in a very proactive way.

I think that is the most relevant point here, which is, we can certainly drive the issue, we can certainly bang the drum on it, but we are, to a certain extent, reliant on other governments to do their fair share.

And I would say, Mr. Chairman, that we have seen, through the Saudis' actions, that they are taking this issue seriously. They are capturing and killing key facilitators. Mr. Myers mentioned Swift Sword, who was a key individual. That continues today.

We have set up a joint intelligence sharing, as well as a joint financial investigatory task force with them. They have issued new money laundering regulations that have been open to the scrutiny of the international community by the Financial Action Task Force.

They have issued pretty far-ranging charitable regulations with respect to the outflows of money. I think all of those are marks of serious commitment to this issue. But, as with any country, we ask them to do more, and we ask them to do it more quickly.

The CHAIRMAN. Can you tell me how many Saudi-based charities, the ones in the kingdom and not their branches around the world, have been investigated by Treasury or our government?

Mr. ZARATE. Mr. Chairman, perhaps in this setting it is not appropriate to give a number, but I would say that we have looked at a number of charities based in Saudi Arabia and have devoted resources to investigating whether or not those charities, whether from the home branch or through branches abroad, have been used by al Qaida.

It has been the subject of quite intense discussions and quite intense actions with respect to al-Haramin, which has been subject to Saudi action, as well as U.S. action, designation of several of their branches internationally.

The Saudis are certainly looking, and they have said so publicly, at the activities of the home branch. They have removed the leader of that branch. We continue to look at other charities based in Saudi Arabia.

A key element of this, Mr. Chairman, is the fact that the Saudis are now taking very seriously the regulation and oversight of these charities within the kingdom. They have announced the consolidation of all of their charities. We are waiting to see how that is going to play out. We are urging them to do that quickly and effectively, and I think that is a very important part of this as well.

The CHAIRMAN. Are you getting full cooperation from the Saudi government?

Mr. ZARATE. Mr. Chairman, we always ask our partners abroad for more, and we ask them to do it more quickly. We feel that they are cooperating, and certainly post bombings in Saudi Arabia. They are not only dealing with these issues with proactive actions, but they are dealing, as Mr. Myers indicated, with the ideological underpinnings of this.

As I mentioned to the House in testimony 2 months ago, one of the great challenges for Saudi Arabia in our engagement with them is dealing with support for radical Islamic extremism that feeds terrorism not only within Saudi Arabia, but outside of Saudi Arabia.

The CHAIRMAN. Senator Baucus?

Senator BAUCUS. Mr. Zarate, how do you know they are doing a good job on charities? How do you know that?

Mr. ZARATE. Well, we have got people on the ground, Senator, who are dealing with this issue directly. We have, for the first time—and this is a credit to the FBI, as well as the IRS—people on the ground who are sharing information, actual financial information, with respect to some of these issues, not only charities, but with respect to donors and those who are facilitating, or we suspect are facilitating, terrorist activities. So, on the first score, we have people on the ground who are looking at these issues.

Second, in diplomatic engagements, at the highest level, from the Crown Prince on down, we have their assurances that they are looking at these issues.

We also have the gaze of the international experts from the Financial Action Task Force who have looked at their laws and looked at the regulations to address this issue, which is of some comfort. So, I think there are various mechanisms we have to verify. As the proverb says, trust but verify. That is exactly what we do on a daily basis.

Senator BAUCUS. All right. Now, what is your reaction, and I guess it was Mr. Myers that said, this cannot all be coordinated in Treasury yet, because Treasury does not have the resources.

I do not want to put words in his mouth, but it will take a couple of years for Treasury to get there. What do you think about that? He does not pass judgment whether Treasury should, once Treasury gets there. But he is saying that Treasury is not there yet.

Mr. ZARATE. Well, with respect to the leadership issue, I agree that having NSC at the head at this point makes sense because it is a vehicle to integrate in a better way——

Senator BAUCUS. Should it stay there?

Mr. ZARATE. I think it depends on how quickly and how effectively we can stand up this office, and that would be a decision I look forward to discussing with Mr. Levey as he moves on.

Senator BAUCUS. All right. I will ask Mr. Levey that question.

Mr. LEVEY. Is the question who should chair the PCC?

Senator BAUCUS. Basically. And how long it takes Treasury to be up to speed.

Mr. LEVEY. Well, I think that, on the one hand, I do not think it is as important as maybe some others do who chairs the PCC. As I mentioned before, I think the important thing is, whoever is chairing it, to be viewed and act as an honest broker among the agencies.

Senator BAUCUS. Right.

Mr. LEVEY. Is the Treasury Department ready to do it? I think they are. But I also think——

Senator BAUCUS. Well, then where would you disagree with Mr. Myers? He seems to think that Treasury is not ready yet. I mean, you lost Customs. You lost Secret Service. You lost a lot of these

other agencies related to homeland security. Just the feel of all this is, Treasury has got a long way to go.

Mr. LEVEY. I do not want to be viewed, and I am not advocating, that Treasury be the head of the PCC. I think that it does not matter that much.

Senator BAUCUS. Well, that is not my question. My question is, is the Treasury able?

Mr. LEVEY. Treasury is able. Yes.

Senator BAUCUS. Why do you differ from Mr. Myers then?

Mr. LEVEY. I would have to talk to Mr. Myers about that.

Senator BAUCUS. He was here. Did you hear him?

Mr. LEVEY. Well, I do not want to take your time up.

Senator BAUCUS. I am sorry?

Mr. LEVEY. I would not want to waste your time.

Senator BAUCUS. No. But you heard his testimony.

Mr. LEVEY. I did.

Senator BAUCUS. So what is the difference?

Mr. LEVEY. He seems to think that it is critically important that the NSC do it because of their——

Senator BAUCUS. Oh, no, no, no. I am talking about the resource side. He seems to think that maybe, ideally, it could be at Treasury, but it is going to take a couple of years for Treasury to get up to speed.

Mr. LEVEY. I just do not understand that it is a resource issue chairing the PCC. I do not understand why that would be.

Senator BAUCUS. All right. I have more questions here. Here is the quote: "Treasury is not up to the challenge yet." That is what he said. It is not up to it yet.

Why do I get the feeling that we in America really do not know what are doing here? That is a little strong. But why do I get the feeling that there is a lot of terrorism financing going on around this world that we are a little bit ignorant of?

As Americans, we just assume that everything is done the western way. We assume too much that financing is done through banks and traditional financial institutions. We assume people have judicial processes that are similar to ours.

We just make an awful lot of assumptions that may or may not be valid, and my guess is, a lot of which are not valid. What is going on in Iraq right now certainly explodes some of the assumptions that this country has made in that part of the world.

I do not know how to pronounce it, but hawallahs, or whatever it is. You hear about those. You hear about other ways that activities are financed. You know, these people are not dumb. They are very smart. They are human beings. You are human beings, they are human beings. They are just as smart.

In fact, they are also, in a certain sense, more hungry. They are fanatic. They just will stop at nothing, whereas, all of you are tempered a little bit by growing up in western civilization, and are a little less fanatic, I would guess, about some things.

So I just get the feeling, and I think a lot of Americans have the feeling, that we are well intended, we are trying hard, but just maybe we are not quite there. It has to do probably with the lack of coordination with countries overseas.

We also have a feeling, all of us talk about Saudi Arabia cooperating, but I would bet you dollars to donuts that most members of Congress are not very convinced of that, honestly. Just, something does not feel right. You listen to the music and not the words, and read between the lines, and all that. We are just kind of missing something here.

So, my question is, and you cannot answer it, but I am just telling you, I get the feeling that we are kind of around the edges too much still on this basic question of terrorism financing. Part of it is that the agencies are, I think, all messed up, with 19 different agencies. You are not coordinating. That is part of the problem.

Another big one, from our point of view as members of Congress, is everybody covers up. They do not want to tell us. They want to protect their you-know-what. That is a huge problem that we face here in the Congress. I do not want to get too specific, but FBI is not one of the better agencies that tells us what is going on. They are not at the top of the list by any stretch of the imagination. I mentioned earlier the assumptions, cultural assumptions we sometimes have.

So could you just sit back a little bit, forget your titles, forget your jobs, just based upon the information, your experience in having dealt with this, if you could just tell this committee a little bit, how do we get at this so we are really hitting the bull's eye, not just kind of around the edges, a lot of talk and not a lot of direct action. Sitting back a little bit, with a little perspective. Sit back in your chairs and just kind of talk a little bit. What do we have to do?

Mr. ZARATE. Mr. Baucus, you have hit a very important issue. The issue of terrorist financing, frankly, I think, from where I sit, is probably the most complicated issue we have to deal with in the war on terrorism.

That relates to not only the many methods and sources that terrorists can and do use to finance their horrible acts, as you have mentioned, but it also deals with a gray area of the war on terror where you have certain entities or individuals who have one foot in the western world and one foot in the world of Islamic extremism.

What we have seen in particular with our designations, which are public and we can talk about, are that they are entities of all sorts, front companies, charities, hawaladars, wire remittance companies, banks, individuals, deep-pocket donors that, in fact, have been used and have been supporting terrorist financing.

Senator, the one issue I think I would differ with you on, is the campaign against terrorist financing, I would daresay, has been one of the most coordinated efforts, not just domestically, but internationally. It may be that not enough of this can be made public. It may be that we do a poor job of reporting here or to the public about what we are doing.

But, in fact, we have been looking at all of the issues you have talked about. Whether it is bank regulation, regulation of hawalas in the United Arab Emirates, whether it is other issues that are of concern with respect to this issue, that is key. I would daresay that the creation of this office will allow us to focus even more attention on these issues.

Senator BAUCUS. My time is up. I am sorry.

The CHAIRMAN. Senator Graham, you will be the last person to ask questions. If it would not be rude on my part, I would leave you with the committee to close.

Senator BAUCUS. Before you do that, and I will leave, too. Do you mind?

The CHAIRMAN. Go ahead.

Senator BAUCUS. Mr. Levey, could you answer my question?

The CHAIRMAN. Can I do this before you respond? I am going to have to make a 12:30 appointment, so I want to thank you very much for answering our questions and being kind to the committee members who are here. I would suggest that there might be some who were not here who would have questions for answer in writing, if you would respond to those.

Well, you must respond to those. Thank you. [Laughter.] Because if there is anything that holds up nominations around here, it is when people do not get answers to their questions. I will even protect Democrats on that point, as long as they are not politically motivated questions.

Go ahead.

Senator BAUCUS. Mr. Levey?

Mr. LEVEY. Senator Baucus, it is hard to give you a completely satisfying answer on that. I do think that the point that resonated most with me, is I do believe we are up against a very savvy enemy.

We might think that we are staying one step ahead, but I do not want to put my head down on the pillow at night and rest because we cannot afford to fall one step behind. We have got to bat a thousand.

It is something the FBI says all the time, and you have probably heard it: we cannot miss once. Terrorists only have to succeed 1 out of 1,000 and they hit us hard. So, I do not want to try to persuade you that I think we have got it all in hand, because we do not.

Senator BAUCUS. Well, no. That is not my question. I am just saying, what is the best way to really hit the bull's eye here so we are not wasting our time, with all the complexity of the problems that I outlined?

Mr. LEVEY. Well, I do think that having a group of people that spend all day long thinking about this and trying to make sure that we are staying a step ahead, trying to make sure that we are thinking creatively, is our best strategy, and getting the best possible people to do that.

I think that this restructuring of the Treasury Department is a great step in that direction. We hope to have people who will be doing that all day long, every day to make sure that we are putting our best foot forward.

Senator BAUCUS. How many speak Arabic?

Mr. LEVEY. Pardon me?

Senator BAUCUS. How many speak Arabic?

Mr. LEVEY. You have hit a huge problem. We do not have nearly enough people in our government, in lots of different agencies, who speak Arabic.

Senator BAUCUS. Are you training them, recruiting them?

Mr. LEVEY. Again, I have seen this from the FBI's perspective, because I am at the Justice Department. This is a huge problem. We are doing our best to do that. But it is slow and we are not as far along as we would like to be.

Senator BAUCUS. I have taken too much time. Thank you.

Thank you, Mr. Chairman.

Senator GRAHAM. I want to say, my colleagues Senator Baucus and Senator Grassley, I think, have asked some excellent questions. The last question Senator Baucus asked was, what are you doing to assure that you have the human resources necessary to do this job?

I would like to ask if you could let us know in writing, what is the linguistic diversity of the entity that you are creating, and if you find it to be inadequate, what are you doing to change that mix?

[The information appears in the appendix.]

Senator GRAHAM. Let me say one concern I have. This is in the nature of an editorial. When you get into this discussion of terrorist financing, there is almost an inevitable gravitational pull to start talking about charities and banks, et cetera.

I am concerned about that, of course, but that is not where I see the real problem. I see the real problem is when governments, G-O-V-E-R-N-M-E-N-T-S, are providing the financial assistance.

What difference does it make if a charity or a government is doing it? One, the scale of the financing that can be made available through governments. Two, the sustainability of the financing that can be made available through governments. Three, the benefits of being able to use diplomatic cover mechanisms to disguise it, as witnessed by my earlier statement about the FBI's difficulty in getting access to bank records.

I would suggest, as a baseline of study when we have this closed session, I would encourage the members of this committee to read those 28 pages that have been denied to the rest of the American people so that they will have some sense of those issues of scale, sustainability, and the use of diplomatic cover.

One of the most, I think, revealing incidents that has occurred on this issue occurred in the late summer, early fall of 2003. The administration had just announced that it was going to withhold most of the information about the role of governments in financing of the 9/11 terrorists.

Shortly thereafter, the ambassador of Saudi Arabia made a statement that he was concerned that people were suspecting that his nation was the one that was listed in those 28 pages, that he was facing a lot of criticism and questions that he could not answer because he did not have access to that information.

So, he announced publicly that it was the position of the Kingdom of Saudi Arabia to have all of that information made available to the public so that he would be in a position to respond, not an unreasonable request.

He then said, I, to drive this point home, have asked the foreign minister of Saudi Arabia to come to Washington and plead our case, that we need to be protected against this undisclosed criticism that we are getting.

Before the minister of Saudi Arabia's plane had touched down in Washington, the President had said, I do not care what the ambassador says, I do not care what the minister is going to say once he gets here, we are not going to disclose what is in that document.

Then a few days later, there is a press conference which talks about what a wonderful job Saudi Arabia is doing with charities. I mean, I have seen good cop/bad cop played before, but not many times as publicly and as transparently as just occurred in that instance.

I am concerned about an aside that was made in the first panel and that was alluded to in this panel. That is the fact that there are "other relationships" that have to be taken into account in terms of how aggressively we are going to pursue the governmental role in terrorist financing.

I cannot think of what would be another relationship that would be more important than protecting the people of the United States from acts of terrorism which got a portion of their financing from a foreign government.

If you were asked how important this is, are there any relationships that you think are more important and would justify giving protection to a foreign government that was engaged in that practice?

Mr. ZARATE. From my vantage point, Senator, absolutely not. This is a key issue. Funding from state sources is a key issue for this administration, as evidenced by the sanctions announced last week, I think, against Syria.

Their support of Hezbollah, Iran's support of Hezbollah is a major concern, and any state supporting terrorism is a major concern, and any financing coming from a state directly is of concern.

I would like to mention one thing, Senator. It is an issue that I think complicates the debate about Saudi Arabia, which is, I think we need to be clear about, when we are talking about sources of financing coming from Saudi Arabia via private channels or through charities versus those that are state-sponsored.

I think the Saudis themselves would admit that, prior to 9/11, they were not as diligent with respect to how they handled their finances, where their money was going.

I think it is something that they have focused much more attention on post-9/11, and certainly since we have been driving the issue with them they have focused on it. But to answer your question plainly, no, I do not think so. From my perspective, that issue is front and center.

Senator GRAHAM. When we have the closed session, would you have someone prepared to review, over a timeline of, let us say, beginning in 1994 through 2004 what in your judgment, or what in the judgment of those institutionally are responsible for knowing about these issues, has been the pattern of relationships—and you have now mentioned a second country, Syria—in terms of government support of the terrorists.

I could not give as high a report card as you have indicated you would give to the U.S. Government's efforts to deter, and where deterrence has not worked restrain, foreign governments' direct assistance to terrorists.

What we have done with Syria, in my judgment, has been an outrage. It is not just the current administration, but it has been a long time. We have known that Syria was directly assisting terrorists. They have been providing sanctuary, financial, and other assistance and we have not done anything, effectively, about it.

The fact that it took Congress to pass a law called the Syrian Accountability Act is some indication of how unengaged this and previous administrations have been on the issue of Syria, and the fact that it took the better part of 6 months from the time the law was passed until it was put into effect is further evidence of the lack of engagement.

I think it is intolerable, in that we have already paid the price with 3,000 American lives. How many more do we have to put at risk before we take this issue of the government financing of terrorism inside the United States of America as a serious concern?

I would hope, when you assume the positions to which you have been nominated, that you will give it the same high level of vigorous attention that you have given it here this afternoon. Thank you.

Mr. LEVEY. Thank you, Senator.

Senator GRAHAM. I guess, since I am the only one left, I have the authority to close the hearing. Thank you very much. Best wishes.

Mr. LEVEY. Thank you, Senator.

Mr. ZARATE. Thank you, Senator.

[Whereupon, at 12:30 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)

   John Orlin Colvin

2. Position to which nominated:

   Judge, U.S. Tax Court (renomination for a second term)

3. Date of nomination:

   May 13, 2004

4. Address: (List current residence, office, and mailing addresses.)

   a. Residence address: 2534 No. Vermont Street, Arlington, VA 22207

   b. Office address: U. S. Tax Court, 400 Second Street, N.W., Washington, D.C. 20217

5. Date and place of birth:

   November 17, 1946; Canton, OH

6. Marital status: (Include maiden name of wife or husband's name.)

   Married; wife's maiden name: Ava Maria Belohlav

7. Names and ages of children:

   Timothy, age 29

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)

(listed in reverse chronological order):

a. Georgetown U. Law Center, Washington, D.C. (1974-1978, part-time; Master of Law in Taxation, May 1978)

b. Georgetown U. Law Center, Washington, D.C. (1968-1971, J.D. May 1971). In Fall 1970, I attended St. Louis U. Law School, St. Louis, MO, to work on the Christopher S. ("Kit") Bond for MO State Auditor Campaign.

c. University of Missouri at Columbia, MO (1964-68, A.B., June 1968)

d. St. Charles High School, St. Charles, MO (1962-1964, diploma, June 1964)

e. Henderson High School, Henderson, KY (1960-1962)

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Full Time Employment Since College Graduation (listed in reverse chronological order)

a. September 1988 to date: Judge, U.S. Tax Court (Senior Judge since September 2003 due to expiration of 15-year term)

b. December 1984-August 1988: Majority Chief Counsel and Minority Chief Counsel, Senate Finance Committee

c. March 1975-December 1984: Tax Counsel and Legislative Director (beginning around 1982), Senator Bob Packwood, Washington, DC

d. August 1971-March 1975: Lieutenant, U.S. Coast Guard, assigned to Office of Chief Counsel, U.S. Coast Guard Headquarters, Washington, DC

Part-time and Summer Employment Since College Graduation (listed in reverse chronological order)

a. January 1987 to date (part-time): Adjunct Professor of Law, Georgetown University Law Center, Washington, DC

b. June-August 1971: law clerk, Neidner, Neidner, Ahlheim & Bodeaux, Attorneys, St. Charles, MO

c. Summer-Fall 1970 (full time Summer; part-time Fall): field representative, Christopher S. Bond for Auditor of Missouri, Mexico, MO

d. December 1969-June 1970 (part-time): staff assistant, Senator Mark O. Hatfield, Washington, DC

e. Fall, 1969 (part-time): legal research instructor, Georgetown U. Law Center, Washington, DC

f. Summer 1969: summer clerk, Consumer Protection Division, Office of Attorney General of Missouri John C. Danforth, assigned to (now Senator) Christopher S. Bond, Jefferson City, MO

g. October 1968-June 1969 (part-time): desk worker, Law Library, Georgetown U. Law Center, Washington, DC

h. Summer 1968: election data researcher, Missouri Republican State Committee, Jefferson City, MO

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)

(listed in reverse chronological order):

a. 1980 (voluntary) : Chair, Ad Hoc Committee on Arlington Water Needs (reviewed adequacy of Arlington County's water distribution and storage facilities)

b. July-August 1967: Congressional Intern, Congressman Thomas B. Curtis (R-MO)

c. March 1966-June 1968 (part-time): Staff assistant, Missouri State Representative Richard C. Marshall (R-Webster Groves), Jefferson City, MO

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

None.

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

    a. 1988-date: various positions (e.g. president, vice president, and currently parliamentarian-historian), Donaldson Run Recreation Association (operates a neighborhood swimming pool in Arlington, VA)

    b. 1991-92: president, Yorktown High School PTA, Arlington, VA

    c. 1988-89: president, Yorktown High School PTA, Arlington, VA

    d. 1985-86: vice president, Taylor Elementary School PTA, Arlington, VA

    e. 1977-97: Council member (and chair in 1992), Tax Section, Federal Bar Association, Washington, DC

    f. 1998-date: member, Senior Friends (a national organization open to persons over age 50)

13. Political affiliations and activities:

    a. List all public offices for which you have been a candidate.

       None.

    b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

       None.

    c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

       None.

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

    a. Georgetown U. Law Center, Charles Fahy Distinguished Adjunct Professor Award, 2004

    b. Federal Bar Association Tax Section, Kenneth H. Liles Award for Distinguished Service, 1998

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

(listed in reverse chronological order):

a. Incentive Stock Options, 55 Journal of Taxation 202 (1981)

b. Medical Reimbursement Plans, 50 Journal of Taxation 104 (1979)

c. The New Tax-Free Fringe Benefit: Employee Educational Assistance Programs, 50 Journal of Taxation 20 (1979)

d. Contesting Loss of Exemption Under Section 501(c)(3) After Bob Jones University and Americans United, Inc., 2 Federal Bar Journal 182 (1975)

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with **two** copies of each formal speech.)

I have given no formal speeches since becoming a Tax Court judge. I have participated in panels relating to Tax Court procedures and ethics sponsored by bar associations, and I have spoken informally to organizations of tax practitioners in cities where I have conducted court sessions.

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

Completion of one 15-year term as a Tax Court judge; employment in Congress relating to tax law, including as Chief Counsel of the Senate Finance Committee during its consideration of the Tax Reform Act of 1986; academic work relating to federal taxation.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

N/A because nomination is for a second term.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

None other that part-time adjunct teaching at Georgetown U. Law Center.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

I am now age 57. The retirement age for Tax Court judges is 70. IRC sec. 7447(b)(1). Thus, if confirmed, I can serve only between 12 -13 years of the 15 year term. However, a retired Tax Court judge can continue to serve if recalled by the Chief Judge. IRC sec. 7447(c).

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Nothing other than indicated by other answers herein, e.g., if a company in which I hold stock is a party in a case before the Tax Court.

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None except as discussed in C-1.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

None other than related to the U.S. Tax Court.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with **two** copies of any trust or other agreements.)

Recusal is required if, inter alia, a company in which I hold stock is a party in a case before the Tax Court. See Canons 3(C)(1)(c) and 3(C)(3)(c), Code of Conduct for United States Judges.

5. **Two** copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

To be supplied. I submit Annual Financial Disclosure Reports to the Committee on Financial Disclosure of the Administrative Office of the U.S. Courts, Suite 2-301 One Columbus Circle, N.E., Washington, DC 20544, telephone 202-502-1860.

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

N/A.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Yes. In every such case, I was sued in my official capacity as a Tax Court Judge, and I was (successfully) represented by the Justice Department. Those cases are:

a. Chisum v. Colvin, Civil Action No. 02-0318 (JBD) (USTC D.C.)

b. Owens, et. al v. Colvin, et al., 1-99-CV-115-JTC (USDC N.D. GA)

c. Golden v. Colvin, et al., 1-96-00658 (USDC D.C.)

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes.

PREPARED STATEMENT OF STUART A. LEVEY

Chairman Grassley, Ranking Member Baucus, and Members of the Committee, thank you for the opportunity to appear before you today. It is truly an honor to be the nominee to serve as Under Secretary for Enforcement and as the head of the new Office of Terrorism and Financial Intelligence at the Department of the Treasury. I want to thank the President and Secretary Snow for the confidence they have shown in me by selecting me for this position.

Above all, I want to thank my wife Annette, who is the best thing in my life, for the sacrifices she has made to allow me to pursue opportunities in public service. She is the perfect wife, my best friend, a fabulous mother to our two baby daughters, and, on top of all that, a dedicated public servant at the National Institutes of Health. I would also like to thank my parents for the opportunities and support they have given me throughout my life. I am happy that my mother and stepfather, Karen and Manuel Nackes, are here with me today.

I am also grateful to Attorney General Ashcroft for the opportunity he has given me to serve at the Department of Justice. I came to the Justice Department to work for Deputy Attorney General Larry Thompson, and I have continued to serve there under Jim Comey. I have handled a variety of issues in the Deputy Attorney General's office, focusing most recently on national security and counterterrorism matters, including the Department's terrorist financing portfolio. In my current role as Principal Associate Deputy Attorney General, I serve as the Justice Department's representative to the Policy Coordinating Committee on Terrorist Financing and to the NSC's Counterterrorism Security Group. In these roles, I have established close working relationships with officials within the Department of Justice as well as in the FBI, the CIA, the State Department and elsewhere that will be valuable to me in my new position if I am confirmed.

My experience at the Justice Department makes me very mindful of the enormous responsibility that will be before me if I am confirmed. I begin almost every morning by meeting with the Attorney General, the Deputy Attorney General, the FBI Director and other senior staff to go over the most important terrorist threats that we are facing that day, both within the United States and abroad. Even after so many months, it is still chilling to hear every morning about people who are scheming to kill as many innocent people as they possibly can. Chilling, but, in a sense, moti-

vating too. I never question why I go to work in the morning. There is so much at stake.

The financial war on terror is critical to our overall mission to defeat terrorism. Terrorists need money to operate—to recruit, to train, to travel, to communicate, and, of course, to carry out attacks. Whenever we cut off their money supply, we reduce their present abilities and force them to adopt new funding methods that are more cumbersome or risky. On another level, the audit trail that money leaves is one of our best sources of intelligence to find and disrupt terrorists. There are times when watching where the money comes from and where it goes is more valuable than taking immediate public action to stop it. We must adapt our strategy in each circumstance to do whatever is best for the overall counterterrorism mission. That is one reason why a coordinated, interagency effort is vital to our success.

Within that coordinated effort, the Treasury Department has a unique leadership role to play in the financial war on terror. The Treasury Department, working with other agencies around the government, and with the support of the Congress, has made significant progress in the fight against terrorist financing since September 11. The people who have been doing that work in the Department, including Juan Zarate, are among the most dedicated and talented public servants you will find. If I am confirmed, I will be joining a fantastic team.

I think that team would agree that there is much more work that needs to be done. If I am confirmed, I hope to bring a heightened sense of urgency to the terrorist financing mission at the Treasury Department. We must re-energize our efforts because our enemies remain committed to killing innocent people and, as this Committee has noted, our work grows more difficult as terrorists move away from known funding channels and organizations. The overarching mission for the new Office of Terrorism and Financial Intelligence will be to ensure that the Treasury Department is fully exploiting all of its authorities, capabilities and all of the government's information to combat terrorist financing and financial crime. Among other things, if I am confirmed, I would strive to make better use of the tools the Congress provided in the PATRIOT Act and of Treasury's other enforcement powers. I also would build a new Office of Intelligence and Analysis that will exploit Treasury's own information and integrate the Department more fully into the intelligence community. And, I would press terrorist financing issues as a priority with other nations around the world whose cooperation we need if we are to succeed.

I am aware that there are substantial challenges before us. Still, I am optimistic because of the steadfast support that Secretary Snow and Deputy Secretary Bodman have already shown to the cause of fighting the financial war on terror. I am also heartened by the support for this mission demonstrated by the Congress and this Committee in particular. If I am confirmed, I look forward to working with you on these important issues. I am happy to answer any questions you may have.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

Stuart Alan Levey

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Stuart Alan Levey

2. Position to which nominated:
Under Secretary of the Treasury for Enforcement

3. Date of nomination:
April 8, 2004

4. Address: (List current residence, office, and mailing addresses.)
Home: 3214 Pickwick Lane
Chevy Chase, MD 20815

Office: Department of Justice
Office of the Deputy Attorney General
Room 4208
950 Pennsylvania Ave., NW
Washington, DC 20530

5. Date and place of birth:
June 3, 1963 in Akron, Ohio

6. Marital status: (Include maiden name of wife or husband's name.)
Married to Annette Cara Levey (formerly Hamburger)

7. Names and ages of children:
Josephine, age 3
Helena, age 1

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
a. Harvard Law School (1986-89), JD 1989
b. Harvard College (1981-86), AB 1986
c. Hebrew University of Jerusalem (1983-84), no degree received
d. Firestone High School, Akron, Ohio (1977-81), diploma 1981

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)
   a. Principal Associate Deputy Attorney General, Department of Justice, Washington, DC, 2003-2004
   b. Associate Deputy Attorney General and Chief of Staff, Department of Justice, Washington, DC, 2003
   c. Associate Deputy Attorney General, Department of Justice, Washington, DC, 2001-2003
   d. Partner, Baker Botts LLP, Washington DC, 2001
   e. Partner, Miller Cassidy Larroca & Lewin, LLP, Washington DC, 1996-2000
   f. Assistant Special Counsel and Special Assistant United States Attorney, Office of Special Counsel John C. Danforth (Waco), Washington DC and St. Louis, MO, 1999-2000
   g. Associate, Miller Cassidy Larroca & Lewin, LLP, Washington DC, 1990-1996
   h. Law Clerk to the Honorable Laurence H. Silberman, United States Court of Appeals for the District of Columbia Circuit, Washington DC, 1989-1990
   i. Summer Associate, Jenner & Block, Washington DC, summer 1989
   j. Summer Associate, Jenner & Block, Chicago IL, summer 1988
   k. Summer Associate, Proskauer Rose Goetz & Mendelsohn, New York NY, summer 1987
   l. Consultant, Yamaichi Securities Ltd, Tokyo Japan, spring and summer 1986

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)
    All of my government experience is listed above.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)
    Other than legal work performed for clients while in private practice, all such relationships are listed above.

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)
    I am a member of Temple Sinai Congregation, the District of Columbia Bar Association, and the Edward Bennett Williams Inn of Court. I was previously a member of the International Association of Jewish Lawyers and Jurists (IAJLJ) and served on the board of the IAJLJ American Chapter for approximately 2 years. While in private practice, I was also a member of the National Association of Criminal Defense Lawyers, the American Bar Association, and the Illinois State Bar Association. I also served on the Criminal Justice Act Panel for the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for

the D.C. Circuit to undertake the representation of indigent criminal defendants. In the past, I have also been a member of the American Israeli Public Affairs Committee and the Jewish Museum.

13. Political affiliations and activities:

a. List all public offices for which you have been a candidate.
None

b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.
None

c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

a. Kris Kobach for Congress -- $200 – 2003
b. George W. Bush for President -- $1,000 – 2000
c. Orrin Hatch Presidential Exploratory Committee -- $250 – 1999
d. Orrin Hatch Senate Campaign -- $200 – 2000
e. Mark Nielson for Congress -- $150 -- 2000
f. Joseph Barta for Congress -- $200 – 1998
g. Barry Ford for Congress -- $100 – 1998
h. Jules Polonetsky for Public Advocate -- ? – 1997 (I vaguely remember making this contribution, but I am unable to locate a record of it. The amount would not have exceeded $200.)
i. Karen Doty for State Legislature -- $100 – 1996

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

In college, I received my degree *summa cum laude* and was elected to Phi Beta Kappa. In law school, I received my degree *magna cum laude* and was selected as an editor of the Harvard Law Review.

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)
I was a co-author of a chapter entitled "The Privilege Against Self-Incrimination," published in the book Testimonial Privileges, McGraw Hill, (2d ed. 1994). I was the primary author of a case note entitled, "Standard of Scrutiny for Dealer Termination Agreements," published at 102 Harvard Law Review 297 (1988).

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)
None

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

I believe that I have had a wide variety of experiences that will help me serve effectively as the Under Secretary of Treasury for Enforcement. In my current capacity as Principal Associate Deputy Attorney General (PADAG), I am the Deputy Attorney General's primary staff member with responsibility for coordinating the Justice Department's varied counter-terrorism activities, including investigations, intelligence collection and prosecutions. I also serve as the Justice Department's representative to the NSC's Counter-Terrorism Security Group, a senior interagency group chaired by the Deputy National Security Advisor for Combating Terrorism. In addition, I am often called upon to represent the Department of Justice in a variety of interagency bodies, including NSC and HSC Deputies' Committee meetings, to discuss topics related to the war on terrorism, thereby exposing me to the broad picture of what our government is doing to try to protect the American people from terrorist attacks. Through these efforts, I have also worked closely with the senior officials from other departments who are engaged in this effort and with whom I would continue to work if confirmed to this position.

The fight against terrorist financing is, of course, a vital part of this overall counter-terrorism mission. As PADAG, I monitor the significant terrorist financing investigations being handled by the Department's prosecutors and the FBI. I also serve as the Department of Justice's principal representative to the Terrorist Financing Policy Coordinating Committee (PCC). This position has offered me the opportunity to observe and discuss the efforts of the entire executive branch in combating terrorist financing, ranging from intelligence collection to diplomatic initiatives, from administrative sanctions to traditional law enforcement actions. Through my work with the PCC, I have become familiar with the exercise of administrative authority pursuant to Executive Order 13224 to freeze terrorist assets -- and the analogous processes in the UN and other international bodies -- which have given our government a flexible and powerful tool to combat terrorist financiers and facilitators since 9/11. Through the consultation process with the Justice Department mandated by law, I have also become familiar with Treasury's new and promising powers under Section 311 of the USA PATRIOT Act to impose counter-measures against financial entities or foreign nations that are a primary money laundering concern.

Finally, my direct experience in dealing with the threat of terrorism -- beginning most days with a briefing on the most pressing threats we face -- has given me a greater appreciation of the urgency of the counter-terrorism task. This perspective is crucial for the battle against terrorist financing, as this is not a fight for its own sake, but a campaign to disrupt and cripple the end-users of these funds -- the terrorists themselves.

My prior experience should be helpful to me in this position as well. I previously served in the Office of Special Counsel headed by former Senator Danforth that investigated potential government misconduct surrounding the stand-off at the Branch

Davidian compound in Waco, Texas. I also have over 10 years of experience as a lawyer in private practice where I focused on white-collar criminal matters.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.
   Yes

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.
   No

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.
   No

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.
   Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.
   Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of the Treasury, which is documented by letter to Kenneth Schmalzbach, Designated Agency Ethics Official and Assistant General Counsel for General Law and Ethics.

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.
   None

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public

policy. Activities performed as an employee of the Federal government need not be listed.
None

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)
Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of the Treasury, which is documented by letter to Kenneth Schmalzbach, Designated Agency Ethics Official and Assistant General Counsel for General Law and Ethics. Should any potential conflicts of interest arise in the future, I will consult with Treasury ethics officials.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.
No

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.
No

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.
No

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.
No

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.
None

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?
Yes

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?
Yes

F. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files.)

1. Provide a complete and current financial net worth statement which itemizes in detail:

a. The identity and value of all assets held, directly or indirectly, with a value in excess of $1,000. This itemization should include, but not be limited to, bank accounts, securities, commodities futures, real estate, trusts, investments, and other personal property held in a trade or business or for investment. Household furnishings, personal effects, clothing, and automobiles need not be reported.

Checking Account	$10,000 (approx)
These securities valued as of 2/29/04:	
BP Amoco	100,023
Burlington Resources	5,854
Northrop Grumman	10,819
Fidelity Select Technology	3,162
Fidelity Select Software	5,801
Fidelity Select Telecom	2,722
Fidelity US Govt Reserves	58,760
American Electric Power	18,975

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.
No

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.
None

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?
Yes

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?
Yes

INTEGRATION INTO THE INTELLIGENCE COMMUNITY

RESPONSES TO QUESTIONS FROM SENATOR ROCKEFELLER

Question 1. Please describe the role you think Treasury Department should play in the Intelligence Community. Will it primarily support the CIA, FBI and Homeland Security with analysis, or will it be a consumer of intelligence in order to fulfill its role in enforcing financial laws and regulations?

Answer. If it is to effectively safeguard the nation's financial systems against increasingly dangerous and sophisticated enemies, the Treasury Department must be fully integrated into the Intelligence Community (IC).One of the first priorities of the new Office of Intelligence and Analysis (OIA) will be to expand and strengthen these bridges. To that end, it is imperative that the Assistant Secretary who heads this new office have credibility within the intelligence arena.

The relationship between Treasury and the IC will be collaborative. On the one hand, OIA will be an active consumer and should drive intelligence collection and draw upon the analytical resources of the broader IC. On the other hand, OIA should generate distinctive analytical products in its own right, with an eye towards serving the needs of policy-makers across the Department. In assembling these reports, OIA should draw upon not only external IC data but also Treasury's unique resources, such as IRS information (to the extent legally appropriate), FinCEN's BSA data, leads tracked through international financial investigative units, and OFAC compliance alerts. By synthesizing all of this information into decision-oriented analytical products and drawing upon its specialized expertise, Treasury can make a significant contribution to the broader intelligence community as well.

Question 2. What relationship will you have to the CIA, the FBI, and the Department of Homeland Security? Have you given some thought to how to improve these relationships?

Answer. Please see my response to question 1 for how I envision the relationship between Treasury and the CIA, FBI and DHS within the Intelligence Community. In addition to what I stated there, I would attempt to improve these relationships primarily by striving to provide information and analysis to those agencies that helps them fulfill their respective missions. Also, I would hope to improve relationships with others in the intelligence community through joint projects, regular meetings, and personnel exchanges.

Question 3. Are there plans to connect the Terrorism and Financial Intelligence Office electronically to each of these agencies, and have you begun to develop a memorandum of understanding to ensure connectivity?

Answer. As a nominee and a current Department of Justice official, I have not yet had an opportunity to study this issue. However, I am told that Treasury is currently connected to the CIA, FBI, and DHS through ICE-mail and other components

through SIPRNET. In addition, I am told that Treasury continues to support the former Customs and Secret Service on the Treasury Foreign Intelligence Network.If confirmed, I hope to begin discussions on sharing of databases to the extent possible and appropriate.

Question 4. Are there overlaps or redundancies that you think need to be eliminated between Treasury and these other agencies?

Answer. I believe that one of the guiding principles in the development of TFI is minimization of redundancy to ensure that limited resources are used wisely. My hope is that TFI will be filling key intelligence gaps in the area of terrorist finance, particularly in support of the execution of Treasury's authorities, such as the PATRIOT Act and IEEPA. The goal will be not to recreate the fine analytic work being done on these matters by our sister agencies. If confirmed, I and my staff will coordinate closely with CIA's Counterterrorism Center and others to ensure that we are not duplicating their efforts. I have already had preliminary discussions with officials at the CIA's CTC on this issue. I also hope that TFI will work collaboratively with CTC and TTIC on joint projects that combine areas of expertise when that is appropriate.

Question 5. Is the Department of the Treasury represented at the Terrorist Threat Integration Center (TTIC)? If so, how many Treasury personnel are assigned there? If not, do you plan to provide personnel to TTIC?

Answer. I am told that Treasury currently does not have any staff at TTIC. When TTIC moves to its new facility, there are plans to place up to ten Treasury staff on site.

Question 6. A recent letter to Senators Collins and Levin from Secretary Ridge, FBI Director Mueller, Director of Central Intelligence Tenet and the Director of TTIC, John Brennan, sought to differentiate and describe the various responsibilities of their agencies in who has primary responsibility for terrorism information analysis. Have you have the opportunity to review this letter? If so, in which areas do you see the Terrorism and Financial Intelligence Office making the greatest contribution?

Answer. I have read the letter dated April 13, 2004, addressed to Senators Collins and Levin. I believe that the new Office of Terrorism and Financial Intelligence (TFI) can provide a vital service within the general structure described in that letter. The letter makes clear that TTIC will have the primary responsibility in the entire United States government for terrorism analysis (except as it relates to information about purely domestic terrorism), but that each of the other entities will retain analytical functions to support its distinctive mission and to advance the overall goal of counterterrorism. I envision a similar goal for TFI: TFI should support and interact with TTIC and the other relevant entities but should also be the premier analytic unit specializing in financial intelligence and exploiting the Treasury Department's unique data. Just as one example, TFI's Office of Intelligence and Analysis will be able concentrate specialized effort on analyzing BSA information obtained by FinCEN that may reveal indications of terrorist financing. Those indications can be conveyed to TTIC and FBI for appropriate analysis and action, and, at the same time, Treasury can and should take action on its own to follow up. If done properly, I believe that such a unit would both advance the mission of the Treasury Department and also be valuable to TTIC.

Question 7. Do you envision the Terrorism and Financial Intelligence Office as having a role similar to Homeland Security's Information Analysis and Infrastructure Protection in terms of identifying our financial vulnerabilities?

Answer. As you indicate, one of the goals that I would like to see TFI pursue is very much analogous to the mission of DHS's Directorate of Information Analysis and Infrastructure Protection Directorate. Once it is fully operational, one goal of TFI's Office of Intelligence and Analysis will be to identify vulnerabilities in our financial system that could be exploited by terrorists or other criminals and recommend potential countermeasures.

STAFFING CONCERNS

Question 8. How do you envision your office blending the analytic capabilities that already exist at Treasury in the Financial Crimes Enforcement Network, the Office of Foreign Assets Control and the Office of Intelligence Support and to what extent will you need to attract analysts from other parts of the Intelligence Community?

Answer. Treasury's intelligence functions will be consolidated to allow unimpeded access to information and encourage cross-pollination of ideas and techniques. At the same time, it is important to preserve the distinctive expertise and outlook of analysts who serve different functional roles. I am mindful of the challenges presented, and they will require careful thought and attention.

With respect to resources, I am told the following: in FY04, Treasury intends to fill several newly-created analyst positions, supplementing existing resources in FinCEN, OFAC, and the former Office of Intelligence Support. There will also be an effort to recruit additional IC analysts on detail. Treasury has already recruited an officer from the CIA to exploit internet and other open source material. The Department is not yet in a position to make final decisions regarding staffing needs for future years.

Question 9. Have you considered ways to attract top quality analysts to ensure that they are protected so that a transfer or rotational assignment to the Terrorism and Financial Intelligence Office would be seen as career enhancing, or would provide appropriate incentives?

Answer. I am very concerned about this issue since I believe recruitment of top quality analysts is critical to the success of the office. Initially, the profile of Treasury's intelligence function will be raised by the establishment of OIA under the leadership of an Assistant Secretary whose primary focus is intelligence. Of course, Treasury will need to identify an Assistant Secretary who can command the confidence of the Intelligence Community. In the end, though, the keys to attracting talented analysts will be (1) to differentiate the responsibilities of OIA analyst positions from other opportunities within the IC and (2) to ensure that the office enjoys an excellent reputation. The primary appeal of Treasury analytical positions will be the ability to have a hand in shaping policy. Analysts in OIA will be well positioned—and encouraged—to propose targets for Treasury or inter-agency action or to recommend other policy initiatives. With respect to OIA's reputation, it is my goal to build an intelligence office whose financial skills are second to none. Much in the same way that IRS-CI is known for investigators with unmatched business and accounting savvy, OIA will look to recruit intelligence analysts with strong financial backgrounds, giving the office unique expertise, perspective, and appeal.

Question 10. Have you had discussions with your counterparts at other agencies that could be contributors of staff on how to address this issue? Have those discussions been productive?

Answer. As a nominee, I have felt constrained from pursuing such discussions in any detail with officials from other agencies. I have, however, had very general conversations with officials at the CIA on this topic and have received a generally favorable reception in terms of expressions of support. In addition, I understand that the Secretary of the Treasury has discussed the possibility of assigning details to the new office with the DCI and Director of NSA. The newly appointed Deputy Assistant Secretary for Intelligence is a detail from the CIA, and, if confirmed, I hope that we can bring others on board as well. Treasury also has several liaison officers from NSA and is seeking to have an analyst assigned to the office. If confirmed, I will continue to pursue such arrangements.

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV

Mr. Chairman, I want to start by thanking you for holding this hearing. The nominations of Mr. Zarate and Mr. Levey give this committee an opportunity to take stock of our nation's progress in eliminating terrorist financing. I am very pleased that we have such knowledgeable witnesses here today to share their own expertise and perspectives on this important topic. I look forward to their testimony and will carefully review their responses to the questions submitted by myself and my colleagues.

My service on the Intelligence Committee has reinforced my belief that the ability to cut off the financial resources of terrorists is an important part of the War on Terror. This mission requires the close coordination between the Treasury Department and the Intelligence Community. It seems to me that the Treasury Department will be dependent on the intelligence gathering and analysis that can only be done by the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation. And by the same token, each of those agencies will need to rely on the finance expertise and enforcement powers available to the Treasury Department.

It is certainly my hope that the recent reorganization undertaken by the Department, including the creation of the Office of Terrorism and Financial Intelligence (TFI), will lead to greater coordination within the Department and between the Department and the Intelligence Community. I am extremely encouraged by the Administration's quick action to nominate two individuals, Mr. Levey and Mr. Zarate, who already have experience fighting terrorist financing.

Congress must play an active role in monitoring the progress of the Treasury Department's counter-terrorist financing and financial crimes enforcement efforts. The

President has requested a considerable increase in funding for the battle against terrorist financing, and it is my belief that our resources can be used most effectively if the relationship between the Treasury Department and the Intelligence Community is strengthened with greater communication, electronic connectivity, and staff interaction. I look forward to hearing the witnesses' and the nominees' thoughts on how this relationship can be improved.

Again, Mr. Chairman, thank you for your commitment to thisissue.

PREPARED STATEMENT OF JUAN C. ZARATE

Chairman Grassley, Ranking Member Baucus, and distinguished Members of this Committee, it is an honor for me to be before you today. It is a privilege to have been nominated by the President for the position of Assistant Secretary of the Treasury for Terrorist Financing, and I thank him, Secretary Snow, and Deputy Secretary Bodman for their confidence in nominating me for this important position.

Mr. Chairman, the positions for which Mr. Levey and I have been nominated form an important part of our country's long-term strategy in the war on terror. This Administration has waged an unprecedented campaign against terrorism and the financing that fuels horrendous acts of violence and hatred around the world. This is not just an American problem born on September 11th. From the railway bombings of Madrid and Moscow to the commercial center attacks in Istanbul and Casablanca, we have seen that terrorism does not discriminate among race, religion, or national origin.

When I came to Washington as a federal prosecutor, Mr. Chairman, I was immersed quickly into the reality of the threat that al Qaida posed to our country. One of my first assignments was to assist in the prosecution of those responsible for the American Embassy bombings in East Africa. I further confronted the unabated viciousness of al Qaida as a prosecutor in the investigation of the murders of 17 of our countrymen and women on the *USS Cole.*

Just days after I began work at the Treasury Department on August 27, 2001, our world and our collective mission changed forever.

Since September 11th, I have been privileged to form part of the U.S government effort, along with Mr. Levey, to attack the financial underpinnings of terrorism.

We have achieved important successes in the mission to bankrupt terrorism. It is now harder, costlier, and riskier for al Qaida and other like-minded terror groups to raise and move money around the world. We have frozen and seized terrorist assets, exposed and dismantled known channels of funding, deterred donors, arrested key facilitators, and built higher hurdles in the international financial system to prevent abuse by terrorists.

We have forged an international coalition to combat terrorist financing, and have focused the world's attention on previously unregulated, high risk sectors like charities and hawalas. In this effort, we have also enlisted the private sector worldwide—the banks, money service businesses, broker-dealers, and the charitable sector—to serve as the front-line in this battle. These efforts have tightened the financial noose around al Qaida's neck.

The drumbeat of our drive to disrupt and dismantle terrorist financing has been constant and will continue.

Mr. Chairman, I am very proud that this work has been undertaken while our other efforts to combat money laundering, financial crimes, and enforce sanctions have also intensified. I would like to share with you a few of our actions over the past several days, which serve as good examples of the steady and important work that the Treasury continues to produce:

- Yesterday, in furtherance of our efforts to expose Saddam Hussein's financial web, we announced the designation by the Office of Foreign Assets Control of an additional six individuals and two companies that served as agents and fronts for Uday Hussein. We submitted these names to the United Nations, adding to the already 220 Iraqi-related entities listed at the U.N. Since March 2003, when Secretary Snow launched our campaign to find, freeze, and repatriate the Iraqi assets stolen by the Hussein regime, we have worked with our international partners to freeze approximately $6 billion around the world and return over $2.6 billion to the Iraqi people.
- On Friday, Treasury shared, through our Asset Forfeiture Office, over $2.5 million with the governments of Australia, Canada, and Switzerland for their assistance in money laundering investigations led by the IRS and the Bureau of Immigration and Customs Enforcement.
- Last Thursday, the Treasury's Financial Crimes Enforcement Network (FinCEN), along with the Office of Comptroller of Currency, levied a fine of $25

million against Riggs Banks for failure to comply with provisions of the *Bank Secrecy Act*.

- Last Tuesday, as part of the President's announcement of the sanctions to be imposed against Syria, the Secretary of the Treasury designated the Commercial Bank of Syria as a "primary money laundering concern" under Section 311 of the *USA PATRIOT Act*. As a result, the Secretary ordered the closing of their correspondent accounts because of that bank's complicity in dealing with the Hussein regime, its weak money laundering practices, and suspicions of terrorist financing through the institution.

This is but a mere snapshot of the important work the Treasury accomplishes every day. These efforts are critical not only to preserve the integrity of our financial system, but also to promote the national security interests of our country.

The need for this type of intensive and consolidated work in the long-term is why this Administration, in concert with Congress, decided to create the new Office of Terrorism and Financial Intelligence. TFI, as it will be called, brings under one umbrella the intelligence, enforcement, diplomatic, policy, and regulatory resources of the Treasury. It will allow us to consolidate our information and analysis to best utilize Treasury authorities to advance our national security interests and protect our financial systems. TFI will allow us to sustain these and additional efforts for the long term.

This is important, Mr. Chairman, because we know that we are in the midst of a real and protracted struggle against terrorism. We will not tire in our mission to find and incapacitate those who underwrite terror. We will continue to strengthen the financial net to protect our institutions from tainted capital flows and will continue to use all of our authorities, relationships, and expertise to attack sources, conduits and proceeds of financial crime.

Finally, Mr. Chairman, I am pleased to have with me my wife, Cindy, my parents, my brother, and friends who have supported me professionally and personally. It has been both a dream and an expectation of my parents—who immigrated from Mexico and Cuba in the 1950s in search of freedom and opportunity—that my siblings and I serve this country. If confirmed, I hope to continue to serve this President and Secretary Snow with an unwavering commitment and a deep passion for these issues, and to work with this Committee and other Committees of Congress to advance our national interests.

Thank you.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.): Juan Carlos Zarate

2. Position to which nominated: Assistant Secretary of the Treasury (Terrorist Financing and Financial Crimes)

3. Date of nomination: March 11, 2004.

4. Address: (List current residence, office, and mailing addresses.): Residence: 6335 Walking Lane, Alexandria, VA 22312. Office: U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

5. Date and place of birth: May 31, 1971, Santa Ana, California.

6. Marital status: (Include maiden name of wife or husband's name.): Married to Cynthia Michelle Millsap Zarate.

7. Names and ages of children: N/A.

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.): Mater Dei High School (1985-1989), HS Diploma 1989; Harvard University (1989-1993), A.B. 1993; Universidad de Salamanca (1993-1994) (graduate studies but no degree); Harvard Law School (1994-1997), J.D. 1997.

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

U.S. District Court, Central District of California, Summer Law Extern for Honorable Alicemarie Stotler, U.S. Courthouse, 411 West Fourth St., Room 1053, Santa Ana, CA 92701 (June 1995 to August 1995) (unpaid).

White & Case, LLP, Summer Associate, 1155 Avenue of the Americas, NY, NY 10036 (May 1996 to July 1996).

O'Melveny & Myers, Summer Associate, 610 Newport Center Drive, 17th Floor, Newport Beach, CA 92660 (July 1996 to September 1996).

U.S. District Court, Southern District of California, Law Clerk for Honorable Judith N. Keep, 940 Front Street, San Diego, CA 92101 (October 1997 to October 1998).

U.S. Department of Justice, Criminal Division, Terrorism and Violent Crime Section, Trial Attorney, 601 D Street, Suite 6500, Washington DC, 20530 (January 1999 to August 2001). My service at the Department of Justice also included work as a Special Assistant United States Attorney at the U.S. Attorney's Office, District of Maryland as well as a rotation in the Criminal Appellate Section of the U.S. Department of Justice.

U.S. Department of the Treasury, 1500 Pennsylvania Ave, NW, Washington DC, 20220, Deputy Assistant Secretary (Executive Office for Terrorist Financing and Financial Crimes) (March 2003 to present); Deputy Assistant Secretary (Terrorism and Violent Crime) (November 2001 to March 2003); Senior Advisor to the Under Secretary (Enforcement) (August 2001 to November 2001).

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.) N/A.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.): Summer Associate for White & Case and O'Melveny & Myers.

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.):

I have been a member or associate/affiliate of the following organizations within the past ten years: Freedom's Foundation at Valley Forge (1989-present); Washington Crossing Foundation (1989-present); Hermanos Al Rescate ("Brothers to the Rescue") (approximately 1995-1998); Harvard Law School's Tenant Advocacy Project (1994-1997); Harvard's Earthen Vessels Program (1994-present); Harvard's Catholic Students Association (1989-1993); Harvard's Progressive Alliance for Life (1989-1993, Co-Chair in 1992-1993).

13. Political affiliations and activities:

    a. List all public offices for which you have been a candidate: None

    b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years: None

c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years: None

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Department of the Treasury, Exceptional Service Award (February 7, 2003)
Mater Dei High School Ring of Honor Inductee (May 2002)
Department of Justice, Special Achievement Award (Summer 2001)
Department of Justice Honor Program Attorney (Selection in 1998)
Rotary International Fellowship (1994)
Harvard University's John P. Reardon, Jr. Award (top male student-athlete, 1993)
Harvard/Lowell House Patrick C. Melendez Award (public service award 1993)
Harvard/Lowell House Franklin Ford Award (intellectual curiosity 1993)
Harvard University Dean's List (4 years: 1990-1993)
Washington Crossing Foundation Scholarship (1989)
Rotary Club of Santa Ana Young Man of the Year (1989)
Freedom's Foundation at Valley Forge Honoree (1988-89)

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.):

Forging Democracy: A Comparative Study of the Effects of U.S. Foreign Policy on Central American Democratization (University Press of America 1994);
The Emergence of a New Dog of War: Private International Security Companies, International Law, and the New World Disorder (Stanford Journal of International Law Winter 1998);
Review of Jon Galen Carpenter's *Beyond NATO* in the Harvard Journal of International Law Spring 1995;
Response to Article in Harvard's Lighthouse Journal (Spring 1990).

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.):

I have made formal speeches, participated on various panels, testified several times before Congress, and have been interviewed by the media frequently. The following are the names of the fora in which I have participated and made a presentation of some kind (either as a panelist or a presenter): Investment Company Institute (November 10, 2003); Islamic Society of North America (April 2003 Chicago Symposium and August 2003 National Conference in Chicago); Muslim Public Affairs Council (December 2002 National Conference in Long Beach); National Press Club Event Sponsored by the Muslim Public

Affairs Council (October 20, 2003), Bankers' Association for Finance and Trade (2002), Jewish Council for Public Affairs (February 2002); Bank Secrecy Act Advisory Group (May 14, 2003, and October 22, 2003); Pakistan American Business Association (January 2002); The Conference of State Bank Supervisors; Freedom's Foundation at Valley Forge/Orange County Chapter (Richard Nixon Library July 2002); Roundtable on Social and Behavioral Sciences and Terrorism (March 18, 2002).

Only one of those events, my keynote address at the Investment Company Institute, has included formal remarks that the Treasury Department has published. That speech is attached.

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.):

I have served the Administration and the Treasury Department since September 11, 2001, as a primary policymaker and spokesperson on the issues of terrorist financing, financial sanctions and national security, money laundering, and financial crimes – first as the Deputy Assistant Secretary of the Treasury for Terrorism and Violent Crimes and then as the Deputy Assistant Secretary for Terrorist Financing and Financial Crimes. Since March 2003, I have been charged with coordinating the Treasury's policy and operational efforts to deal with terrorist financing and financial crimes threats, in addition to overseeing the functions and operations of the Office of Foreign Assets Control (OFAC), the Financial Crimes Enforcement Network (FinCEN), and the Executive Office for Asset Forfeiture. In addition, I have provided Treasury's policy guidance to the Criminal Investigation Division of the Internal Revenue Service as it relates to terrorist financing, money laundering, and related financial crimes.

In my capacity since September 11th, I have represented the Treasury in the inter-agency on issues related to terrorism and terrorist financing as well as the application and administration of US economic sanctions. In addition, since March 2003, I have led Treasury efforts with respect to combating money laundering, financial crimes, and drug trafficking. In this capacity as well, I have served as a primary financial diplomat to other countries and with the private sector to enlist cooperation – having led or participated in dozens of international initiatives and delegations related to terrorist financing, financials sanctions, and money laundering. In particular, I have served as a primary interlocutor with key countries like Saudi Arabia on the issue of terrorist financing.

Most recently, I have been charged with coordinating and leading the US government's efforts to find, freeze, and return Iraqi and Hussein-related assets to the Iraqi people. In this capacity, we have marshaled the resources of the intelligence, law enforcement, regulatory, financial, and diplomatic communities to achieve real success in finding and returning Iraqi assets, and I have directly engaged with foreign leaders, ministers, and representatives on this issue.

My oversight over sanctions policy generally and over the work of the Office of Foreign Assets Control more specifically has required that I be a primary policymaker on issues of national security and import within the Treasury Department and within the US government. In this capacity, I am directly involved in the policies surrounding and enforcement of US laws related to the Cuba sanctions program, given the President's October 2003 call for more effective enforcement of existing laws and regulations.

In my role over the past year, I have also overseen the implementation of the 2002 National Money Laundering Strategy, the drafting and publication of the 2003 National Money Laundering Strategy, and the continued implementation of Treasury and US government efforts to combat money laundering and financial crimes. In this capacity, I have also guided Treasury's powers and involvement to combat transnational financial criminal activity – including international narcotics trafficking. This includes direct involvement and work with the law enforcement and intelligence communities.

In addition, I have worked on issues related to the USA PATRIOT Act since its conception and have overseen the work of FinCEN over the past year in reviewing and implementing key provisions of the Act and the Bank Secrecy Act.

My background as a federal prosecutor in the counter-terrorism division and in working on cases prior to September 11th related to al Qaida and other terrorist groups has been an added advantage for me in my current position and would continue to help as we continue to focus efforts on dismantling terrorist infrastructures.

Most importantly, I believe I have a vibrant and clear vision for Treasury's role in leading and supporting U.S. national security goals. The use of Treasury powers, influence, and expertise is an essential element of the U.S. government's ability to affect the behavior of rogue elements around the world and to protect the international financial system and the people of the United States against the ill effects of flows of tainted capital.

I therefore believe that I am qualified for this position given (1) my direct and continued experience in leading and managing the issues related to terrorist financing, economic sanctions, money laundering, financial crimes, the Bank Secrecy Act; (2) my deep experience internationally in building coalitions with foreign governments and the private sector to deal with issues of import to the Treasury and the US government; (3) my well-established relationships within the US government, especially in the law enforcement, diplomatic, and intelligence communities; and (4) my deep commitment to these issues and passion for accomplishing the goals of disrupting and dismantling terrorist financial networks, deterring money laundering and drug trafficking, and using Treasury's

financial powers, influence, and expertise to affect the behavior of rogue elements within the international system.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details: Not applicable.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details: No.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain: Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated: None.

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated: None.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed: None. Any such activities have been as a Treasury employee.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.): Should any potential conflicts of interest arise in the future, I will consult with Treasury ethics officials.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details: No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details: No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details: Yes. I am currently a member of the plaintiff's class of Department of Justice attorneys challenging the Department of Justice for failing to apply federal overtime rules. The name of this case is John Doe v USA, Federal Court of Claims (filed November 25, 1998). I have had no direct involvement in this case other than membership in the class.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details: No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?: Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?: Yes.

RESPONSES TO QUESTIONS FROM SENATOR GRASSLEY

Question 1. A major part of the TFI office is the new Intelligence Analysis office, run by an Assistant Secretary. This person has not yet been nominated. How is Treasury going to become more of a member of the Intelligence Community, which can be an exclusive club?

In your answer, please include an explanation of these three issues:

- What you envision for that office?
- What are the challenges for intelligence?
- What can Treasury bring to the table?

Answer. The new Office of Intelligence and Analysis (OIA) will address one of the longstanding issues identified in the Department of the Treasury, which is a lack of an integrated intelligence function that supports the Department and is linked directly into the Intelligence Community. The Office will have two primary functions:

The first function of OIA is to build a robust analytical capability on terrorist finance. The Department of the Treasury needs *actionable intelligence* that can be used to fulfill its mission and exercise its legal authorities. Analytical products from the intelligence community tend to be based on anecdotal information and are largely intended to inform policymakers rather than provide them with data points that can be a basis for than taking action. They also tend to be highly classified, whereas Treasury often needs to use the lowest classification possible to be used openly to press foreign governments or in evidentiary packages. While OIA will draw on all-source analytical products from the intelligence community, it will produce its own intelligence reports tailored to the particular needs of Treasury's mission.

The second is the provision of intelligence support to senior Treasury officials. OIA will also provide intelligence support to other senior Treasury officials on a wide range of other international economic and political issues of concern to the Department. Subsuming the functions of the current Office of Intelligence Support, OIA will continue to review incoming raw and finished intelligence from other agencies, then select relevant items for senior officials. The intelligence advisors will also drive collection by drafting requirements for the intelligence agencies to ensure that Treasury's information needs are met. Moreover, they will continue to serve in a liaison capacity with the intelligence community and represent the Department in various intelligence-related activities.

One of the challenges of the office will be to leverage existing resources within the Department and coordinate intelligence work throughout other parts of Treasury. The office will evolve in several stages. OIA has already assembled a team of analysts to closely monitor and review incoming current intelligence threat reporting and identify and track the financial angle of the threats. In the near term, it will further develop its analytical capability in areas such as strategic targeting of terrorist financial networks and their key nodes. Over the longer term, it will analyze trends and patterns and non-traditional targets such as hawalas and couriers.

Treasury brings unique expertise and information to the table. For example, the Suspicious Activity Reports from FinCEN and its extensive Bank Secrecy Act database have provided unique information to the intelligence community. OFAC's compliance division has also given the intelligence community alerts to possible suspicious activity. The IRS/Criminal Investigation Division also has developed lead information on possible terrorist suspects. Furthermore, Treasury analysts have financial expertise that it can share with the rest of its interagency partners. Moreover, the Department has played a leadership role in its outreach to its international counterparts, including the Financial Intelligence Units and Finance Ministries worldwide.

One of the new office's primary objectives will be to enhance the Department's relations with the Intelligence Community. We believe that by elevating the intelligence function to an assistant secretary level, it will allow Treasury's enforcement functions to be better integrated into the national intelligence community. We also hope to attract new analysts with expertise and invest in technology that will support sophisticated analytical tools and provide seamless connectivity with the rest of the community.

Question 2a. Why can't we have full disclosure about any involvement of Saudi persons or entities in terrorism?

Answer. The Treasury Department cannot discuss specific investigations or analysis or targets under consideration, regardless of where those targets are located or what action is contemplated.

Question 2b. If the Saudi government is helping us, but still allowing some of its powerful citizens to support terrorism even indirectly, how do we balance what we should do?

Answer. Should we obtain information indicating that the Saudi government was knowingly tolerating support for terrorism, we would pressure them in the strongest terms to terminate that support. The United States has devoted enormous resources and effort to stemming the flow of funds from within Saudi Arabia to terrorists and, with the cooperation of the Saudi government, these efforts have begun to bear fruit. This is evidenced by numerous U.S.-Saudi initiatives, including the Joint Terrorism Task Force (JTTF) and, most recently, by the June 2nd joint designation at the UN of five Al Haramain Islamic Foundation branches. We intend to do everything in our power to continue to press the government of Saudi Arabia at all levels to ensure that progress continues and that no stone is left unturned.

Question 3a. How many Saudi-based charities—the ones in the kingdom, not their branches around the world—have been investigated by Treasury or our government?

Answer. The Treasury Department cannot discuss specific investigations or analysis or targets under consideration. It should be noted that several public actions have been taken to designate and freeze the assets of branches of the Al-Haramain Foundation, a Saudi-based charity. The Saudi Arabian government recently announced that this charity along with others within the Kingdom would be dissolved and merged into a single Saudi charity, Saudi National Commission for Charitable Work Abroad, to ensure proper oversight and use of charitable funds.

Question 3b. If so, has this led to shutting any charities down, or charges against anyone?

Answer. On June 2nd, the U.S. and Saudi Arabia jointly designated five branches of the Saudi-based charity Al Haramain Foundation (AHF), and at the same time Saudi Arabia announced its intention to dissolve AHF in its entirety and merge its remaining operations and assets into the newly-established Saudi National Commission for Charitable Work Abroad. Saudi Arabia has stated that this new entity will be subject to strict financial legal oversight, and will operate according to clear policies to ensure that charitable funds intended to help the needy are not misused.

Question 3c. If that's the case, what have they done inside the kingdom?

Answer. In addition to the actions cited above, Saudi Arabia took an important step relating to charities by issuing rules, through the Saudi Arabian Monetary Authority (SAMA), to Saudi banks in May 2003. These rules place new restrictions on the bank accounts of Saudi charities, including the following:

- Accounts can be opened in Saudi Riyals only;
- Enhanced customer identification requirements, particularly with respect to board members, individuals authorized to manage the account, and individuals making deposits;
- One main consolidated account for each charity. Sub-accounts are permitted for branches, but are restricted to receiving deposits. Withdrawals and transfers must be through the main account.
- No cash disbursements. Payments may be made only by checks payable to the first beneficiary and deposited in a Saudi bank.
- No ATM or credit cards issued, and outstanding cards cancelled.
- No transfers outside of Saudi Arabia.

Question 4a. What measures—or metrics, as Mr. Myers called them—are you going to use at Treasury to measure your performance?

Answer. Our primary goal is to prevent and deter terrorist activity by disrupting and dismantling terrorist financial infrastructures. Perhaps the most effective measure of our success has been the anecdotal information about the inability of al Qaida and other groups to fund their organizations and activities as they have in the past as well as their changed tactics to deal with increased diligence by governments and the private sector. Statistical metrics in this arena—particularly figures that are open and unclassified—will not reflect the true picture. Prevention and deterrence, by their very nature, are difficult to quantify.

Reliance on unrepresentative metrics can be counterproductive, as it tends to concentrate effort on activities that may not be best-suited to serve the overall goal of combating terrorism. It is very important, particularly for an agency at the forefront of these efforts, not to rely on metrics that skew incentives in favor of one agency tool or another. Decision makers must be encouraged to choose the most effective alternative, not the one that boosts a reportable statistic.

Though difficult to measure, the Treasury has used certain indicators to monitor our effectiveness, such as amounts of assets or transactions blocked or seized, numbers of key financiers or facilitators incapacitated or financially isolated, numbers of channels exposed and dismantled, and numbers of countries that have taken important steps on their own to pass laws, freeze assets, or arrest terrorist supporters, among others. Strategic measures for Treasury's progress in combating terrorist financing, which capture some of these elements, were incorporated in the Treasury Department's strategic plan.

Question 4b. Also, both witnesses from our first panel proposed that the Office of Management and Budget and the NSC conduct an across-the-board analysis of our terrorism financing efforts. Do you think that's a good idea? If so, when will Treasury propose that it be carried out? If not, please explain why.

Answer. Evaluating the resources being devoted to terrorism and terrorist financing in general may prove useful, although it would require a significant expenditure of time and effort on the part of all relevant agencies that are currently engaged in the fight against terrorism. With the reorganization underway at the Treasury Department, though, as a new Undersecretary and two new Assistant Secretaries

assume their roles and as personnel and resources are reshuffled, this is not an advantageous time for such a study.

Question 5. It's well-known by now that terrorists are resorting to unregulated methods of moving their money, outside of the banking system, such as gold, diamonds and other commodities. Please describe what actions Treasury has taken since 911 to address this tactic, and what are Treasury's plans moving forward?

Answer. For a background discussion of trade-based money laundering and terrorist financing, please see *2003 National Money Laundering Strategy*, Appendix D.

As the formal international financial system becomes increasingly regulated, scrutinized, and transparent, money launderers and terrorist financiers are increasingly likely to use fraudulent trade practices in international commerce to earn, move, and integrate funds and assets. Trade-based value transfer is prevalent in many parts of the world that are vulnerable to terrorist financing. Gold in particular has a deeply rooted cultural appeal and is uniquely susceptible to trade-based money laundering. In addition, diamonds represent a very condensed form of wealth and are easily smuggled, authenticated and laundered in world trade. However, hawala type transactions literally use any type of commodity as a vehicle to launder money, transfer value, or provide counter-valuation.

Treasury investigators found that the most effective way to counter-act trade-based money laundering and fraud is to compare inbound and outbound trade data between countries. Trade anomalies identified could be indicative of money laundering, tax evasion, and even terrorist financing. As a result, Treasury has been working with the Financial Investigations Division of the Department of Homeland Security's Bureau of Immigration and Customs Enforcement (ICE), which tracks both the importation and exportation of trade goods. Through its Numerically Integrated Profiling System (NIPS) computer program, ICE analyzes electronically captured trade data and overlays it with Bank Secrecy Act (BSA) databases and other records. It has become a tremendous targeting tool for analysts and investigators. Many countries around the world have shown substantial interest in the program. There have been preliminary discussions of establishing an international network of "Trade Transparency Units," modeled loosely on the Egmont Group of Financial Intelligence Units pioneered by FinCEN that will identify specific trade transactions between member countries that merit scrutiny and perhaps investigation. Since customs data and expertise is essential in this process, ICE has the lead. Treasury helped initiate the trade transparency concept related to money laundering. Treasury is prepared to assist ICE and others in analysis and establishment of an international network of Trade Transparency Units.

Treasury has also worked with the State Department to establish and help structure the Kimberly Process that helps authenticate the origin of diamonds and track their worldwide sale. The Kimberly Process is an example of government, industry and NGO partnership in setting worldwide standards that has helped create mechanisms to stem the flow of blood or conflict diamonds. Vulnerabilities in the international diamond trade remain, as the Kimberly Process was not designed to combat the use of diamonds' by terrorists. Treasury's FinCEN has recently held extensive discussions with the diamond industry in the U.S., the Middle East, and Africa. In March, FinCEN's Director Fox addressed the World Diamond Council and called for a public-private partnership. He will address the industry again in October. FinCEN has also issued proposed rules pursuant to Section 352 of the USA PATRIOT Act ("Patriot Act"). The Patriot Act that will require dealers in precious metals, stones, or jewels to develop risk-based anti-money laundering programs. FinCEN representatives also recently traveled to South Africa for far-reaching conversations with government and business regarding the misuse of the international gold and diamond trade.

Treasury worked with the interagency Terrorist Finance Working Group to create an innovative trade-based money laundering training program that is given to prioritized countries in our war against terrorist financing. Treasury has also taken the lead hosting periodic interagency meetings to discuss developments and strategies regarding trade-based money laundering efforts.

Treasury realizes that terrorist financing is diversified and that trade-based money laundering deserves scrutiny. As we move forward, Treasury will continue its efforts outlined above and support interagency efforts to identify and combat the misuse of trade by terrorists and money launderers.

Question 6. Please explain in detail why we should rely on charities to voluntarily comply with the 2002 guidelines released by Treasury, as opposed to mandating compliance by administrative action or legislation?

Answer. The U.S. government relies on the current regulatory structure dealing with tax-exempt organizations, as overseen and implemented by the Internal Rev-

enue Service, to ensure that our charities are not being abused by criminals of any stripe.

Federally, they are subject to the 501(c)(3) processes administered by the IRS. Post-9/11, the IRS has undertaken quite intensive efforts to look at the overseas elements of their regulations, in fact, revising their 1023 forms and 990 forms with respect to overseas issues. Additionally, the IRS is looking at revising their guidelines on overseas grant making.

Another key component of this has been the engagement with the private sector. Part of that has been the issuing of the above-referenced guidelines, which are voluntary and, in essence, best practices. In many respects, these have been treated as regulatory guidance by the charities.

Treasury issued the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* in November 2002, in response to the Muslim American community's request for further guidance on dealing with the real risk of terrorist financing. These *Guidelines* are intended to assist the charitable sector in addressing the threat of terrorist financing, rather than constructing an overall regulatory structure. Treasury remains committed to this approach for a number of reasons, including:

- The *Guidelines* are intended to inform the sector and the donor community of the kinds of steps that charities can take to protect themselves from terrorist abuse. They were not drafted as regulations and would have to be substantially revised before ever considering them as such.
- The large and diverse nature of the U.S. charitable sector requires us to adopt a risk-based approach and secure the cooperation of the sector to protect it from terrorist abuse. Owing largely to the collaborative relationship between the sector and IRS-TEGE, as well as to Treasury's outreach efforts, we have achieved a cooperative partnership with the sector without the need for additional regulation;
- Through 501(c)(3) reporting requirements (Forms 1023 and 990), the IRS already receives a wealth of information from the charitable sector. This information has been extremely valuable in aiding law enforcement investigations into terrorist and other abuse of and by charities. These reporting requirements have recently been revised to provide more helpful information to examiners and investigators.

Charitable organizations are taking meaningful steps to protect against terrorist abuse in response to the *Guidelines*. We are actively engaged in an outreach campaign with the charitable sector and continue to work with them on this issue. As this relationship develops, we will continue to assess and evaluate the most effective approaches to take.

Question 7. After 9/11, the government took action against a number of charities in this country who were suspected of terrorism financing. These include the Global Relief Foundation and the Holy Land Foundation.

But we've since learned that various agencies—Treasury, the FBI and the CIA—had information that these groups were suspected of terrorism involvement long before 9/11.

Another concern is that some of the people linked to charities we've shut down just open up new charities with different names, and they use their family members as cover.

First, why do you think the government could not or did not act sooner against these groups? Second, what is Treasury doing to make sure these terror charities are not being revived under new false names? Is this effort part of the Treasury Working Group on Charities and Terrorist Financing? If not, what is that focused on?

Answer. We cannot divulge the internal deliberations of the various agencies that target terrorist financiers. However, as a general matter, designation is but one tool in a U.S. government arsenal that also includes law enforcement, intelligence collection, and diplomatic engagement. The failure to designate an entity publicly should in no way be taken as a failure to act.

Treasury, along with its inter-agency partners and the international community, continues to monitor the activities of those who would circumvent the international terrorist financing sanctions regime and has designated reconstituted charities and their leadership in specific instances where such activity is demonstrated.

The Treasury Working Group on Charities and Terrorist Financing (WGTF) is an informal group that meets as necessary to discuss a wide range of issues concerning the threat of terrorist financing in the charitable sector. These issues may be generally categorized under one of the following four topics: (i) oversight; (ii) outreach; (iii) targeting and investigation, and (iv) international developments and initiatives. Each of these issues implicates a combination of various Treasury components, in-

cluding the Executive Office for Terrorist Financing & Financial Crimes, the Office of General Counsel, the Office of Tax Policy, the Office of International Affairs, the IRS—Tax Exempt Government Entities Section, the IRS—Criminal Investigation Division, and the Office of Foreign Assets Control.

Representatives from each of these offices participate on the WGTF, which serves as an information clearinghouse to keep all relevant parties informed and to capitalize on expertise from across the Department on issues regarding charities and terrorist financing. Specific projects or initiatives dealing with these issues are supported by the relevant Treasury parties and discussed in this group. To coordinate the Department's efforts on these issues with those of other departments, Treasury has also convened an inter-agency Working Group on Charities and Terrorist Financing.

Question 8. Would the Treasury Department's efforts to combat terrorism financing benefit from the power to designate foreign banks—along with their correspondence accounts, wherever they are—if they do business with entities that are already designated? What are the pros and cons of having and using such authority? Is Treasury asking the Congress for this authority?

Answer. The Treasury Department, in many respects, already has the power to designate foreign banks. Pursuant to E.O. 13224 and the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq*.) (IEEPA), Treasury, in consultation with the Departments of State, Justice, and Homeland Security, has the authority to designate foreign banks that are determined to be owned or controlled by, act for or on behalf of, or assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, those persons listed in the Annex to E.O. 13224.

As such, Treasury has exercised its authority, in consultation with the Departments of State, Justice and Homeland Security, to designate certain foreign banks determined to fall within the parameters of E.O. 13224. In fact, we used this authority to designate al Aqsa al-Islami Bank and Beit al Mal Holdings on December 4, 2001. These entities were designated because of their links to other designated persons.

In addition, under the authorities of Section 311 of the Patriot Act provided by Congress, the Secretary of the Treasury has the power to designate foreign jurisdictions, foreign entities, and classes of transactions as "primary money laundering concerns." This power allows the Secretary to cut off correspondent relationships with U.S. financial institutions based on criteria related to money laundering-related activities.

Question 9a. The Treasury Department has many responsibilities, but it's unclear if it has sufficient authorities and resources to carry them out effectively.

For example, the Treasury Secretary remains in charge of fighting counterfeiting. But the Secret Service is over at the Homeland Security department. Monitoring compliance with forthcoming Patriot Act regulations over industry will fall in the lap of the IRS. And overall, Treasury is light on foot soldiers as a result of the Homeland Security plan.

Please address what Treasury is obligated to do, and whether it can do it effectively and quickly.

Answer. The Treasury Department has traditionally been responsible for safeguarding the integrity of the U.S. financial system. The Treasury Department has therefore developed expertise in the wide range of disciplines necessary to meet that responsibility. Today, Treasury has expertise in disciplines that stretch across the entire anti-money laundering/counter-terrorist financing (AML/CFT) spectrum. In essence, Treasury can be viewed as a microcosm of the broad U.S. government efforts in this area:

Sanctions and Administrative Powers: Treasury wields a broad range of powerful economic sanctions and administrative powers to attack various forms of financial crime. We have continued to use these authorities in the campaign against terrorist financing, drug trafficking, money laundering and other criminal financial activity.

- In combating terrorism financing, the U.S. government's primary and most public tool is the ability of the Departments of the Treasury and State to designate terrorist financiers and terrorists under Executive Order (E.O.) 13224, together with Treasury's ability to implement orders that freeze the assets of terrorists under E.O. 13224.
- In combating drug trafficking, Treasury continues to apply its authorities under the Foreign Narcotics Kingpin Designation Act and the International Emergency Economic Powers Act (IEEPA) to administer and enforce the provisions of law relating to the identification and sanctioning of major foreign narcotics traffickers.

- In combating money laundering, Treasury has applied its new authority under Section 311 of the Patriot Act to designate and take action against jurisdictions and financial institutions of primary money laundering concern.

Law Enforcement and Law Enforcement Support: Treasury combats various forms of financial crime through the direct law enforcement actions of IRS-CI and the law enforcement support provided by FinCEN and Treasury's regulatory authorities. Whether working with DEA on the money laundering component of significant drug investigations, with the FBI on terrorist financing cases, or investigating offshore tax shelters and other tax-related matters, IRS-CI brings an unparalleled financial investigative expertise to the table. The financial forensic expertise of our IRS criminal investigators around the country and the world is critical to the U.S. law enforcement community's attack on sources and schemes of terrorist financing. We complement such direct law enforcement action with law enforcement support. Through FinCEN, Treasury serves as a repository and analytical hub for Bank Secrecy Act information, which aids investigators across the interagency community in finding financial links to criminal enterprises and terrorist networks.

Financial Regulation and Supervision: The Treasury Department—through FinCEN's administration of the Bank Secrecy Act as amended by Title III of the Patriot Act—is responsible for establishing the U.S. AML/CFT regime by issuing the regulations intended to safeguard U.S. financial institutions from abuse by terrorists, narcotics traffickers, and other organized criminals. Treasury further maintains close contact with the federal financial supervisors—including the Treasury Department's Office of the Comptroller of the Currency and Office of Thrift Supervision—to ensure that these regulations are being implemented throughout the financial sectors.

International Initiatives: The Treasury Department is part of and has access to an extensive international network of Finance Ministries and Finance Ministry-related bodies such as the Financial Action Task Force (FATF) and various FATF-Style Regional Bodies, the International Monetary Fund (IMF), the World Bank, and the G–7. Treasury leads the U.S. representation to each of these bodies, and through them seeks to ensure that all jurisdictions throughout the world are working to meet international AML/CFT standards, and that the international community stays focused on emerging AML/CFT concerns.

Private Sector Outreach: As a result of our traditional role in safeguarding the financial system, Treasury has developed a unique partnership with the private sector that provides us with the benefits of the insights and suggestions of the financial institutions that are in many ways the front-line in our war against money laundering and terrorist financing. Through such mechanisms as the Bank Secrecy Act Advisory Group, Treasury ensures that the private sector plays an appropriate role in the development of AML/CFT regulatory policy and receives appropriate feedback from the information it provides.

In addition to these current capabilities, the Treasury Department—in collaboration with Congress—is taking steps to enhance our organization and abilities. On March 8th, 2004, Treasury formally announced the creation of the MI in the Department of the Treasury. TFI will be a high profile office led by an Under Secretary—one of only three in the Department—and two Assistant Secretaries, one for terrorist financing and financial crimes, and one for intelligence. It will bring together Treasury's intelligence, regulatory, law enforcement, sanctions, and policy components, and will redouble Treasury's efforts in at least four specific ways.

- First, it will allow us to better develop and target our intelligence analysis and financial data to detect how terrorists are exploiting the financial system and to design methods to stop them. TFI will be responsible for producing tailored products to support the Treasury Department's contributions to the war against terrorist financing.
- Second, it will allow us to better coordinate an aggressive enforcement program, including the use of important new tools that the Patriot Act gave to Treasury.
- Third, it will help us continue to develop a strong international coalition to combat terrorist financing. A unified structure will promote a robust international engagement and allow us to intensify outreach to our counterparts in other countries.
- Fourth, it will ensure accountability and help achieve results for this essential mission.

Question 9b. Also, one option, which Mr. Winer mentioned, is to have a force of financial experts who can subpoena documents for their own investigations and assist others. Another option is to give Treasury a force of 1811-series federal agents.

What does Treasury think of these two proposals, and what changes are under considering for Treasury to meet all of its responsibilities?

Answer. The Treasury Department has a staff of investigators in the IRS-CI. Since September 11, 2001, IRS-CI has played a prominent role in many investigations of individuals and organizations believed to be involved in, or supporting, international terrorist activities. Special agents have been engaged in a variety of activities including assisting the FBI by focusing on financial leads, conducting witness interviews, participating in "jump teams" sent to the Middle East, Europe, and the Caribbean to conduct financial investigations, and analyzing financial data. In June 2003, at the request of Treasury, an IRS special agent flew to Iraq to review documents seized and to interview individuals in custody to determine the government's ability to track Iraqi assets that can be repatriated to the Iraqi people. As a result of this assessment, additional IRS agents will be going to numerous countries to continue to track these assets. The unique skills of CI special agents enable them to analyze complex, often unusual, financial transactions, and are best utilized to combat terrorism involving:

- The leadership and members of extremist groups who have committed tax, money laundering, or currency violations;
- Persons engaged in fundraising activities to support terrorism, especially if tax exempt organizations are being utilized;
- Terrorism investigations involving complex, extensive or convoluted financial transactions.

Additionally, it is worth noting that existing authorities under the International Emergency Economic Powers Act and the Trading With the Enemy Act allow the U.S. Treasury's Office of Foreign Asset Control (OFAC) to require the production of records related to economic activity regulated under those acts. These authorities contribute significantly to OFAC's ability to monitor and enforce economic sanctions imposed pursuant to those acts.

As TFI is established and expanded we will consider whether any additional authorities or resources in this area are necessary. Initially, we are focusing on ensuring we are using what resources we have as effectively as possible. As part of this, we are exploring all options, e.g., exploiting the expertise and resources of existing Treasury bureaus and offices, not just for intelligence or law enforcement purposes, but also looking at regulatory actions. But before we turn to the solution of adding more people, we are ensuring we clearly know what is necessary—whether expertise, personnel, technology, or legal authorities.

Question 10a. Two years ago, Congress enacted the Patriot Act. Section 312 put into law for the first time the requirement that US financial institutions use due diligence when opening new accounts and monitoring existing ones. Section 312 also required banks to use enhanced due diligence for 3 categories of clients: political figures, offshore banks, and banks in suspect jurisdictions. Within a few months of enactment, Treasury issued proposed regulations to implement the due diligence requirements, but never finalized them.

If Treasury cares about terrorist financing so much, why hasn't it fixed the flaws and finalized the 312 due diligence regulations?

Answer. The Treasury treats the issuance of the final section 312 rule very seriously, which requires a careful consideration of all relevant elements of this rule and the costs associated with it. This is one of the most complicated of the regulatory provisions of the Patriot Act, and it behooves us to ensure that we strike the right balance in this area. Section 312 of the Patriot Act requires due diligence, and in some cases, enhanced due diligence, when U.S. financial institutions offer correspondent accounts for foreign financial institutions, and requires due diligence when financial institutions maintain private banking accounts for non-U.S. persons. While Treasury has not yet issued a final regulation, in July of 2002, Treasury issued an interim rule requiring banks to comply with the correspondent account provisions of section 312, and requiring banks, securities broker-dealers, and futures commission merchants to comply with the private banking portion of section 312. This rule remains in effect, requiring compliance with the terms of the statute, even though a final regulation has not yet been issued.

Beyond that, while section 312 forms an important part of the overall anti-money laundering and anti-terrorist financing regime of the BSA, it is not the only provision directing financial institutions to guard against money laundering and terrorist financing through correspondent accounts and private banking accounts. Anti-money laundering program requirements, suspicious activity reporting requirements, requirements specific to correspondent accounts and the customer identification requirements all ensure that a U.S. financial institution offering these accounts have adequate procedures in place to control the risks and report suspicious activities. Indeed, in many respects, section 312 is the extension of the anti-money laundering program, directing the institution to guard against identified risks.

With respect to the final regulation, it is essential to recognize that section 312 is potentially the most far reaching of the provisions in the Act, and, as such, requires Treasury to take care in completing the final regulation. In response to the proposed rule implementing section 312—which interpreted the statute broadly—we received extensive industry comments as well as a comment from Congress raising challenging issues that went to the foundation of the proposed rule. We have been through several iterations of a final regulation in our efforts to strike the appropriate balance between achieving the enforcement goals and ensuring that compliance resources are appropriately directed toward those account relationships posing the greatest risk of money laundering or other financial crimes. More importantly, we have worked to ensure that we understand the consequences of our regulatory requirements.

Question 10b. When will the final regulations be issued?

Answer. We have largely completed our work on the final regulation. We will shortly circulate the draft final rule to the functional regulators for consultation, as is required by section 312. Once we have incorporated any appropriate comments from the regulators, Treasury policy officials will review, make any further changes, and sign off on the regulation. At that point, we will be prepared to issue the final regulation.

Question 11a. A number of questions have been raised about the future focus and functions of the new Office of Terrorism and Financial Intelligence, especially regarding possible investigatory functions.

Do you believe that TFI should have investigatory powers and, if so, what investigative jurisdiction do you believe should be controlled by TFI?

Answer. Please refer to response to question 9 above. Question:

Question 11b. How would these investigative functions be coordinated with the Departments of Justice and Homeland Security to ensure that the Treasury Department's efforts are not redundant to theirs?

Answer. There are no current plans to establish a new investigative body within the Treasury Department. In any case, all current and future activities of the Office of Terrorism and Financial Intelligence will seek to enhance the Treasury Department's ability to meet our own mission and to work cooperatively with our partners in the law enforcement and intelligence communities. The Department of the Treasury is committed to complementing the important work being done by the Department of Justice and Department of Homeland Security, and by the various intelligence agencies, and will be fully integrated into already established task forces and processes.

Question 11c. How does this new office fit into the Treasury Department's organizational chart and how does it change the focus of Treasury's efforts to combat not only terrorist financing but all financial crimes?

Answer. A copy of the organizational chart for TFI is attached. The establishment of OIA will not alter the focus of Treasury's efforts to combat terrorist financing and other financial crimes. OIA is intended to support all Treasury activities, though clearly terrorist financing will be a priority.

Question 11d. What provisions will be in place to ensure that the intelligence and analysis produced in TFI is shared with other agencies with jurisdiction over investigative aspects of money laundering and terrorist financing, especially DHS and DOJ, to ensure effective coordination and collaboration?

Answer. We are confident that TFI will compliment and not duplicate the important work being done by the Department of Justice and Department of Homeland Security, and by the various intelligence agencies. TFI will be fully integrated into already established task forces and other interagency processes, such as TTIC and the Terrorist Financing PCC.

Question 12a. Earlier this year, the Treasury Department announced a 12.7 percent increase in the FY05 budget for FinCEN which would be used to expand the Gateway computer system and increase the number of personnel dedicated to analytical products and community outreach. It is my understanding, however, that the actual increase for FinCEN is only about 2.7 percent when you take into account mandatory cost increases of over $1.7 million, program annualizations of over $1.5 million and the $2.5 million fund transfer for the BSA Direct project with the IRS.

Would you please explain this disparity in funding numbers and how it will affect the ability of FinCEN to achieve its goals for 2005?

Answer. The 12.7 percent increase was calculated by adding the cost of program increases ($1.533m), program annualizations ($1.522m), mandatory cost increases ($1.716m), and the transfer from the Internal Revenue Service for the BSA Direct System ($2.5m)—totaling an increase of $7.271m over the FY 2004 budget.

The BSA Direct initiative—a program critical to FinCEN's ability to provide law enforcement robust access to timely information—is the top priority. Through BSA

Direct, FinCEN will improve law enforcements' access to crucial BSA data by integrating the data into a consolidated, modern web-based data warehouse. BSA Direct will include sophisticated, web query and reporting tools and a web portal. Law enforcement and the regulatory agencies will gain easier, faster data access and enhanced ability to query and analyze the Bank Secrecy Act data, improvements that are expected to lead to increased use of the BSA data. BSA Direct will also aid FinCEN's ability to network agencies with overlapping interests, and augment its ability to audit and evaluate the utility of the Bank Secrecy Act data.

The $1.533 million and four FTEs for program increases will provide for the expansion of FinCEN's on-line access system know as Gateway; enhanced regulatory support to newly covered industries (i.e., mutual funds, operators of credit card systems, life insurance companies, unregistered investment companies, and the precious metals, stones, and jewelry industries) required under the Patriot Act to ensure that they are familiar with their reporting obligations.

Question 12b. It is my understanding that a number of personnel may be moved from FinCEN to TFI to focus on financial intelligence. At this time, do you know how many FinCEN personnel will be redirected to TFI, and how many will subsequently be hired to increase the analytical capabilities of TFI?

Answer. At this time, two FinCEN personnel have been detailed to OIA. They are focusing primarily on the financial angles of the current threat reporting. They are also coordinating with FinCEN to ensure we are not duplicating efforts. Over the coming months, the Department is considering drawing additional resources from FinCEN to further develop its analytical capabilities, but no final staffing decisions have been made.

Question 12c. How will this affect the analytical capabilities of FinCEN, given that Director Fox has discussed hiring more analysts to meet the demands on the department since 9/11?

Answer. The small number of details from FinCEN should have a minimal effect on their ability to accomplish their missions. Indeed, the detailing of these officers should enhance closer coordination between OIA and FinCEN, ensuring that the Department is focusing on its highest priorities and moving scarce resources across the Department to focus on priority targets.

Question 12d. Has FinCEN requested and received funding through the Asset Forfeiture Fund to help pay for these projects? If so, how much has FinCEN received? If not, why were their requests denied?

Answer. FinCEN received $2 million from Treasury's Asset Forfeiture Fund to launch the requirements phase of the BSA Direct initiative. FinCEN continues to work with Treasury officials to ensure adequate funding for this project in FY 2005.

Question 12e. What are the advantages of having financial intelligence specialists located at both FinCEN and TFI, as opposed to consolidating their locations? How will their missions be different?

Answer. FinCEN analysts provide case support, both tactical and strategic, to law enforcement and the intelligence community that supports tactical operations. In addition, law enforcement agencies have liaisons located at FinCEN who interact with the FinCEN analysts on a daily basis. In contrast, the TFI analysts will be providing coordination of intelligence and analytical products across Treasury, including FinCEN, OFAC, IRS and the Office of International Affairs, ensuring that appropriate networking takes place and that the Department is able to take advantage of the diverse skills and expertise that exists across Treasury and its bureaus. In addition, the TFI analysts will use existing analytical product and produce analytical products to support the policy decision making of Treasury's senior officials, which is so critical to directing Treasury's operations and providing guidance across the government.

Question 13a. The Asset Forfeiture Fund was designed to punish criminals by seizing their ill-gotten gains and provide funding to law enforcement agencies for their programs. I want to ensure that these funds are used for programs that focus on combating money laundering and financial crimes.

Roughly, what is the current total amount of unobligated assets being held in the Asset Forfeiture Fund?

Answer. At the beginning of FY 2004, the Treasury Forfeiture Fund had an unobligated balance brought forward from FY 2003 of $74,826,034. Of this unobligated balance, $49.8 M was reserved as the beginning balance required to fund operations during this fiscal year. The remaining $25 million constitutes our "Super Surplus" that can be used for any federal law enforcement purpose.

At this point, it is projected that the unobligated balance at the end of the current fiscal year will be approximately $50 million. Amounts in excess of $50 million will again be declared as "Super Surplus" funds.

Question 13b. What types of programs are eligible to receive money from this fund and what are the criteria for receiving funding?

Answer. The agencies that participate in the Treasury Forfeiture Fund are IRS CI; US Customs and Border Protection; US Immigration and Customs Enforcement; United States Secret Service; FinCEN; FLETC; the Tax and Trade Bureau; and the Coast Guard.

The enabling legislation for the Treasury Forfeiture Fund (31 U.S.C. ¶ 9703) defines those purposes for which Treasury forfeiture revenue may be used. In general terms there are three different authorities of funding from the TFF.

The *mandatory authority* items are generally used to meet "business expenses" of the Fund, including expenses of storing and maintaining seized and forfeited assets; valid liens and mortgages; investigative expenses incurred in pursuing a seizure; information and inventory systems; and certain costs of local police agencies incurred in joint law enforcement operations. Following seizure, equitable shares are paid to state and local law enforcement agencies that contributed to the seizure activity at a level proportionate to their involvement. The total amount budgeted for mandatory authority items in FY 2004 are $231 million.

The *Secretary's Enforcement Fund* (SEF) is derived from equitable shares received from the Justice forfeiture fund for work done by Treasury law enforcement bureaus leading to Justice forfeitures. SEF revenue is available for federal law enforcement purposes of any Treasury law enforcement organization. The total amount budgeted for SEF items in FY 2004 are $19.4 million.

Super Surplus represents the remaining unobligated balance after an amount is reserved for Fund operations in the next fiscal year. Super Surplus can be used for the law enforcement activities of any federal agency. The total amount budgeted for Super Surplus items in FY 2004 are $25 million.

Question 13c. How often is the fund audited and are the audit reports made available to Congress and the public?

Answer. The financial statements of the Treasury Forfeiture Fund are audited every year and are transmitted to Congress by the Office of the Inspector General. The audit reports are available to the public on our web site and can be accessed at: *http://www.treas.gov/offices/eotffc/teoaf/annual-reports.html*.

Question 14a. In a press conference at the Treasury Department in January, Adel Al-Jubeir, Foreign Affairs Advisor to the Crown Prince, stated, "Today, Saudi authorities and their U.S. counterparts work side by side in teams dedicated to fighting terrorism and unraveling the worldwide financial networks that support it."

How many terrorist financing cells and networks have been disrupted and ultimately dismantled in Saudi Arabia or with direct ties to the Kingdom as a part of this coordinated effort? Please give specific examples of how forthcoming the Saudi Arabian government has been in sharing information with US officials about terrorist financing within its borders.

In a recent speech to the Islamic Society of North America, you stated, "Our Government is working intensely with other governments around the world to develop case studies and typologies of terrorist abuse of charities."

What information have you received from the Saudi government about the abuse of charities by terrorist organizations?

Answer. Through a variety of channels, the U.S. and Saudi governments are sharing information relating to terrorism on a routine basis. As part of these exchanges, the Saudi government's willingness to recognize the critical role charities have played as a means of support and cover for terrorist activities continues to improve. The recent joint designation of five branches of the Al-Haramain Foundation signals a clear recognition of how charities have been misused by terrorist supporters.

Question 14b. How effective has the information been when used to develop case studies and typologies specifically being utilized in Saudi Arabia?

Answer. Through our efforts to examine all information available to the U.S., including information shared by Saudi authorities, we have learned that the key to ensuring that charities are not abused or exploited by terrorists typically rests on the question of effective leadership. The charitable organizations implicated in supporting terrorist activity are often owned or controlled by persons who know (and willingly support), or should have known, that their organizations were supporting terrorist activity.

Question 14c. I want to know, in general terms, how many Saudi-based charities—located in Saudi Arabia, not their branches in other countries—have been investigated to date and whether these investigations have resulted in the prosecution of charity officials or the dismantling of those charities? In other words, has any action actually been taken by the Treasury Department against charities within the borders of Saudi Arabia?

Answer. The Treasury Department cannot discuss specific investigations or analysis or targets under consideration. It should be noted that the Saudi Arabian government recently announced that Al-Haramain Foundation other domestic charities that provide international assistance would be dissolved and merged into a single Saudi charity, Saudi National Commission for Charitable Work Abroad, to ensure proper oversight and use of charitable funds.

RESPONSES TO ADDENDUM QUESTIONS FROM SENATOR GRASSLEY

Question 1. BSA Direct provides law enforcement direct access to FinCEN information by data mining. What is the current status of that program? How will this program ensure that pertinent information is shared by all necessary agencies? When will BSA Direct be operational?

Answer. FinCEN is currently in the final stages of evaluating the proposals received in response to the Request for Proposals that were issued in February 2004, and expects to award a contract in the next few weeks.

The full scope and detail of the system's functionality will be more fully determined as a result of the user requirements analyses to be conducted in the first months of the project. The following examples identify the types of capabilities BSA Direct will afford FinCEN and its customers that they presently do not have and which have been previously identified as critical to FinCEN's ability to properly manage the data it is responsible for and provide significantly enhanced support services to law enforcement.

- The automated capability for FinCEN to control and audit the use of all persons accessing Bank Secrecy Act information.
- The enhanced alert capability for FinCEN to "network" all users of Bank Secrecy Act information that "hit" the same data, or appear to be analyzing the same information. BSA Direct will expand the number of users presently using FinCEN's Gateway system.
- The capability to analyze law enforcement's use of the data to provide meaningful feedback to the financial industry, which will result in better reporting.
- The capability to develop sophisticated filer profiles for financial industry members, which will help FinCEN and the regulators target entities for compliance examinations as well as to have the ability to be notified automatically by the system when there is a significant filing anomaly.
- An intuitive interface will enable users to query data reduced training, and with strong context sensitive on-line help available.
- Users will be able to keep and view a list of their prior queries.
- Managers in organizations will be better able to audit and manage the use of the data by their subordinate users.
- Users will be able to customize query output, i.e., define what columns of information are displayed, rearrange the order of the columns, and then save that order as a personal default view.
- Users will have the ability to sort, filter, and aggregate columns of data.
- Users will be able to run "batch queries," *e.g.*, social security numbers from all bankruptcy filings six month ago against all Bank Secrecy Act filings in the last year.
- Users will be able to create customized queries and reports.
- A geographic mapping tool will be provided for information to show geographic significance of Bank Secrecy Act data.
- Users will have the capability to pre-schedule queries and receive reports on a timetable scheduled by users.
- Users will be able to download results into popular formats, *e.g.*, Word, Excel, Analysts Notebook, etc.

With full funding, FinCEN projects that the basic system contemplated by BSA Direct will be operational and available to users by October 2005. FinCEN will continue to enhance the basic functionality of the system in future years.

Question 2. FinCEN is looking for ways to share certain types of information to financial institutions in an effort for them to perform a risk assessment of their systems. Some of that information may be law-enforcement sensitive and/or classified, but would be critical in analyzing the financial institution's risk and vulnerability to money laundering and terrorist financing. If that system of information sharing is not currently in place, what is the current condition of risk assessment in our financial institutions without that information? Are we possibly allowing our financial institutions to be a part of a future terrorist act because critical information is not being shared?

Answer. Treasury is committed to finding methods of getting more accurate, detailed information about money laundering and terrorist financing risks to the fi-

nancial community. The new Office of Intelligence and Analysis is already facilitating making intelligence information that is relevant to the financial community available to the financial community.

In addition, FinCEN is currently exploring appropriate ways certain sensitive information might be shared with financial institutions on a case-by-case basis and, depending upon the circumstances, limited to an institution or a group of institutions. The process by which this is done needs to be considered carefully by decision makers within the law enforcement and intelligence communities in order to develop adequate safeguards to ensure that national security interests are fully protected. Meanwhile, there are other ways in which FinCEN can provide more substantive information to financial institutions regarding indicators of terrorist activity. For example, a group of analysts within FinCEN are engaged in a study of the financial operations of certain terrorist groups to attempt to construct a business model of these organizations. The intention is to provide information gained from this study to financial institutions to assist them in identifying the types of activities and vulnerabilities with which they should be familiar. FinCEN is also looking at nonclassified ways to extract information from non-adjudicated cases and provide red flag indicators to institutions.

Question 3. According to GAO report number GAO–04–710T, Investigating Money Laundering and Terrorist Financing, dated May 11, 2004, the HIFCAs (High Intensity Money Laundering and Related Financial Crime Areas) are not operating as expected or intended. The GAO report went on to say that The Money Laundering and Financial Crimes Strategy Act of 1998 (Strategy Act) expected that the HIFCA's would "have a flagship role in the U.S. Government's efforts to disrupt and dismantle large-scale money laundering operations." However, the FBI and DEA not involved in most HIFCAs. Additionally, state and local law enforcement agencies provided little or no involvement in four of five HIFCAs. The Terrorist Financing Operations Section (TFOS) from the FBI was created to combat terrorist financing.

What is the relationship and coordination between HIFCA and TFOS? What are your plans to ensure the effectiveness of HIFCAs are increased?

Answer. Although there are no formal relationships between any HIFCA and TFOS, HIFCA activities affect the anti-terrorist financing activities of TFOS as well as of the JTTFs nationwide by identifying financial information potentially implicating the financing of terror. The Departments of Justice and Treasury currently are clearing a HIFCA Report that will assess past and ongoing HIFCA activities and developments, as well as make recommendations for the future of the HIFCA concept. We anticipate submitting this Report to the Congress by the end of August 2004.

Question 4. In what ways is the Treasury Working Group on Charities and Terrorist Financing working to "ensure effective communication, cooperation and collaboration among Treasury's various components assisting in this effort?" Is the group temporary or permanent? Will another Section within Treasury take over its responsibilities if it is disbanded?

Answer. The Treasury Working Group on Charities and Terrorist Financing (WGTF) is an informal group that meets as necessary to discuss a wide range of issues concerning the threat of terrorist financing in the charitable sector. These issues may be generally categorized under one of the following four topics: (i) oversight; (ii) outreach; (iii) investigation, and (iv) international developments and initiatives. Each of these issues implicates a combination of various Treasury components, including the Executive Office for Terrorist Financing & Financial Crimes, the Office of General Counsel, the Office of Tax Policy, the Office of International Affairs, the IRS—Tax Exempt Government Entities Section, the IRS—Criminal Investigation Division, and the Office of Foreign Assets Control. Representatives from each of these offices participate on the WGTF, which serves as an information clearinghouse to keep all relevant parties informed and to capitalize on expertise from across the Department on issues regarding charities and terrorist financing. Specific projects or initiatives dealing with these issues are supported by the relevant Treasury parties and discussed in this group. To coordinate the Department's efforts on these issues with those of other departments, Treasury has also convened an interagency Working Group on Charities and Terrorist Financing.

Question 5. What is the current status of cooperation from foreign countries and banks in the prevention of terrorism financing? What is being done to ensure continued support, and to encourage support from countries and banks not doing so?

Answer. The cooperation from foreign governments in preventing terrorist financing has become as much a part of their top priorities as it is in the U.S. Our success in securing wide support for and implementation of anti-money laundering/counterterrorist financing regimes that meet FATF standards is one example. The increase

in percentage of names being submitted to the UN 1267 Sanctions Committee by foreign governments is another sign of our success.

We consistently raise this issue, and push for results, at every opportunity, e.g. at APEC meetings, meetings of the G–7 and G–20 finance ministries, and the less formal bilateral discussions. In addition, we are always looking for new vehicles of cooperation with the private sector, whether domestically or internationally. We are in the process now of engaging the international banking community in several initiatives to improve the culture and capabilities of compliance.

Question 6. Information suggesting possible wrongdoing, i.e. money laundering, providing funds to terrorist groups, was uncovered during investigations into Riggs Bank and Fleet Bank. Is anyone pursuing those investigative leads? Which agencies? What is the status of those investigations?

Answer. The Federal Bureau of Investigations has been and continues to conduct an investigation into the account activity mentioned in your question. It would not be appropriate for Treasury to speak for the FBI in regard to the status of its investigation.

Question 7. When an organization is designated by the U.S. Treasury Department as a Foreign Terrorist Organization, are senior leaders of the organization also designated? If the senior leadership of a designated organization is not individually designated, what mechanisms are in place to ensure that they do not move to another similar organization or create a new one? Have any cases been prosecuted that involved the violation of sanctions against a designated group or individual?

Answer. Foreign Terrorist Organization (FTO) designations are effected by the State Department and apply solely to foreign organizations, not individuals. In designating Specially Designated Global Terrorists (SDGTs) pursuant to Executive Order 13224, the Treasury Department can designate individuals or entities that meet the criteria of the Executive Order. With designations either under the FTO process or under EO 13224, the U.S. government attempts to monitor the activities of designated terrorist groups and will take action as appropriate to designate "morphed" organizations (those that change their name under the same or similar leadership). With respect to cases that have been prosecuted related to violation of the material support laws and other related statutes, it is best to refer you to the Department of Justice.

Question 8a. How receptive has the United Nations been on recommendations for designation provided to them by the U.S. Treasury Department that fall under UN resolutions 1267, 1333, 1390, and other appropriate resolutions?

Answer. The United Nations process for designating Al Qaida and Taliban-related operatives, supporters, financiers, and associates has been an important part of our international success to date. This stems from the obligatory nature of the freezing of assets under international law when a designee is listed by the United Nations. Of the 384 U.S. designations under Executive Order 13224, the U.N. has listed 278. The disparity lies in the fact that the President's Executive Order addresses international terrorism of all stripes and not just Al Qaida or Taliban related individuals and entities. Thus, the United States frequently designates individuals and entities, such as Hamas and Hizballah supporters, whose names are not submitted to the United Nations for listing since there is no mechanism at the United Nations for designating non-Al Qaida or Taliban-related names.

Question 8b. Have other nations been supportive in enforcing those sanctions once approved?

Answer. U.N. member countries overwhelmingly support U.N. designations proposed by the United States. Typically, over 130 nations report taking action in response to blocking orders against U.S.-proposed entities or individuals.

Many countries frequently support our designations and nominate their own names for listing at the United Nations. We have had several joint designations with countries to designate specific individuals or entities of common concern, such as the referral of Jemaah Islamiyah to the United Nations by fifty countries. Countries have demonstrated support for these designations by instituting legal mechanisms that automatically add the designee to their active list and require their financial institutions to freeze assets. The E.U. member countries, for example, have been strongly supportive of the U.N. designation process. Once the U.N. makes a designation, the E.U. response is automatic designation.

Question 9. The Office of the Comptroller of the Currency (OCC) and the Financial Crimes Enforcement Network (FinCEN) recently levied a $25 million fine against Riggs Bank for its failure "to implement an effective anti-laundering program and properly monitor its foreign banking relationships, specifically those with Saudi Arabia and Equatorial Guinea." Are there any systemic changes needed in the way bank regulation agencies operate to ensure that violations of the Bank Secrecy Act do not go undetected?

Answer. The Treasury is currently reviewing measures that can be taken along with the regulatory community to ensure the Bank Secrecy Act is fully and forcefully implemented. As a first step, FinCEN will create a new program office within its regulatory office devoted to the Bank Secrecy Act examination function. Currently, the affected substantive program area handles examination related issues on an-hoc basis. For example, individuals responsible for the Money Services Business program have taken a primary role in working with the Internal Revenue Service to develop and enhance their examination regime. The new structure will consolidate all examination support functions and better enable FinCEN to provide the necessary support to regulatory agencies conducting Bank Secrecy Act compliance examinations. As an initial priority, FinCEN plans to focus on assisting the Internal Revenue Service in its examination function, particularly in light of the new regulations that FinCEN has and will issue to being thousands of additional businesses under Bank Secrecy Act anti-money laundering program provision.

Question 10. Is the Foreign Terrorist Asset Tracking Center being utilized to the full extent of its envisioned capability? Are the necessary agencies providing the support, and more importantly, sharing the intelligence needed to make well-informed decisions in the war against terrorism financing?

Answer. The Foreign Terrorist Asset Tracking Group was renamed and relocated to the CIA. The interagency PCC on Terrorism Financing is currently reviewing the function of the FTAT–G to ensure it is being fully utilized. One aspect of this review is ensuring that all of the necessary agencies are participating.

Question 11. Have the currently established High Risk Money Laundering and Related Financial Crimes Areas (HIFCA) been effective in investigating and closing down money laundering schemes with connections to terrorism financing? Has the HIFCA been affected by the MOU between the Department of Homeland Security and the Department of Justice?

Answer. See answer to question 3 above. We do not believe that any HIFCA was directly affected by the MOU. The lead for terrorist investigations has always been the FBI. When any financial information leads to possible terrorism, that lead will be worked under the auspices of the appropriate JTTF.

Question 12a. There have been reports of involvement by Saudi Arabian nationals, and even possibly members of the Saudi Arabian government, in possible ties to terrorist financing. Examples have been in the media regarding information obtained during official investigations into the operations of Fleet Bank and Riggs Bank. Investigation by Swiss authorities indicates that Saudi Sheik Khalid Bin Mahfouz may have played a primary role in establishing, funding, and directing the Muwafaq Foundation. The Chairman of the Muwafaq Foundation, Yassin Al Qadi, and others associated with the foundation, have been designated as Specially Designated Global Terrorists (SDGT) by the U.S. Treasury Department. Are investigations into the involvement of Saudi Arabian nationals in terrorism financing continuing?

Answer. The Treasury Department cannot discuss specific investigations or analysis or targets under consideration, regardless of the nationality of the subject(s).

Question 12b. Would you support designation of a Saudi Arabian national even if it means cries of opposition from the Saudi Arabian government?

Answer. The Treasury Department would support any well-founded designation if it is determined that such designation would be the most effective course of action against that particular individual. With respect to Saudi Arabia, the United States government has designated Saudi citizens like Yassin al Qadi and Aqeel Abdulaziz Al-Agil unilaterally while also jointly designating with the Saudi government Wa'el Julaiden, a Saudi terrorist financier.

RESPONSES TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Do you think that organizations accused of providing support for terrorism should be provided hearings to challenge the merits of the allegations against them? Although I fully recognize the government's critical interest in combating terrorism financing, I have some concerns about the ability of the government to seize assets without giving the group the ability to fully respond to the allegations, especially when much of the evidence is secret.

Answer. Procedures are in place to allow designated persons to challenge the blocking of their assets. We do not, however, believe a hearing should be required at the agency level. The Administrative Procedure Act provides that final agency actions, such as the determination to block the property of a particular target, may be challenged in court on the agency's administrative record, not at an administrative hearing. The party challenging the blocking has the opportunity to make legal and factual submissions to the Treasury, which become part of the administrative

record that may be challenged in court. In addition, parties can petition the Treasury to have their assets unblocked and their names removed from the list of blocked persons when there has been a change in circumstances.

Over sixty years of economic sanctions jurisprudence under both the Trading with the Enemy Act ("TWEA" and the International Emergency Economic Powers Act ("IEEPA") supports the validity of these procedures. Due process challenges by designated parties have been consistently rejected by the courts, most recently in litigation involving two major Muslim charitable organizations that provided financial and other support for terrorists, the Global Relief Foundation and the Holy Land Foundation.

Question 2. Is it your position that the blocking of assets under the International Emergency Economic Powers Act (IEEPA) is not considered a "taking" of property? Is there a point where the blocking of funds under IEEPA becomes a taking that would entitle the property owner to a full hearing? If so, under what circumstances would this occur?

Answer. It is our position that the blocking of assets under IEEPA is not a "taking" of property pursuant to the Fifth Amendment. Federal courts have upheld this position on grounds that include the determination that any deprivation of property effectuated by a blocking is temporary, not permanent. In the parallel context of TWEA, courts have found that even such blocking orders as are in effect for decades do not rise to the level of a taking. Regardless of the particular factual context of a blocking action, we do not think it would be appropriate to hold a hearing at the agency level in connection with a takings claim arising out of a blocking. As noted above, the Administrative Procedure Act provides for final agency actions to be challenged in court on the agency's administrative record. In addition, whether government action amounts to a taking typically involves, in the first instance, an analysis of legal factors that is appropriately conducted by a court, not at the agency level at an administrative hearing.

Question 3. Can the blocked assets of an organization be used to pay attorneys to defend the organization against allegations that it has supported terrorism? Under what circumstances?

Answer. Yes. In the various sanctions programs that the Treasury administers, the Secretary of the Treasury has the discretion to authorize the use of blocked funds. As part of this discretion, the Treasury will consider requests for the use of blocked funds for legal representation in certain circumstances, including circumstances involving a challenge by a U.S. entity to Treasury's designation of it as a specially designated global terrorist. The Treasury considers such requests on a case-by-case basis.

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