



Department of Justice

STATEMENT

OF

BARRY SABIN
CHIEF, COUNTERTERRORISM SECTION
CRIMINAL DIVISION

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

THE 9/11 COMMISSION REPORT:
IDENTIFYING AND PREVENTING TERRORIST FINANCING

PRESENTED ON

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**Testimony Before the
United States House of Representatives
Committee on Financial Services
August 23, 2004
Barry Sabin, Chief
Counterterrorism Section
Criminal Division
United States Department of Justice**

Chairman Oxley, Congressman Frank, and Members of the Committee, I am honored to appear before this Committee. I am also pleased to share the microphone today with Treasury Undersecretary Stuart Levey, a dedicated and principled former colleague, as I discuss with you some of the Justice Department's efforts to investigate and prosecute terrorist financing matters, and how we are using the legislation Congress provided to the Executive Branch to protect the American people from future terrorist attacks.

The recent elevation of the United States terrorism threat level in connection with the financial services industry remind us that the terrorists continue to plot catastrophic attacks against us. Working in concert with our foreign partners yielded related terrorist arrests and charges just last week in the United Kingdom. In recent months, we have seen the seizures of large quantities of chemicals used to make bombs from a garage near London's Heathrow Airport; the bombings in Madrid; a car bombing in Riyadh that killed five and wounded 147 others; and the defusing of five other bombs in and around Riyadh. Usama bin Laden has issued yet another call for Al Qaeda and its supporters to continue their violent terrorist *jihād* against the United States. These developments, separately and collectively, indicate that the United States and its allies remain a target of deadly, worldwide attacks by Al Qaeda and others whose view of the world involves the indiscriminate killing of innocent people.

Working together, the various components involved in the United States' efforts to combat terrorism and its funding have made significant progress and scored key strategic victories, while continuing to respect human rights and the Constitutionally-guaranteed civil liberties of those affected by the threat of terrorism. We are extremely cognizant of the need to protect our nation's cherished freedoms and liberties during the struggle to preserve our national security interests. On a daily basis, throughout this country, indeed throughout the world, Justice Department lawyers selflessly contribute to this mission. We are sobered and ennobled by the unique opportunity that history has presented to us to seek justice, both in our words and in our actions.

To be clear, we will be aggressive, as Congress and the American people rightly expect that of us. Our concerted efforts and reliance on the rule of law have led to the disruption or demise of terrorist cells in locations such as Buffalo, Charlotte, Portland, Seattle and Northern Virginia. We continue to dismantle the terrorists' financial networks – including those that rely on petty crime or that prey on charities – through, in part, an

application of standard white collar investigative techniques. To be sure, criminal prosecution remains a vital component of the war on terrorism, and we at Justice have used our law enforcement powers when appropriate to prevent terrorist acts. Much of our success is due to the wide array of legislative tools made available to us by this Committee and the Congress, for which we are grateful. We are looking forward to additional legislative enactments, some of which will be considered by this Committee.

Today, I would like to survey: first, some of what we have done since 9/11 in the area of terrorist financing criminal enforcement; second, some of the future trends that we foresee; and lastly, how this work relates to the Treasury Department and the Department of Homeland Security, and the oversight responsibilities of this Committee. My goal is to cite some examples and highlight some trends, and I do not intend this description to be a comprehensive review of all that has been done in this area by the Justice Department.

A. What We have Seen Since 9/11

I must first stress our main priority since 9/11: preventing terrorist attacks *before* they occur. In the United States, we rightly do not criminalize thoughts or speech. Instead, our criminal laws are crafted to rely on demonstrable acts. A prosecutable crime occurs when these acts occur in combination with a requisite mental state. This presents a challenge where we seek to use the prosecutorial function to prevent terrorism, for we do not want to wait until the terrorists show their hand by taking a significant step towards a deadly attack in order to assure that we have enough evidence to convict.

Thanks to Congress, we have a legal regime that allows us to avoid this thorny operational issue. The crimes of providing material support to terrorists and terrorist organizations - 18 U.S.C. § 2339A and 2339B – criminalize conduct several steps removed from actual terrorist attacks. These crimes are specifically designed to redress the problem of the terrorist financier, someone whose role in violent plots is not obviously lethal but involves the act of logistical and financial facilitation. These offenses, along with the criminal penalty provisions of the International Emergency Economic Powers Act (IEEPA) - 50 U.S.C. § 1701, *et seq* – which we frequently use in material support prosecutions -- contain the offenses of attempt and conspiracy, which adds to our ability to take down terrorist plots at a very early stage of planning. Quite simply, we seek to intercept the money that is being transferred to purchase the explosive components, rather than intercept the terrorist with the bomb on his way to the scene of the attack.

Stemming from this legal regime, especially since September 11, we may glean some themes that illustrate important aspects of what Congress has provided us, how we have used those legislative tools, and what type of additional legislation may be in order.

(1) The FTO Designation Process and Terrorist Infiltration of Charities

The watershed legislative development of terrorist financing enforcement occurred in 1996, when Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA). This statute created the § 2339B offense, and the concept of “designated foreign terrorist organizations” (FTOs). In October 1997, the Secretary of State announced the first round of FTO designations, which included Hamas, Hizballah, and the Palestinian Islamic Jihad (PIJ). Al Qaeda was added in 1999. Today, there are 38 FTOs. This list is intentionally public, designed for all the world to see.

Section 2339B prohibits persons subject to U.S. criminal jurisdiction from knowingly providing material support to a foreign terrorist organization, irrespective of the donor’s intent for the donation. Faced with this crime, persons in the U.S. – who were previously raising funds on behalf of such groups as Hamas, Hizballah and Palestinian Islamic Jihad – were forced to find another way to continue their activities.

In the 1990s, as Hamas’ U.S.-based fundraising began to attract the notice of U.S. authorities, a Hamas leader named Musa Abu Marzook, who was then living in the United States, helped an organization known as Holy Land Foundation for Relief and Development become Hamas’ U.S. beachhead and source of support. In December, 2001, the Holy Land Foundation itself was designated as a terrorist organization under the President’s emergency economic authority. A few weeks ago, the Holy Land Foundation and its officers were indicted by a grand jury in Dallas, for, among other crimes, conspiring to provide material support to Hamas over the last decade.

Another accused U.S.-based terrorist financier, Sami Al-Arian, allegedly used his University of South Florida office and several non-profit entities he established to support the Palestinian Islamic Jihad. The trial of Dr. Al-Arian and his seven co-defendants is scheduled to begin in January 2005.

Leaders of other seemingly-legitimate charities, which went by such names as Benevolence International Foundation (Chicago) and Help the Needy (Syracuse) have been charged with criminal offenses based on their financial connections to terrorists and terrorist regimes. We expect that prosecutorial trend to continue as we work with our counterparts in the FBI, the Internal Revenue Service(IRS), U.S. Immigration and Customs Enforcement (ICE), and other agencies of and the Departments of the Treasury and Homeland Security.

(2) Definition of “Material Support or Resources”

Section 2339B, along with its companion statute, § 2339A (enacted in 1994), prohibit the act of knowingly providing “material support or resources” to terrorists, a term of art specifically defined in the statutes. Included in this term are funds and other forms of tangible items, as well as “personnel.” Since 9/11, we have relied on the “personnel” prong of the definition to charge persons who sought to donate themselves to violent *jihād* causes around the world.

John Walker Lindh, who was charged under § 2339B, ultimately pleaded guilty to an IEEPA charge after being captured in Afghanistan fighting on behalf of the Taliban. He now is serving a 20-year prison term.

We prosecuted and obtained guilty pleas from several men living in Lackawanna, New York, who had attended an Al Qaeda training camp in Afghanistan. In New York City, we recently obtained the guilty plea and cooperation of Al Qaeda associate and military procurer Mohammed Junaid Babar.

In Portland, Oregon, we convicted several members of that community who attempted to travel to Afghanistan after 9/11 to fight against the U.S. military.

A former community leader in Seattle, Washington named James Ujaama was charged with helping al Qaeda set up a violent *jihad* training camp in rural Oregon, and ultimately pleaded guilty and agreed to cooperate in other terrorism investigations.

Recently in Northern Virginia, our prosecutors convicted several persons of training in the U.S. to engage in violent *jihad* activities in the Kashmir region of the Indian-Pakistani border. Earlier, we obtained in that district the guilty plea of Al Qaeda operative Iyman Fares.

Clearly, our ability to redress this conduct through criminal prosecutions would not have been possible had Congress not provided us with a powerful tool like the material support statutes.

(3) Penalties

Pursuant to section 810 of the USA PATRIOT Act, violations of the material support statutes carry a 15 year prison sentence and, in certain cases, the possibility of life imprisonment. These maximum penalties, combined with the terrorism enhancement of the U.S. Sentencing Guidelines, allow us to exert significant leverage over terrorist supporters to gain their cooperation, thereby parlaying the good results of one case into additional indictments and disruption of further terrorist plots. We are aware of and support pending legislation (H.R. 3016) that would increase the maximum penalty for IEEPA violations to 20 years.

This leverage was on display in the Lackawanna and Portland Jihad cases, in which the defendants all pleaded guilty and most agreed to cooperate. Tough sentences also played a significant role in the first § 2339B prosecution ever to go to a jury. The guilty plea of Said Harb in Charlotte, North Carolina provided us critical evidence that permitted our government to supersede the RICO indictment against other significant conspirators in a massive multi-state cigarette smuggling and tax evasion operation. Following a jury trial, Hammoud was convicted under § 2339B and sentenced to a 155-year prison term in the Hizballah military procurement plot. Prosecutors in other districts have benefitted from the cooperation of persons who pleaded guilty to terrorist support crimes in Lackawanna, Portland, and Northern Virginia.

(4) Serial Prosecutions

The very process of “material support” investigations and prosecutions often results in the identification of other targets and future prosecutions. For example:

- Following the Charlotte Hizballah case I mentioned, prosecutors in Detroit have built on these successes to charge other Hizballah-connected individuals linked to the cigarette smuggling and tax evasion conspiracy. Additionally, we recently arrested Fawzi Assi, a Hizballah procurer who fled to Lebanon after being charged under § 2339B.
- The Al-Arian case in Tampa has been supplemented by additional criminal charges against co-defendant Sameeh Hammoudeh and Hatem Fariz in Tampa and Chicago, respectively. Another Al-Arian associate, Fawaz Dahmra, was convicted by a jury in Cleveland of misrepresenting his terrorist associations on his U.S. naturalization application.
- The Holy Land Foundation case in Dallas was assisted by a FBI raid on September 7, 2001, of a related computer company known as INFOCOM. Last month, the brothers that ran INFOCOM were convicted by a jury in Dallas of illegally shipping computer parts to Libya and Syria.
- The Northern Virginia Jihad case described above was initiated on the basis of information developed by Chicago agents and prosecutors assigned to the Benevolence International Foundation investigation.

Simply stated, aggressive law enforcement begets more enforcement and further disruption of terrorist support mechanisms. Prosecutions generate more leads and intelligence. Let me underscore the point because I think it is a critical one: increased penalties yield cooperation by criminal defendants, which yields information -- indeed it yields actionable intelligence, -- which enables the government to more successfully prevent terrorist incidents and attack terrorist funding. As our terrorist financing enforcement program continues -- and assuming Congress agrees to provide us with additional personnel and resources -- we expect a dramatic growth in our prosecutorial volume.

(5) Information-Sharing and Coordination

No matter how effective our criminal statutes are in theory, using them depends on the development of facts. Since 9/11 and with the vital assistance provided by Congress with the USA PATRIOT Act, criminal investigators and prosecutors now have access to the full body of information developed by the U.S. intelligence community, including intelligence gathered through investigative activities authorized by the Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. § 1801 *et seq.* The Attorney General has declassified and authorized our prosecutors to use in criminal prosecutions, electronic

intercepts and other intelligence gathering undertaken through FISA.. These cases include the Holy Land Foundation and Sami Al-Arian cases previously described. The Chicago indictment of three Hamas operatives, announced by the Attorney General this past Friday, is another example. The Counterterrorism Section believes that Sections 218 and 504 of the USA PATRIOT Act, which has been vital to bringing these prosecutions, represent a key Congressional contribution to our counterterrorism efforts, and we are gratified that this view was shared by the National Terrorism Commission in its report.

Inter-governmental coordination, however, is not enough. Many of our prosecutions have been aided by cooperation that stretches across international boundaries. This is not surprising, given the global reach of the terrorist threat. For example:

- The prosecution that resulted in the recent guilty plea by Abdulrahman Alamoudi in an Alexandria, Virginia federal courtroom originated with information provided to us by British law enforcement, which questioned Alamoudi at Heathrow Airport about a briefcase containing \$340,000. These funds, as it turns out, came from Libya, a country with which U.S. citizens, like Alamoudi, have been prohibited from financial dealings. Among the charges to which Alamoudi pleaded guilty was a violation of section 18 U.S.C. § 2332d, which prohibits financial transactions with the government of a nation that has been designated as a state sponsor of terrorism.
- Abu Hamza al-Masri and Baber Ahmed, who have been charged with terrorist support offenses in New York and Connecticut, respectively, are currently in British custody awaiting extradition to the U.S.
- The Charlotte Hizballah case would not have been successfully prosecuted without the great assistance of the Canadian Security Intelligence Service (CSIS).
- Mohammed Al-Moayed and Mohammed Zayed, Yemeni nationals allegedly involved in an Al Qaeda and Hamas fundraising operation, were arrested in Germany and extradited to the U.S., where they will stand trial in Brooklyn.

B. Future Trends

As noted, many of these prosecutions were made possible by information-sharing rules that were changed with the help of the USA PATRIOT Act. These changes, combined with other helpful amendments to our criminal statutes and investigative authorities, have brought us where we are today.

I should also note something that frequently is overlooked in these types of discussions: our reliance on traditional, time-tested criminal investigative techniques - like undercover operations and financial analysis. Our enforcement record has benefitted from Director Mueller's decision, immediately after 9/11, to create a specialized unit of financial investigators to focus on the problem of international terrorism. This unit,

which is now known as the Terrorist Financing Operations Section (TFOS), is a permanent part of FBI Headquarters' Counterterrorism Division. Like the white-collar prosecutors we have brought into the Counterterrorism Section, the TFOS agents are being asked to apply their criminal law expertise to national security. Their analysis and techniques are, in many ways, not new. They are simply pointed at a different problem.

Undercover operations have resulted in several material support prosecutions. In San Diego, following an undercover sting that led to Hong Kong, several persons were charged in a plot to trade drugs for Al Qaeda-destined weaponry, and in Houston, an undercover operation resulted in the arrest and conviction of several persons who were plotting to procure military items for the Colombian terrorist group known as the AUC. FBI undercover operations have resulted in missile-plot arrests in Newark, New Jersey and, more recently, in Albany, New York as well as material support charges in the attempt to provide military gear, including night vision goggles, in cases investigated in Tennessee and New York. Undercover operations represent well-worn law enforcement techniques.

We will also continue to rely on other crimes that do not depend on proof of terrorism connections. The Bank Secrecy Act yielded information that resulted in the terrorist designation of a Somalian financial network known as Al Barakat and our prosecutors, relying on changes to the crime of operating an unlawful money transmitting business (18 U.S.C. § 1960) made by the USA PATRIOT Act, obtained the conviction of an Al Barakat agent in Massachusetts. This crime will remain a valuable part of our counterterrorism arsenal, and we support pending legislation (H.R. 3016) that would make § 1960 a RICO predicate.

We also continue to be concerned about the so-called "lone wolf" international terrorist. Currently, the definition of "agent of a foreign power" found in FISA includes individuals with ties to groups that engage in international terrorism. It does not, however, reach unaffiliated individuals who engage in international terrorism. Therefore, a terrorist in this country, earning money through legitimate means, may never trigger any of the prophylactic measures discussed above and by my colleagues. That is why the Department strongly supports H.R. 3179, specifically Section 4, which would plug this dangerous gap in FISA's coverage by expanding the definition of "agent of a foreign power" to include a non-United States person who is engaged in international terrorism or preparing to engage in international terrorism, even if he or she is not known to be affiliated with an international terrorist group.

The Senate has already acted in a strong bipartisan fashion to amend FISA to cover lone wolf terrorists. Section 4 of H.R. 3179 was included in S. 113, which passed the Senate on May 8, 2003, by a vote of 90 to 4. The Department urges the House of Representatives to follow suit and pass this important proposal to plug this dangerous gap in the scope of FISA's coverage to include "lone wolf" terrorists.

As you can see, we have had significant success in investigating and prosecuting terrorist financing, but we have not done it alone. The private sector, particularly the

financial services industry, has been helpful in providing the government information in particular cases in response to judicial process and has been responsive to USA PATRIOT Act § 314(a) broadcasts requesting information on certain potential customers. We hope to continue working with the Treasury to improve the utility of Bank Secrecy Act reports, including suspicious activity reports, to law enforcement, and to provide the financial services sector with additional feedback on the utility of such data to law enforcement.

To ensure that we maximize the utility of all information available to the government, we are assisting the FBI's efforts to exploit technology in order to identify appropriate connections. We are increasingly working with the private sector in providing them with information to allow them to apply similar technologies to the data they maintain. We are doing this in accordance with the laws designed to protect civil liberties, and are active in the legal analysis being done by the privacy experts and technology architects both within the government and in the private sector.

Finally, although we have been successful in prosecutions of persons who attended violent *jihad* training camps on the theory that such conduct represents an attempt to provide support to an FTO, we strongly support pending legislation (H.R. 4942) that would create a new crime of receiving military-type training from an FTO and would make other valuable amendments to the material support statutes.

C. Partnerships Across Departments

The Department recognizes that the terrorist threats we are facing today and in foreseeable future, can not be addressed by any single department, bureau or agency. That is why we would like to acknowledge our strong partnerships with the Departments of the Treasury and Homeland Security, the FBI, ICE, IRS, the U.S. Secret Service (USSS), and the Financial Crimes Enforcement Network (FinCen). We are all working together to fight this war on terrorism.

In particular, we are delighted to have someone we know so well heading the Treasury office responsible for terrorist financing. We share a common goal of doing all that the law and the Constitution allow to disrupt the financing of terrorism, both here and abroad. The addition of Mr. Levey has created an air of positive optimism.

As will be noted by Mr. Levey, both the criminal law enforcement approach to terrorist financing and the process of designating and freezing the assets of terrorist-affiliated groups and individuals is inextricably intertwined with other tools available to the United States. In many cases, such as the Holy Land Foundation and Benevolence International Foundation, these tools are complementary and significantly add to the disruption we seek. At the very least, the Treasury designation process, like the FTO designation system that is so important to those of us responsible for enforcing § 2339B, is important to our investigations. We hope to augment our enforcement efforts relating to the criminal sanctions of IEEPA in matters where the designated individual or entity is not an FTO. We are also looking forward to working with Mr. Levey's office in making

FinCEN an even more effective source of information both for the government and for the private sector, facilitated by § 314(a) of the USA PATRIOT Act, that mutually benefits compliance with legal and regulatory obligations.

Of course I would also take this opportunity to recognize the close working relationship I have seen develop between ICE and FBI agents who work on terrorist financing cases. The unprecedented exchange of information sharing between these two agencies -- pursuant to a Memorandum of Agreement (MOA) between DOJ and DHS -- is indicative of the information sharing that occurs across the board. For example, I am aware that ICE has detailed senior-level manager to the FBI's Terrorist Financing Operations Center (TFOS) to act as the Deputy Section Chief. FBI and ICE have worked out a vetting mechanism to ensure FBI and DOJ are immediately aware of all ICE cases that relate to terrorist financing and ensure a smooth transition of the investigation to the Joint Terrorism Task Force (JTTF).

Finally, it should be noted that all of the above cited cases were products of the JTTFs operating throughout the U.S. The JTTFs bring to bear the broad authorities and vast expertise within the FBI, ICE, IRS, and the many other participating agencies, to successfully address the complex and menacing crimes of terrorist financing, material support, and terrorism.

Conclusion

Mr. Chairman, that concludes my prepared remarks. I again thank this Committee for its continued leadership and support. Together, we will continue to make great strides in the long-term efforts to defeat those who seek to terrorize America.

I am happy to respond to any questions you may have.