

**Statement of Joseph M. Myers
Counsel, Katten Muchin Zavis Rosenman¹**

**before the
United States Senate Committee on Finance
Hearing on the Treasury Department and Terrorism Financing
and the Nominations of Stuart Levey and Juan Zarate
May 19, 2004**

Thank you, Chairman Grassley and Senator Baucus, for inviting me to appear before the Committee to address the Treasury Department's role in combating terrorist financing. I appreciate your attention to the issue. The Treasury Department plays a critical role in the fight against terrorist financing, which itself is an integral component of the overall effort to combat terrorism. The Congress and the Administration must continue to work together to develop our government's still relatively new capacity to combat terrorist financing.

I am privileged to appear on the occasion of your consideration of the President's nominations of Stuart Levey and Juan Zarate. I have worked closely with both gentlemen, before and after September 11, 2001, during my tenure at the Treasury Department and at the National Security Council. They are two high minded, public spirited, capable, and hardworking individuals. They are well fit to lead the newly established Treasury Office of Terrorism and Financial Intelligence. I encourage you and your colleagues to confirm their appointments as soon as possible.

Background

Prior to September 11, 2001, there was little political will to take aggressive enforcement steps against domestic fundraising for terrorism, which in many cases was difficult to distinguish from First Amendment protected freedoms of speech and religion. Similarly, few resources were devoted to assessing global terror fundraising networks; fewer still were directed to doing something about them.

After 9/11, eyes and ears were opened. At Treasury, Secretary O'Neill's initial skepticism about money laundering and terrorist financing control gave way to enthusiastic support and creative leadership. The FBI's white-collar investigators and the CIA's financial analysts were integrated into their respective counter-terrorism divisions and quickly proved their value both to the backward looking 9/11 investigation and to preventing attacks. Customs investigators turned their formidable financial investigative resources to sanctions busters, currency smugglers, and illegal money remitters. The Justice Department began using the terrorist financing statutes to take terror cells off the streets before they had a chance to strike.

¹ The views expressed in this testimony are the personal views of Mr. Myers. They do not necessarily reflect the views of the law firm of Katten Muchin Zavis Rosenman.

Our diplomats helped persuade and assist countries around the world to improve their own capacities to deal forcefully with supporters of terrorism. This interagency work was formalized by the creation of a policy coordination committee (PCC) under the NSC structure.

The PCC has made great strides in focusing our limited resources on the most important issues and tasks, and ensuring methodical, thorough all-source intelligence analysis of strategic financial targets. The agencies have worked to balance in particular cases competing interests in collecting intelligence, pursuing criminal investigations, imposing sanctions, and empowering our allies to take the initiative to address problems posed by their own citizenry and institutions.

Several important objectives have been achieved. Most important, al Qaida's ability to raise and move funds with impunity has been severely diminished. This is not to say that the organization has been crippled, I'm sorry to say. But the government's efforts have made a real impact on the organization's financial picture, and it is a weaker organization as a result. Much of our impact has been through deterrence – i.e., donors are either afraid to support, or repulsed at the thought of supporting, an organization whose goal is to slaughter innocent civilians.

There continues to be a relatively high level of international support for the UN sanctions regime against al Qaida and its affiliates.

Key agencies in our government have grown accustomed to working with one another in new ways, and have become better at accommodating one another's interests. The CIA and the FBI, in particular, cooperate closely up and down the chain of command, on a tactical and strategic level.

The White House leads a regular, high level, and wide ranging dialogue with Saudi Arabia on financing and ideological support of extremists. The Saudis are now engaged in a multi-faceted campaign against terrorism that seeks to overthrow their regime, and their cooperation with the U.S. is extensive.

The Europeans now formally recognize Hamas as a terrorist organization, and the Saudis have withdrawn official support for its activities.

Challenges

The government's counter-terrorist financing infrastructure is still in its infancy, and needs to be nurtured. Effectively performing all of the functions involved in combating terrorist financing requires an orchestrated, interdisciplinary, international effort. It is difficult, sensitive, and labor-intensive. It requires specialized investigators, cutting-edge technology, intensive diplomatic engagement, and cooperation from the private sector.

1. Devote adequate resources to the task. Because we do not today have a clear sense of how many financial and human resources are actually devoted to the various tasks involved in combating terrorist financing, it is impossible to make fully informed, strategic decisions about whether the resources are adequate or the allocations optimal. Nevertheless, there is an

unfortunate historical pattern of authorized but unfunded and undersupported initiatives in this area. This pattern needs to be broken.

As a first order of business, the NSC and OMB should conduct a cross-cutting analysis of all the agencies' budgets in this area, to gain some clarity about who exactly is doing what, and with what resources. Provision should be made to incorporate classified material, so that the full range of activity underway is considered: (1) intelligence collection, analysis, and operations; (2) law enforcement operations (including related operations against money laundering, drug trafficking, and organized crime); (3) regulatory activity, including policy development, enforcement, and international standard setting and implementation; (4) sanctions, including an analysis of their effectiveness as a interdiction and deterrence mechanism; (5) diplomatic activity in support of all of the above; and (6) contributions made by the Defense Department.

I am confident that the outcome of such a study would support at least the following propositions:

(a) The U.S. Government has inadequate resources to conduct forensic financial investigations.

(b) The U.S. Government spends a pittance (\$7 - \$11 million) on building foreign governments' capacity to fight terrorist financing. (Aside from the Defense Department budget, whose counter-terrorism assistance efforts are not coordinated with the rest of the government, relatively little is spent on strategic counter-terrorism assistance overall.)

(c) The U.S. Government's handling of documents received from multiple overseas sources – including documents recovered from the battlefield in Afghanistan and Iraq, as well as documents obtained more formally from foreign law enforcement agencies – is a confusing morass that needs to be addressed. If we do not address it, we are never going to be able to “connect the dots” in financial investigations (or in other subspecialties of the counter-terrorism effort, for that matter).

(d) The government also desperately needs more translators who can deal with Arabic and other languages used by Islamic extremists; this is not news, but it is equally important in financial investigations as it is in other arenas.

2. Focus available resources on real threats to our national security. In connection with the budgetary cross-cut analysis, the NSC should develop a strategic plan, with defined metrics and assigned responsibility to various appropriate officials throughout the government. This could look much like the early National Money Laundering Strategies, but portions of it would need to be classified.

Our focus should be narrow, and our use of terms more precise. “Terrorist finance” means different things to different people. For some, it means almost any kind of support for Islamic fundamentalism. Others seem to mean “financial support for violent Islamic extremism” (as distinct from conservative Islam). Still others speak very broadly of support to all kinds of terror groups. (The State Department has designated 36 “Foreign Terrorist Organizations”

pursuant to section 219 of the Immigration and Nationality Act, as amended by the Antiterrorism and Effective Death Penalty Act of 1996. State's official publication, *Patterns of Global Terrorism*, cites 38 others that do not meet the statutory definition.) Terrorism, after all, is a tactic, not a movement. But even though we loathe all terrorists' choice of tactics, and we are right to denounce all of them, not all terrorist movements pose equal threats to the national security of the United States, or warrant the attention of our relatively scarce financial investigative or analytical resources. These resources should be focused on financial and ideological support for violent operatives from particular terrorist groups with a perverse, extremist understanding of fundamentalist Islam and who wish to inflict mass casualties on U.S. and other Western civilians.

Precision (or a lack thereof) in our language is important in a variety of contexts, and especially so in our effort to build alliances against al Qaida and affiliated Islamic extremist groups. Labeling Iraq "the front line of the global war on terror" and calling home grown Iraqi Ba'athist insurgents "terrorists" is demagoguery and it undermines our credibility with allies we need to fight Islamic extremism.

3. Use resources efficiently. Once we have agreed on the most significant threat(s), we need to conduct our campaign efficiently, across a number of functional agencies. Combating terrorist financing is still widely and mistakenly viewed – inside and outside the government -- as principally an exercise in sanctions. Yet it involves not only seizing money, but also following leads to terrorist cells, dismantling channels of funding, and deterring those who would aid and support terrorists.

The tactical exercise can be described with two central metaphors: on the one hand, following the money is like jumping into a stream and trying to swim both downstream to identify and interdict terrorist cells before they strike, as well as upstream to identify donors or other paymasters. It is also like playing multiple simultaneous games of chess: the pieces at our disposal represent the various aspects of U.S. diplomatic, economic, law enforcement, intelligence, and military power. Each contest is different; the challenge is deciding which pieces to move, where and when.

The campaign also needs to give due attention to international standard setting, maintaining alliances, and building capacity. Because the campaign works on multiple levels and requires choices among competing goals and priorities, the interagency process must be led by someone who is perceived as neutral and fair, and who is empowered to call others to account. For these reasons, the NSC's Office of Combating Terrorism should chair the PCC on terrorist finance.

4. The role of OFAC blocking actions. Blocking actions issued by Treasury's Office of Foreign Assets Control (OFAC) are an important component of the terrorist finance campaign. These sanctions can send an important political message, and are a transparent way to communicate our policies and – when endorsed by the UN – to empower foreign states to take local enforcement steps. Also, the threat of OFAC sanctions can be very effective in private negotiations with foreign governments. Finally, interagency discussion of sanctions forces debate about alternatives.

But there are limits to the impact of OFAC blocking actions, and they should not be overemphasized or considered a default choice. This is especially true of sanctions imposed unilaterally or almost solely by the U.S. (for example, sanctions against Hamas or Hezbollah fundraising). It is also true of sanctions against low level functionaries or entities without economic ties to the U.S. And even where there is multilateral support for sanctions, there is certainly not universal capacity or political will to actually implement them. Moreover, transparency with respect to U.S. targets can itself cause problems, either by compromising other sensitive operations or diplomacy, or by revealing the sources or limits of our intelligence. Insisting on sanctions without solid intelligence undermines our credibility and limits our ability to orchestrate collective action.

5. We cannot go it alone. One of the standard “talking points” for senior officials discussing counter-terrorism generally, or terrorist financing specifically, is to note the importance of allies, and international cooperation. One of my favorite, often repeated lines, illustrates the necessity for cooperation in gaining access to records from foreign financial institutions by invoking the unworkable absurdity of the alternative -- bombing a foreign bank. But I am concerned that these talking points are too often mere lip service, and that we don’t realize how destructive our other, often contradictory words and actions can be in securing effective cooperation.

The political posturing on Saudi Arabia is a good example of the importance of careful language to maintaining alliances. The Saudis are regularly portrayed as either our worst enemies or our best, most loyal and steadfast allies. The reality in my limited experience is that our relationship with the Saudis has much in common with our other bilateral relationships: it is strategically important, and complex, and we seek to maximize areas where our interests overlap, while we minimize conflict in order to achieve as many of our common goals as possible. The relationship is in the spotlight for good reason: we face a common deadly enemy in al Qaida, and neither of us anticipated how serious an enemy it would be. But the Saudis are fighting it with us, on many levels, including by pursuing a reform agenda inside the Kingdom. Whether they have taken the right steps, or taken them quickly enough, is a subject about which reasonable people can reasonably disagree. But there is no reasonable option other than to work with Saudi Arabia to fight al Qaida, and to support the Saudis’ reform agenda in the process.

I fear a larger obstacle to our terrorist financing efforts is emerging now, largely as an unintended consequence of the war in Iraq. As Robin Wright wrote in the *Washington Post* this past Sunday (May 16 edition, pp. B1, B4):

“Whether the U.S. led occupation was wise or well handled, the way it unfolded in Iraq has profoundly disappointed many Muslims both near and far from Iraq’s borders. . . . The occupation of Iraq has affirmed the worst fears of the Islamic world, reinforcing distaste for America and what it represents, and spawning wild conspiracy theories about the motives of the West.”

Certainly the photographs emerging from Abu Ghraib are an ideal recruiting tool for Osama bin Ladin. But there are broader questions. Have we stepped into a trap by overreacting to the

September 11 attacks? Are we becoming more isolated in the Islamic world than Osama bin Ladin? Let's hope not, because if our effort against terrorist financing becomes a fight against a newly energized and radicalized Muslim Brotherhood, wiser heads than mine are going to have to figure out a way to secure necessary international cooperation against support for violent Islamic extremism.

6. Metrics. Though it will be difficult to do so, the government needs to devise metrics to measure success against terrorist finance that actually are connected to the day-to-day activities of many of the people necessarily involved in the fight. The most fundamental metric was articulated by Secretary Rumsfeld in his famous "leaked" memorandum – i.e., whether our efforts are resulting in fewer, as opposed to more, terrorists. One degree removed from this measure is whether people are still willing to contribute money to violent Islamic extremists. I do not know, but I fear we are not doing well against either of these benchmarks. If we are failing, however, our failure has little to do with the community of people charged with fighting terrorist financing per se, and much to do with our mismanagement of the conflict in Iraq and other matters that have inflamed anti-U.S. sentiment in the Arab and Muslim world.

The more pedestrian metrics I find most meaningful are: (1) whether any more catastrophic attacks are carried out against the U.S. at home or abroad; (2) anecdotal information -- and the intelligence community's assessment -- about whether al Qaida was having more or less trouble paying its bills and supporting its operatives; and (3) our success or failure in killing, capturing or otherwise taking out of commission key financial and logistical operatives for al Qaida.

Other measures are also in circulation, and have been cited as more or less meaningful by others. These include: (4) how many people have been charged or convicted of financial support for terrorists; (5) how much money has been seized or frozen by the U.S. and our allies; (6) how much "flow" has been choked off by sanctions; (7) how many names are on OFAC's list; (8) how many names have particular agencies proposed for discussion by the PCC; (9) how many prominent individuals or institutions have been publicly exposed or punished; (10) how many countries passed new laws and regulations to stem terrorist financing; (11) how many foreign missions have focused on these and related issues.

Now that I am in the private sector, I have a better appreciation of the time and money spent by financial institutions in trying to comply with their regulatory obligations. Some other industry relevant performance measures might include: (12) how many final rules has Treasury issued under the USA PATRIOT Act; (13) how many terrorist financing SARs have been filed by U.S. financial institutions; (14) whether the government has successfully translated its knowledge of terrorist financing into guidance for the industry.

This range of possible performance measures demonstrates that one's view of success or failure very much depends on one's perspective.

Conclusions

1. Treasury's Role. Reestablishing an Under Secretary at Treasury, with two Assistant Secretaries, is a good start to rebuilding Treasury Enforcement, which was decimated by the creation of the Department of Homeland Security. But Treasury should not try to recreate what was there before. The present and former Treasury enforcement bureaus have had a proud history, and distinguished themselves particularly in financial investigations. But Treasury's headquarters enforcement office has too often tended to live vicariously through the bureaus, and indulge in a fantasy that it supervised them in an operationally meaningful way. Too many enforcement office staffers were drawn from the enforcement bureaus, and a great deal of energy was spent trying to compete with the Justice Department for resources or for control over particular categories of cases. Meanwhile, Treasury's enforcement office often failed to realize its competitive advantage, to focus its energies on areas where it could make a unique contribution. I hope that, as the new office comes into being, its leaders can avoid these mistakes.

Treasury should lead, but do so through support, strength of work product and argument. It should not try to do so by favoring its own powers at the expense of other agencies. The top priorities in the war against al Qaida and its allies must remain to kill, capture, prosecute, and collect information to identify cells and prevent attacks. Treasury should support, and not interfere with, these actions first. Often, Treasury's powers can be used to support these other steps.

Treasury's resources should be focused on specialized intelligence analysis, support to law enforcement, regulatory policy and oversight, international financial crime enforcement policy, and the administration of sanctions.

Intelligence analysis. Treasury's goal should be to compete with the CIA in generating quality finished intelligence analysis of terrorist finance and other illicit finance issues. OFAC's analytical product tends to be formulaic, styled as an administrative record to support blocking action. But given the complexities involved in making informed decisions about the best ways to proceed against particular targets, the government as a whole would be better served by products that presented a more objective view, and could be used to support a range of actions. The new director of Treasury's Financial Crimes Enforcement Network (FinCEN), William Fox, testified recently before the Senate Committee on Banking, Housing and Urban Affairs, that FinCEN analysts need training and upgraded security clearances and equipment in order to be able to complete a study on the illicit trade in diamonds and other precious stones and metals. The intelligence community should do everything it can to facilitate FinCEN's access to the information it needs.

After all, there is much to consider, and it is always difficult to stay current. Though the patterns of terrorist financing that have developed over time – with charitable funding from Gulf states being diverted to support extremists – are still worth pursuing, we also need to look at emerging realities. Al Qaida financing per se has almost certainly become more diffuse since our war in Afghanistan and the bombings – and resulting enforcement and regulatory steps -- in

Saudi Arabia. Whereas once al Qaida's funds were managed centrally, communication and logistical difficulties have forced local operatives in many cases to fend for themselves. The Madrid bombing investigation indicates that the cell there relied on self help, and on drug trafficking and document fraud, to fund its operations. Does this signal a trend? Treasury analysts should be in a position to answer this question.

Support to law enforcement. FinCEN has made significant strides over the years in leveraging technology to support law enforcement investigations, and most recently has contributed through developing and implementing a secure network to communicate law enforcement requests to financial institutions pursuant to Section 314(a) of the USA PATRIOT Act. But FinCEN has lost its edge in developing artificial intelligence and data mining technology, and its analytical reports have suffered from an assembly line approach taken to respond to the pressures imposed by the large demand from the law enforcement community. FinCEN should strive to be a leading technological service provider for law enforcement investigating financial crimes. And it should triage its routine law enforcement requests, upgrade its analysts' skill levels, and focus on providing support to high impact cases. Director Fox's recent testimony indicates that he is pursuing precisely these goals.

Regulatory policy and oversight. Treasury is the natural leader in the financial crimes regulatory arena, and doing so effectively should be among its absolute highest priorities. Treasury is uniquely situated to gather information from all relevant components of the government, from foreign governments, and from the private sector. And by virtue of its statutory authorities it can oversee the activities of the federal functional financial regulators in examining for compliance with the Bank Secrecy Act. Recent news reports have highlighted significant failures of the control systems of well regarded financial institutions. The time is ripe for Treasury to strengthen its capacity to ensure a consistent regulatory compliance environment.

International financial crime enforcement policy. Treasury has an important role to play in conducting diplomacy through finance ministry channels around the world. Treasury has effectively led the U.S. delegation to the Financial Action Task Force and ensured robust and updated international standards to combat money laundering and terrorist finance. Treasury needs to continue to lead this work, now that the IMF and World Bank have agreed to conduct surveillance of countries compliance with the standards. The FATF list of "non-cooperative countries and territories" has largely served its purpose. Treasury should now consider initiating a process in the FATF to apply multilateral pressure on rogue financial institutions, such as those in Burma and Syria already designated by the Treasury as "primary money laundering concerns" under section 311 of the USA PATRIOT Act.

As an adjunct to this work, Treasury needs to play an important role in the government's delivery of training and assistance to countries wishing to build their own capacity to combat terrorist financing. Very few foreign governments have any significant capacity to block assets or conduct financial investigations. For some reason, however, Treasury has declined to transfer to the new Office of Terrorism and Financial Intelligence the enforcement component of its Office of Technical Assistance whose resources are necessary to execute this work. The new office is the logical home for the enforcement assistance component, and it should be moved there immediately.

Administration of blocking orders and sanctions. Of course, Treasury should continue to administer blocking and related actions under the International Emergency Economic Powers Act, the Trading with the Enemy Act, and various relevant country-specific sanctions legislation. In many ways, OFAC is on the ascendancy, having grown significantly in recent years, and having been able to attract many capable analysts and attorneys. As indicated above, OFAC could be an even more effective agent within the U.S. government if its work product was more accessible and presented in a more objective manner.

2. Resources. Treasury needs time and resources to perform these functions. At the moment, Mr. Levey and Mr. Zarate will return to Treasury to add another layer of management over a still very small complement of workers. The office is slated to grow some over the coming year, but not nearly enough.

I was troubled to learn that the Office of Management and Budget denied the IRS's request for financial investigators to support terrorist financing cases in 2005. The IRS fields some of the most competent, selfless financial investigators in the government. I am confident that the program they wanted to staff enjoyed the full support of the FBI.

More to the point for this hearing, as I understand it, no provision whatsoever has been made to staff the new Assistant Secretary for intelligence with a complement of analysts. In the near term, there is probably only one option – to transfer resources from FinCEN and OFAC. But that will only frustrate those agencies' ability to accomplish their missions.

I would strongly encourage the Administration to request a substantial increase in the work force of the new office, in two key areas. First, Treasury should hire a complement of intelligence analysts, to work for the yet to be named Assistant Secretary for intelligence, and to focus their energy on reviewing and analyzing classified material and producing finished analyses to compete with the CIA's work product in this area. These analysts could also focus on other issues of significance to the Treasury Department.

Second, Treasury should build a cadre of financial forensics and regulatory experts. These people could be deployed to support strategically important law enforcement investigations at home or abroad, as well as significant regulatory matters. They should have administrative subpoena powers, and unfettered access to the files of the federal financial supervisory agencies to whom Treasury has delegated authority to examine for Bank Secrecy Act compliance. The very existence of such a unit would add a degree of discipline to the regulatory oversight process. And their skills could be deployed as needed in connection with significant regulatory or enforcement matters, in support of overseas training missions, as well as on special projects such as the hunt for Saddam Hussein's assets, if and as they arise in the future.

The Administration has inexplicably declined to ask for these basic resources to rebuild Treasury's ability to perform a critical role in the United States counter-terrorism campaign. I hope they will do so soon. If the mission is truly important, the Congress should give Treasury the resources anyway.

Thank you again for your interest in the issue, and for the opportunity to appear before you today. I would be pleased to answer any questions you may have.