

Hearing on  
U.S. Government Efforts Against Terrorist Finance  
And Nominations of Stuart Levey and Juan Zarate

Testimony  
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U.S. Senate Committee on Finance  
May 19, 2004

**Chairman Grassley, Senator Baucus, and Distinguished Members of the  
Committee:**

I am honored to be provided the opportunity to testify here today to share my views on terrorist finance and the role of the U.S. Treasury in combating terrorist finance as the Committee considers the respective nominations of Mr. Stuart Levey and Mr. Juan Zarate for the positions of Under Secretary of the Treasury and Assistant Secretary of the Treasury for Enforcement. I am also honored to share my appearance before you today with Mr. Jody M. Myers, who served both the Clinton and Bush Administrations with distinction, loyalty and courage for a decade working to build domestic and international policies and systems to combat money laundering and terrorist finance.

My views are based on twenty years of experience in the field of money laundering. My work in this field includes six years of service as Deputy Assistant U.S. Secretary of State for International Law Enforcement from 1994 through 1999 and ongoing contacts with the U.S. government on terrorist finance issues since. My testimony is also informed by my continuing service as a member of the Independent Task Force of the Council on Foreign Relations on Terrorist Finance chaired by Maurice R. Greenberg and on the Steering Committee on Transnational Threats of the Center for Strategic and International Studies (“CSIS”) at Georgetown.

Let me begin by endorsing the two nominations before the Committee.

To be effective against terrorist finance, the Treasury Department needs a high-level, fully functional, Office of Enforcement. The nomination of Mr. Levey to an Under Secretary position for Enforcement is a welcome correction to the elimination of that position at the time of the creation of the Department of Homeland Security. He has an excellent reputation, has earned wide respect, and I support his confirmation.

Mr. Zarate, whom I have had the opportunity to observe in action, has by all accounts served performed superbly as Deputy Assistant Secretary for Terrorist Finance,

working with diligence, drive, and creativity. In addition, Mr. Zarate's previous experience as a prosecutor would be extremely helpful to Treasury carrying out its proper role in fighting terrorist finance, which extends in my view beyond leadership in policy and regulation to leadership in enforcement.

I turn now to the broader issue of Treasury's role in combating terrorist finance. In my view, the single most important issue facing the Committee in this hearing is how to assist the Executive Branch in uniting policy, regulation and enforcement into a single, integrated strategic approach. Despite all we have learned since the September 11 terrorist attacks, this goal has eluded us. The restoration of a fully-functioning Office of Enforcement at Treasury with an Under Secretary and an Assistant Secretary responsible for an Office of Terrorism and Financial Intelligence provides the opportunity for considering anew how to achieve it.

Please note however: without adequate authority to secure the cooperation of other agencies, including the FBI, and without adequate personnel resources to carry out its strategic function, Treasury's Office of Enforcement will not be able to meet the enormous challenges facing our country in combating terrorist finance. At this time, neither adequate bureaucratic heft nor personnel have been allocated to Treasury, and these real gaps make the very hard job for these two nominees all the harder.

This is not a new problem, but one that is ongoing.

During the Clinton Administration in which I served, responsibility for both money laundering and terrorist finance was fragmented. Responsibility and leadership in these areas were shared among many agencies. These included the Department of State, where I was the most senior official focused on the issue, the Department of Justice, responsible for prosecutions, the Department of the Treasury, responsible for regulation and some investigations, and the National Security Council of the NSC, where Richard Clarke sought to integrate the work through the Office of Transnational Threats. Through years of work, by the late Clinton Administration we had interagency processes in place that integrated many of our disparate efforts into a strategic whole for the purposes of policy and regulation. But we were never – and let me emphasize this point – *never* able to integrate policy and regulation with strategic law enforcement. The law enforcement agencies, especially the FBI, evaded integration, and chose to discourage independent efforts to think strategically about making important cases in the field of international financial crime.

When the Bush Administration came into office, it made no significant changes to money laundering and terrorist finance enforcement prior to the September 11 terrorist attacks. In the first months after the attacks, however, a new team spirit was built. Treasury, the CIA, the Justice Department, and the FBI began to work closely together strategically, to integrate policy, enforcement activities, and regulatory activities under the Policy Coordination Committee ("PCC") structure. This approach produced enormous results in the first six months following the attacks, and these results were substantially consolidated in the period between the spring of 2002 and the spring of

2003. Some major terrorist financiers were subjected to economic sanctions on a global basis. The U.S. closed a major international hawala network being exploited by and helping to fund Al Qaeda, Al Barakaat. The U.S. secured growing cooperation on the part of the Government of Saudi Arabia in regulating Islamic charities, and in one case, Al Haramain, in closing some of the offices most obviously involved in terrorist finance. The U.S. also closed some of the major nodes in the funding network of the Muslim Brotherhood, a central element for funding global terrorism.

In the spring of 2003 some momentum was lost in connection in connection with the creation of the Department of Homeland Security (“DHS”). That reorganization transferred U.S. Customs in total to DHS out of the Department of the Treasury, and terrorist finance investigations to the FBI from Treasury. Treasury’s existing terrorist finance investigations – Operation Green Quest – were moved to the FBI, along with a small number of the key investigators from Treasury most knowledgeable about Terrorist Finance. The remaining former elements of Treasury’s enforcement capabilities relating to money laundering were subject to a Memorandum of Understanding between the Attorney General and the new Secretary for Homeland Security that limited the DHS side of enforcement to non-terrorism money laundering cases.

The result was that Customs was taken out of active participation in terrorist finance investigations. Treasury lost its key policy professionals above Mr. Zarate to Homeland Security, and the Under Secretary for Enforcement retired and was not replaced. This was harmful to Treasury’s leadership in this area, vacating the enforcement field, at least, to the FBI, which has had an erratic track record in the area of money laundering and terrorist finance investigations. Some months later, the very active David Aufhauser, General Counsel to the Department of the Treasury and a key player in combating terrorist finance, also chose to leave the government to return to the private sector. Senior officials in the Administration also had to focus their attention on other significant foreign policy and national security issues such as the Iraq war.

As GAO has concluded, the removal of Customs jurisdiction over terrorist finance reduced the incentives of persons at that agency from future active participation in terrorist finance investigations. But a deeper injury also took place. By removing Treasury from its enforcement role, the new structure may have made it more difficult to continue the strategic integration of terrorist finance policy, regulation, and enforcement.

The structural reasons for this are pretty obvious. Following the creation of DHS, Treasury continued to have responsibility regarding money laundering and terrorist finance policy and regulation. It also had regulatory enforcement responsibility, for violations of sanctions through the Office of Assets Control (“OFAC”) and for violations of money laundering regulations through FinCEN. In addition, FinCEN continued to be responsible for serving as a resource for money laundering and terrorist finance investigations being undertaken by the FBI and DEA at Justice, and by the new ICE investigators at Homeland Security. However, with the elimination of the position for Under Secretary for Enforcement, no person at a senior position was in charge of the

whole at Treasury. And Treasury was in no position to direct significant international investigations of money laundering or terrorist finance.

While some visible progress continued to be made after March 2003 – such as the global designation in the summer of 2003 of the major European elements of Hamas -- the pace of regulatory designations slowed. While a few major enforcement cases also were made – such as the guilty plea involving the head of Benevolence International in Chicago<sup>1</sup> -- these cases have been relatively few in number.

As an outsider, it's hard for me to know whether the relative quiet we have seen over the past year masks intensive activity on the inside, and substantial progress being made beneath the surface – or whether progress has actually slowed. But that appearance of relative slowing of activity itself carries a cost. If terrorists think we are not going to shut down their networks, they may be less deterred from trying to move their money. To maintain the deterrence function credibly, the U.S. must continue to make highly publicized enforcement and regulatory actions on a regular basis. Not to do so represents at least a tactical failure, and very likely, a strategic one as well.

As the GAO found in its September 2003 report, Treasury, Homeland Security and the Attorney General still need to strengthen how they develop and implement strategies. One problem is that no one has been in charge of doing that. Another problem has been that the three Departments have failed to develop a centralized system to coordinate investigations. As the GAO stated, “although Treasury generally took the lead role in strategy-related activities, it had no incentives or authority to get other departments and agencies to provide necessary resources or compel their participation.”

So where do we go from here?

The Council on Foreign Relations Independent Task Force on Terrorist Financing is continuing to evaluate U.S. government strategies against terrorist finance. And while the latest recommendations remain in draft, the thrust of the Task Force's earlier findings is little changed. As a member of the Task Force, the steps that I view to be most important are as follows:

- 1. Ensure Central Coordination.*

The absence of a designated official in the White House to coordinate terrorist finance activity continues to represent a real gap that inhibits the U.S. government's ability to create strategies that integrate policy, regulation, and enforcement. The White House needs to appoint such a person. Alternatively, the Administration (or the Congress) need to give the Under Secretary of the Treasury for Enforcement the mantle for doing this in such a way that causes the FBI and the CIA to accept the Under Secretary's lead in strategy on terrorist finance. I continue to be concerned that law enforcement cases are not being integrated with regulatory activity and international policy-making in a manner that would produce the greatest impact on terrorist finance.

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<sup>1</sup> [http://www.usdoj.gov/usao/iln/pr/2002/pr1009\\_01.pdf](http://www.usdoj.gov/usao/iln/pr/2002/pr1009_01.pdf)

2. *Provide Appropriate Resources.*

Treasury needs the resources to do its job, as does the rest of the U.S. government. Financial crime investigations have never been adequately funded by the U.S. government. They are hard to do. They involve lots of paper. They require a great deal of sophistication on the part of investigators. They are personnel intensive. I share Mr. Jody M. Myers views on this point, and endorse his recommendation of a NSC/OMB analysis to drive further allocations of funds and personnel.

3. *Regulate Charities.*

As Mr. Zarate has stated on numerous occasions, terrorist groups continue to seize on charities as a means of raising and moving funds and logistical support. In his words, “the infrastructure of charitable organizations and their geographic scope have enabled terrorist groups to shift funds, supporters and operatives around the world quietly through charities.” The U.S. has worked to develop case studies and typologies of terrorist abuse of charities, working closely with the Financial Action Task Force (“FATF”). It has also developed measures that donors and charities can use protect themselves, releasing the “Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S. Based Charities,” which it released in November 2002. Mr. Chairman, these voluntary measures are fine. But they are voluntary. They should be mandatory. Charities should be no less responsible for combating terrorist finance than are financial institutions. We require banks, mutual funds, money services businesses, broker/dealers, investment advisers, and many other categories of financial institutions to put anti-money laundering policies and procedures in place as a condition of license. We are in the processing of requiring insurance companies, which are state-regulated, loan or finance companies, which are largely unregulated, and hedge funds, which by definition are not subject to regulation, to put these policies and procedures into place. And yet we have done nothing to require charities – which are tax exempt institutions and required to file documentation with the IRS to maintain that status – to put anti-money laundering policies and procedures in place. To me, this represents a huge gap.

If the voluntary standards are worth anything, they should be more than voluntary. The problem with charities funding terrorism has not been limited to foreign charities, but has involved charities based in the U.S. In an affidavit filed in U.S. federal court, U.S. Customs Agent David Kane cites a recent CIA report made public in response to a FOIA request, which states that of more than 50 Islamic nongovernmental organizations in existence in 1996, “available information indicates that approximately one-third of these Islamic NGOs support terrorist groups or employ individuals who are suspected of having terrorist connections.”<sup>2</sup> We should put into place regulations of charities similar to that of other businesses we have found to have substantial risk of money laundering or terrorist finance. Terrorist finance compliance should *not* be a faith based initiative, but

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<sup>2</sup>Affidavit of David Kane, Special Agent, United States Customs Service, filed under seal in “In the Matter of Searches Involving 555 Grove Street, Herndon, Virginia and related locations,” in the U.S. District Court for the Eastern District of Virginia, Mar. 2002 (“Kane Affidavit”).

subject to some oversight, with at least a baseline of anti-money laundering and terrorist finance policies and procedures made a condition of tax exempt status.

4. *Focus Efforts on Saudi Arabian Compliance.*

Saudi Arabia has been the single most important source of funds for global terrorism. Some half a dozen of the most visible charities, including two of Saudi Arabia's largest, the International Islamic Relief Organization ("IIRO") and the WML, have repeatedly been linked to supporting terrorist organizations in areas well beyond the Persian Gulf. As described by Kuwaiti liberal politician Abdallah Bishara, "Charitable associations of Kuwait, Saudi Arabia and other Gulf countries have invested huge sums in Afghanistan and its neighboring countries to create a structure of schools, Koranic seminaries, Islamic cooperatives, humanitarian associations, and social services networks that feed Islamic terrorism. This Islamic system is the rear echelon that supports Bin Laden. . . If it were wanted to dry up the funding sources of terrorist organizations at the world level it would not be difficult, because they are all concentrated here in the Gulf region."

Since the May 12, 2003 attacks in Riyadh, the government of Saudi Arabia has reportedly put into place comprehensive anti-money laundering and terrorist finance compliance systems, as well as a system for regulating charities. These systems include active monitoring of charities by the government, and enhanced know-your-customer obligations for Saudi financial institutions holding charitable funds. All of this activity is welcome. But compliance requires actions in practice, implementation, not just policies. And the degree to which Saudi Arabia has actually put into practice the standards it professes remains uncertain, due to the enormous secrecy that accompanies the Saudi approach to governance. As Mr. Zarate told the Congress on March 24, 2004, implementation by Saudi Arabia of its new laws and regulations to combat terrorist finance posed "ongoing challenges." A particularly critical challenge, in Mr. Zarate's words, remains Saudi Arabia "fully implementing and enforcing the comprehensive measures . . . enacted to ensure charities are not abused for terrorist purposes." I concur with Mr. Zarate's previous testimony stating that Saudi Arabia must "move forward to clarify and empower an oversight authority that will administer effective control over the [charities] sector and ensure compliance with obligations under the new regulatory measures." In particular, the U.S. still needs to determine whether Saudi Arabia is serious about shutting down its previous support for Hamas. In the past, senior Saudi officials have stated publicly, if sometimes euphemistically, that they support funding for Hamas. Hamas is an offshoot of the Muslim Brotherhood and has had operational, financial, and institutional relationships with elements of Al Qaeda. The Saudis need to know that the U.S. government will not tolerate the continued support of Hamas by Saudi Arabian entities or individuals. It is not clear to me today whether the U.S. government has sent this message, whether the Saudi government is still providing support to Hamas, and if it is, whether the U.S. government would do anything about it. This lack of clarity may represent an ongoing vulnerability in closing off terrorist funding of Hamas.

5. *Proceed With Designations of Major Foreign Financial Institutions and Businesses as Terrorist Financiers.*

If I differ from Mr. Myers in any area of his testimony, it is in his emphasis on cooperation with Saudi Arabia, to the exclusion, perhaps, of accountability. Mr. Myers states that there is no reasonable option other than to work with Saudi Arabia to fight Al Qaeda and to support the Saudis' reform agenda in the process. To state this should not mean that in the process we cannot use tough tools as well as diplomacy to secure our objectives. To an outsider, it is not clear that we have been as firm with the government of Saudi Arabia as we should have been, or that we have sent the proper message to the private sector individuals and institutions in Saudi Arabia whose actions helped lead to the murder of our people on September 11, 2001. Aside from the Saudi charity Al Haramain, the U.S. Treasury has not in recent months taken actions against important financial institutions or businesses in Saudi Arabia for past involvement in terrorist finance.

Many members of the Task Force on Terrorist Finance of the Council on Foreign Relations have expressed to me their concern about the U.S. having failed to take this important step in light of Saudi Arabia's failure to take public punitive actions against any member of the Saudi establishment for financing terror. To date, there have been no publicly announced arrests, trials or incarcerations in Saudi Arabia involving the financing of terrorism, nor has the U.S. taken action against a number of Jeddah businessmen and Saudi charities whose names have repeatedly surfaced in public in connection with serious terrorist finance allegations.

Last July 31, when I testified before the Senate, Mr. Rick Newcomb, head of the Treasury Office of Foreign Assets Control, testified that he had put together a number of packages for possible designations of such persons and entities pertaining to Saudi Arabia. The gist of his testimony was that there had never been a decision by the Administration to move forward with those packages. It is my understanding that the U.S. government is receiving cooperation from Saudi Arabian financial institutions and the Saudi Arabian government to monitor of accounts of charities or certain other suspected terrorist financiers, and that the U.S. would not have received this cooperation if we had proceeded with the designations. Accordingly, the U.S. made a strategic decision to undertake monitoring in early 2002 by agreement with the Saudis, rather than to simply freeze and sanction relevant Saudi accounts unilaterally.

I cannot fully evaluate the merits of this decision from the outside, as I do not know what information the U.S. has received as a result of the monitoring of financial accounts in Saudi Arabia undertaken with the cooperation of Saudi officials and financial institutions. Regardless of the reason, I strongly believe that the U.S. should take action in this area to hold all known Gulf State terrorist financiers accountable through economic sanctions, regardless of whether such action might alienate or anger persons in Saudi Arabia or elsewhere. Our failure to do this in public sends the message that you can fund terror and if you are politically protected, there will be no public consequences. That is certainly the wrong message, and we should send one that unmistakably makes clear

that there are consequences for funding terrorism regardless of one's political patrons or connections.

6. *Complete the Rule-Making Process.*

Congress mandated that the Treasury Department issue all Patriot Act regulations within one year of the Patriot Act's enactment. It is now two and a half years since Congress issued that direction and yet many categories of financial institution have yet to be covered by regulations. Insurance companies, loan and finance companies, hedge funds are among the major categories of institution awaiting guidance from the Treasury as to how they are to proceed with anti-money laundering and terrorist finance compliance. The long delays create compliance uncertainty for these financial sectors. The delays also weaken our ability to counter terrorist finance as those sectors that remain uncovered by regulations may also remain vulnerable to money laundering due to a failure to put compliance provisions in place. Meanwhile, all financial institutions are awaiting the issuance of Section 312 regulations on special due diligence for the handling of foreign correspondent accounts, private banking accounts, and politically exposed persons, which have now languished for many months since the issuance of proposed regulations. Regulatory uncertainty creates very difficult problems for regulated businesses, making it impossible for them to develop systems that they can predict will be compliant. I hope that these nominees will be in a position to speed the completion of this regulatory process.

7. *Fund FinCEN and Enhancing Its Artificial Intelligence Capabilities.*

The new director of FinCEN, William J. Fox, has a well-deserved reputation for intelligence, creativity, ethics, judgment, and energy, all of which are needed at FinCEN, an agency which long did not receive the attention in needed from Treasury. FinCEN has had difficulties in achieving its regulatory mission, that is, getting regulations out, as discussed above, and interpreting them once they are out. It has not always delivered on its promise of providing financial intelligence to enforcement agencies. And it has had tremendous limitations in its handling and analysis of sensitive financial information, and its dissemination of this information to those in the government, and in certain circumstances, the private sector, who need to use it. Mr. Fox has described the provision of counter-terrorism support to law enforcement and the intelligence community as the single most important operational priority for FinCEN. To do this, FinCEN needs to continue to move forward with BSA Direct, its new system for data mining and financial analysis. BSA Direct has taken a long time to come online. FinCEN currently estimates that it will require another \$6 million before BSA Direct is built. Given what terrorism costs the American people, that is not a great deal of money. Treasury should be accelerating the delivery of these funds to FinCEN, and should be accelerating the development and implementation of BSA Direct on an urgent basis.

8. *Develop Systems for Regulating Gold, Diamonds, and Other Barter Commodities Used By Terrorists.*



It is in the interests of our government to understand how terrorists use commodities in conjunction with hawalas and other alternative remittance systems to go around the formal system of banking and thereby to fund terrorism. Our understanding of these areas remains inadequate. The need for understanding them and then developing systems for marking and regulation is critical for us to make it harder for terrorists to evade oversight. The pioneering work done by the Drug Enforcement Administration (“DEA”) in understanding the black market peso exchange, which involved money laundering through commodities as well as alternative remittance systems may be a useful place to begin in this analysis. Ultimately, we will need regulatory regimes covering these additional sectors, applied on a global basis through the FATF.

9. *Review the Regulation of Free Zones and Develop Global Standards.*

The world’s free zones have long been vulnerable to money laundering, due to their relative lack of customs controls. The Gulf States today have some prominent free trade zones, multiple mechanisms for alternative and informal payment systems, and these are adjacent to gold markets. Panama’s Colon Free Zone has demonstrated that this combination is susceptible to money laundering abuse. Yet to date there is no global set of regulations applying to free zones to deal with money laundering and terrorist finance vulnerabilities. While regulation and review of free trade zones may today in the first instance be in the jurisdiction of the Department of Homeland Security, attention should be given to the two Departments working together to think through the intersection of the payments systems and trade documentation at the free trade zones to determine whether the zones today pose special vulnerabilities for terrorist finance.

10. *Trust, But Verify.*

Every Administration, Republican or Democrat, constantly seeks to put the best face on things when their witnesses testify before the Congress. Indeed, I have been on both sides of that equation, as a former Congressional staffer and Executive Branch policy maker. But the oversight function of Congress is especially urgent when it comes to terrorist finance, because in the absence of public activity, failures of coordination and successes in coordination may look identical to the outside world. We may never know what is going well and what isn’t, unless the Congress insists on holding the Executive Branch accountable.

During my time in the Clinton Administration, I found it impossible to secure cooperation from the FBI on enforcement activity in the area of money laundering. This was not merely because I was located in the Department of State, and the FBI was in the Department of Justice. FBI enforcement activities were decentralized and over time, it became clear to me that no one in Main Justice had a good idea of what the FBI was doing in the field on money laundering or terrorist finance. Indeed, whenever I would stumble into an active investigation and sought to look further into it, I would be told that it was under control, going well, and I should stay out of it. Inevitably, and I mean *inevitably*, I would later find out that the investigation was not going well and was not being undertaken strategically. Repeatedly, the FBI’s failure to include other elements of

the government (and often, other relevant elements of the FBI itself), was making the investigations strategically ineffective.

Now that the Treasury had been stripped of its enforcement capacity in the area of terrorist finance, the U.S. government is more vulnerable than ever to the risk of failures in strategic thinking by the FBI with regards to terrorist finance cases. Such failures are endemic in government whenever an agency is insufficiently connected to other elements of the government that may often hold important information and have important insights from other perspectives. Here, we need an FBI that cooperates completely not only with the Justice Department and the CIA, but with the White House NSC, with the Department of Homeland Security, with the Department of State, and with the Department of the Treasury, to make major cases against major terrorist targets on an international basis, using all available tools.

I do not know whether or not such cooperation is taking place today. Based on what is public, the problem of interagency cooperation would seem to remain an acute one. Again to quote the GAO, “long-standing jurisdictional and operational disputes regarding terrorist financing investigations may have strained interagency relationships to some degree and could pose an obstacle in fully integrating investigative efforts.”

Mr. Chairman, the only method that I know of to hold the Executive Branch accountable on issues of this nature is the oversight function of the Congress. You sit on the Judiciary Committee in addition to your chairing this Committee. You are thus in a unique position of authority to exercise oversight regarding terrorist finance. You have labored for years to meet those extraordinarily important oversight responsibilities and the task remains as essential as ever. I can only say that in the absence of aggressive, ongoing, demanding Congressional oversight, because of the nature of bureaucracy rather than any bad intention, neither this Administration nor any other is likely to take all of the steps needed to protect our public against terrorist finance.

I appreciate being provided the opportunity to testify before you today and would be pleased to respond to any questions.