

WHY THE GLOBAL ANTI-MONEY LAUNDERING REGIME IS ILL-EQUIPPED TO FIGHT THE WAR ON TERRORISM, AND WHAT TO DO ABOUT IT

Master of Arts in Law and Diplomacy Thesis

Submitted by Syed Waqar Hasib

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Under the advisement of
Professors Laurent Jacque and W. Scott Thompson

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Introduction	4
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Chapter 1. Money Laundering Before September 11: From Ancient Chinese Merchants to the War on Drugs	8
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A. What is Money Laundering?	9
B. The Early History of Money Laundering: From Merchants to Mobsters	10
C. The Recent History of Money Laundering: the War on Drugs	11
D. What Makes a Money Launderer a Money Launderer?	15
E. Why Do Governments Care About Money Launderers?	16
F. How Do Governments Stop Money Launderers?	18
1. The 1988 UN Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	19
2. Other characteristics of the global anti-money laundering regime	22

Chapter 2. Money Laundering Since September 11: The War on Terrorism	24
---	-----------

A. Why does Al Qaeda need money?	25
B. Where does Al Qaeda's money come from?	28
1. General Patterns	28
A. Financing from legitimate business profits	29
B. Financing from illegal activities	31
B(1). Heroin and Opium trafficking	32
B(2). Credit card fraud and other illegal activities	34
B(3). Kidnapping	35
C. Charitable donations from individuals	36
D. Donations from Islamic charities	39
2. Specific Patterns	43
C. How does al Qaeda move its money?	44
1. Legal transactions using traditional financial institutions and the global financial system	45
2. Informal transactions: hawalas and Islamic charities	49
3. Illegal transactions: smuggling of currency and commodities	50

Chapter 3. Fitting Square Pegs into Round Holes... How to Make the Global Anti-Money Laundering Regime a Useful Tool in the War on Terrorism	53
---	-----------

A. Four reasons why anti-money laundering strategies developed in the War on Drugs are ill-suited to the War on Terrorism	54
1. Reverse money laundering	54
2. Different end goals	56
3. Geographic decentralization	58
4. Structural decentralization	61
B. Four Recommendations to help Law Enforcement Agencies and Financial Institutions Cope with Money Laundering in the War on Terrorism	65

1. Stopping terrorist money laundering must be a truly global effort	65
2. Focus on the Layering and Integration Stages, as well as the Placement Stage, by Implementing "Know-Your-Customer" Standards.	69
3. Don't Freeze Funds; Follow Them.	74
4. Avoid publicizing the financial war on terrorism	78

Conclusion	80
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Introduction

Immediately after the September 11 attacks, the global financial system became one of the most highly publicized battlefields in the "War against Terrorism." Virtually every state that signed up to participate in the U.S.-led coalition declared the tracing and seizure of terrorist finances a top priority. "We have developed the international financial equivalent of law enforcement's 'Most Wanted' list," said President George W. Bush on September 28, 2001, "and it puts the financial world on notice. If you do business with terrorists, if you support or sponsor them, you will not do business with the United States of America."¹ Other nations followed suit shortly thereafter. "Those that finance terror, those who launder their money, those that cover their tracks are every bit as guilty as the fanatic who commits the final act," said British Prime Minister Tony Blair on October 2, 2001.² Likewise, Bahrain's Prime Minister Sheikh Khalifa bin Salman al Khalifa on October 3, 2001, ordered all banks in his country "to freeze immediately the assets of any individual or organisation linked or suspected to be linked to international terrorism."³

Eighteen months into the War on Terrorism, the results of this financial battle appear inconclusive at best. Law enforcement authorities have frozen hundreds of accounts in banks across the globe, totaling over \$100 million in suspected terrorist assets. However, the threat of terror has by no means subsided, nor has al Qaeda's ability to finance future operations. In fact, a recent critical report by the UN Security Council's subcommittee for counter-terrorism indicated that efforts to combat terrorist financing had been largely ineffective. "Despite initial successes in locating and freezing al Qaeda assets," the report warned that the terrorist network "continues

¹ Speech by President George W. Bush, September 24, 2001 at White House Rose Garden, "President Freezes Terrorist Assets." See <http://www.whitehouse.gov/news/releases/2001/09/20010924-4.html>

² Speech by Prime Minister Tony Blair to Labour Party Conference, October 2, 2001. See "Full Text: Tony Blair's Speech (part one)." *The Guardian*, October 2, 2001.

³ Farook, Latheef. "Bahrain to freeze assets linked to terrorism." *Gulf News*, October 3, 2001.

to have access to considerable financial and other economic resources." "Al-Qaeda is fit and well," it added, "and poised to strike again at its leisure."⁴

One major reason why law enforcement agencies have been frustrated in their attempts to curb the flow of terrorist finances is that they are using old weapons to fight a new war. The framework of multilateral agreements, financial industry regulations, and domestic laws around the world that tackle money laundering were written largely during the 1980s as part of a different war, the "War on Drugs."⁵ The *raison d'être* of this global anti-money laundering regime, as I shall refer to it, changed practically overnight. President Gloria Macapagal Arroyo of the Philippines succinctly summed up the transformation in a speech she gave shortly after the September 11 attacks: "Last week, [money laundering] was an economic and political issue. From now on, it is an international political issue. It has moved from being a question of financial corruption and has become a question of abetting terrorism."⁶

In this paper I will compare and contrast the methods used by drug traffickers and al Qaeda to launder money. My position is that money laundering in the War on Terrorism is structurally and materially different from money laundering in the War on Drugs. As a result, the global anti-money laundering regime is not prepared to deal with the kinds of transactions al Qaeda engages in, the financial tools it uses, or the purposes for which it launders money. Law enforcement agencies and financial institutions must either reform the global anti-money laundering regime in order to respond to these new weaknesses, or acknowledge that it is not an effective tool to prevent future terrorist attacks.

⁴ Lynch, Colum. "War on Al Qaeda Funds Stalled; Network 'Fit and Well,' Ready to Strike, Draft of U.N. Report Says." *Washington Post*, August 29, 2002.

⁵ Though the phrase "War on Drugs" was used as early as 1914, I refer here to the "war" declared by U.S. President Ronald Reagan in October of 1982. See, e.g. Wisotsky, Steven. "A Society of Suspects: The War on Drugs and Civil Liberties." *Cato Policy Analysis* No. 180, October 2, 1992. <http://www.cato.org/pubs/pas/pa-180es.html>

⁶ Escandor, Juan Jr. "GMA ties dirty money to terrorism," *Philippine Daily Inquirer*, September 17, 2001.

I have organized this paper as follows. Chapter 1 is an overview of traditional money laundering, in other words money laundering as it relates to drug trafficking. I outline a generic money laundering transaction, provide a history of money laundering as a crime, and explain how an unprecedented rise in illegal drug trafficking in the 1980s gave birth to the global anti-money laundering regime. In Chapter 2, I examine the role that money and money laundering play in al Qaeda's operations. I discuss why al Qaeda needs money, where it raises it, and how it moves it to cells across the world. In Chapter 3, I compare these two approaches and explain why anti-money laundering techniques developed to fight drug cartels are inadequate to stop al Qaeda from committing acts of terrorism. In particular, I identify four key weaknesses that al Qaeda has exposed in the global anti-money laundering regime, and propose a set of remedies that could eliminate those weaknesses.

Chapter 1. Money Laundering Before September 11: From Ancient Chinese Merchants to the War on Drugs

A. What is Money Laundering? _____ 9

B. The Early History of Money Laundering: From Merchants to Mobsters _____ 10

C. The Recent History of Money Laundering: the War on Drugs _____ 11

D. What Makes a Money Launderer a Money Launderer? _____ 15

E. Why Do Governments Care About Money Launderers? _____ 16

F. How Do Governments Stop Money Launderers? _____ 18

 1. The 1988 UN Vienna Convention Against Illicit Traffic in Narcotic
 Drugs and Psychotropic Substances _____ 19

 2. Other characteristics of the global anti-money laundering regime _____ 22

A. What is money laundering?

Money laundering can broadly be defined as the process of disguising the financial proceeds of a crime. The end goal is to sever the financial link between a crime and its perpetrators, allowing them uninhibited and untraceable enjoyment of their funds. Various government agencies and multilateral organizations involved in the fight against money laundering use similar definitions. The UN Office of Drug Control and Crime Prevention says, "Criminals who wish to benefit from the proceeds of large-scale crime have to disguise their illegal profits without compromising themselves. This process is known as money laundering."⁷ More succinctly, the U.S. Customs Service says, "money laundering is the legitimization of proceeds from any illegal activity."⁸

Generally speaking, the vast majority of money laundering operations involve three basic steps. To illustrate, suppose that Wanda has just sold several thousands of dollars worth of cocaine on the streets of Boston. (I describe these funds as "dirty," since they arose out of an illegal act.) In the first stage, known as the **placement** stage, Wanda deposits her dirty cash into an account she holds at a bank or other financial institution. Now, with her funds tapped into the global financial system, Wanda moves onto the **layering** stage. In this stage, she moves the dirty funds through a series, or layers, of transactions in order sever the connection between the money and her cocaine sale. Wanda can move her funds in this stage through any number of financial instruments offered by her financial institution, from annuities to zero coupon bonds. In fact, Wanda's only real limit here is creativity. Moreover, in the digital age Wanda can layer through dozens of accounts in dozens of countries with the push of a few keystrokes. The more she layers her funds, the less likely law enforcement officials will be able to connect them to her

⁷ See UN Office of Drug Control and Crime Prevention web site, http://www.unodc.org/odccp/money_laundering.html

⁸ See U.S. Customs Service web site, <http://www.customs.ustras.gov/enforcem/enforcem.htm>

original sale of drugs. In the final stage, known as **integration**, Wanda consolidates her layered funds and transfers them into the account of a legitimate business where she maintains an interest, perhaps a restaurant owned by her brother, Otto. Thus, at the end of the day Wanda enjoys complete access to her funds but arouses no suspicion, because it appears that she is earning profits from her interest in Otto's restaurant, not from selling drugs.

B. The Early History of Money Laundering: From Merchants to Mobsters

Though Wanda's case is simplified for the purposes of illustration, most money laundering operations follow the same three steps. In fact, schemes like hers have been occurring for centuries. Money laundering may not be the oldest crime in the book, but it is certainly close. Historian Sterling Seagrave writes that over 2000 years ago, prosperous Chinese merchants laundered their profits after regional governments outlawed many forms of commercial trading. "Merchants were targeted because of the long-standing official prejudice against commerce of any form," he writes. The government also viewed merchants' activities with a great deal of suspicion because they "were greedy, ruthless, unpredictable, and predatory, and lived by different rules." Moreover, a large portion of merchants' income came from bribery, extortion, and black marketeering. "Only those who remained invisible could expect to hold on to their wealth in the face of continual extortion by imperial eunuchs and bureaucrats."⁹ Many of the techniques Seagrave describes, such as "converting money into readily movable assets, moving cash outside the jurisdiction to invest it in a business, and trading at inflated prices to expatriate funds" are used today by sophisticated money launderers.¹⁰

According to legend, the actual term "money laundering" originated in the 1920s, during the Prohibition era in the United States. Organized criminals became heavily involved in the

⁹ Seagrave, Sterling. "Lords of the Rim," pg. 67. Putnam Publishers, New York, 1995.

¹⁰ Morris-Cotterill, Nigel. "Think Again: Money Laundering," *Foreign Policy*, May-June 2001. (Downloaded from www.foreignpolicy.org)

lucrative alcohol smuggling industry, and in order to conceal their illegal activity began commingling their profits with profits from legitimate businesses. Laundromats were particularly attractive targets because they were cash-heavy businesses with a high turnover of small bills and change.¹¹ Author and money laundering expert Jeffrey Robinson disputes that rather convenient explanation, though, as "a neat story, but not true."¹² According to Robinson, the term first appeared in 1973 in connection with the Watergate scandal. At any rate, regardless of the origins of the term, Robinson says it "perfectly describes what takes place: illegal, or dirty, money is put through a cycle of transactions and comes out the other end as legal, or clean money."¹³

C. The Recent History of Money Laundering: the War on Drugs

The real heyday for money laundering came in the 1980s. During that decade, the street prices of cocaine, heroine, and other major illicit drugs fell dramatically¹⁴. Cheaper drugs meant more accessibility for a wide range of users, which meant more cash transactions for dealers and an ever-increasing need to launder large sums of money quickly and efficiently. One U.S. customs official in 1986 said, "we see narcotics organizations now being set up like major corporations, with an operational arm to move the drugs and a financial arm to move the money."¹⁵

Statistics from the United Nations and the U.S. Department of Justice confirm that the 1980s were indeed an era of unprecedented growth in the illicit drug trade (see tables on following page). U.S. federal drug arrests doubled from 580,900 in 1980 to 1,361,700 in 1989.

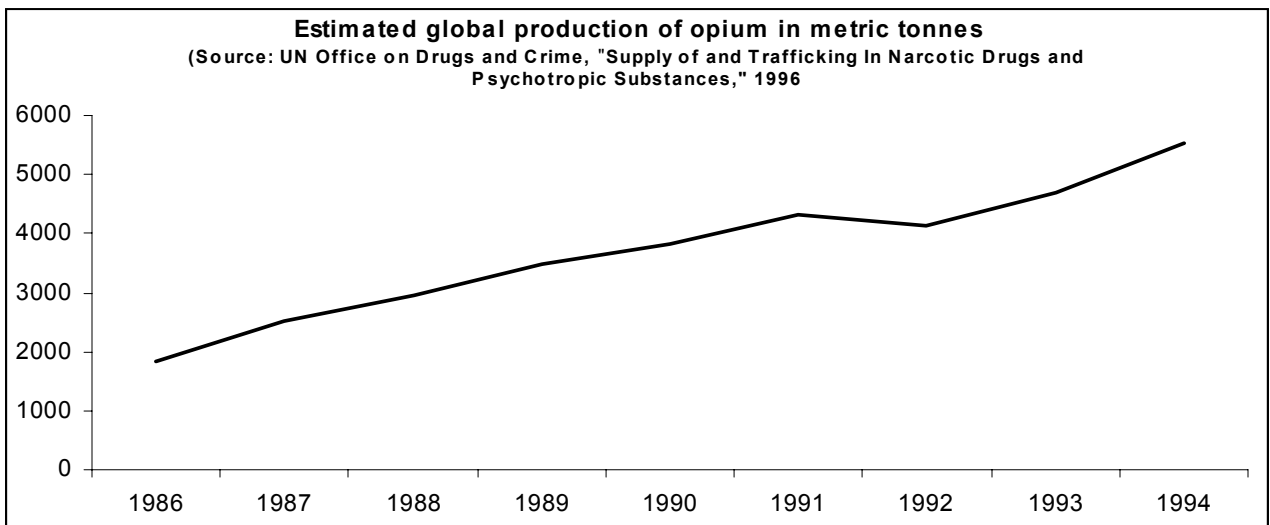
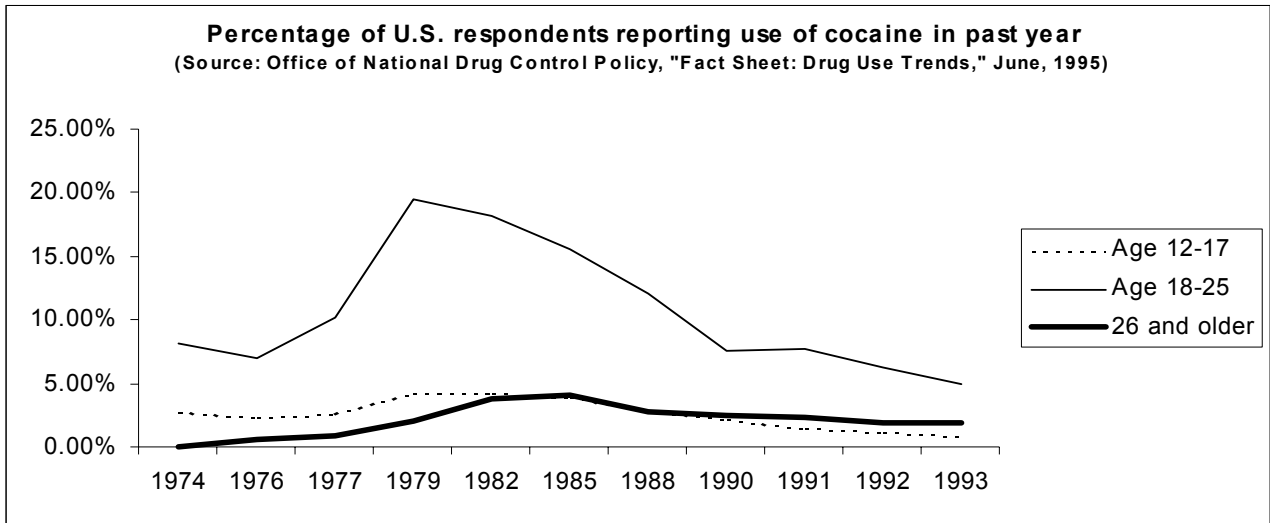
¹¹ "Fighting dirty money: Governments claim progress in the war against money laundering." *The Economist*, June 23, 2001

¹² Robinson, Jeffery. "The Laundrymen: Inside Money Laundering, the World's Third-Largest Business," pg 4. Arcade Publishing, New York, 1996.

¹³ Id.

¹⁴ White House Office of National Drug Control Policy. "The National Drug Control Strategy 2000 Annual Report." Table 42, "Average Price and Purity of Cocaine and Heroin in the United States, 1981-98." See <http://www.ncjrs.org/ondcppubs/publications/policy/ndcs00/table42.html>.

¹⁵ Frank, Allen Dodds. "See No Evil. (Laundering Drug Money)." *Forbes*, October 6, 1986.



Average Price and Purity of Cocaine and Heroin in the United States, 1981-1991

(Source: Office of National Drug Control Policy <http://www.whitehousedrugpolicy.gov/publications/policy/03ndcs/table33.html>)

	Cocaine				Heroin			
	Purchases of 1 gram or less		Purchases of 10-100 pure grams		Purchases of 0.1 gram or less		Purchases of 1-10 pure grams	
	Price per pure gram (\$)	Purity (%)	Price per pure gram (\$)	Purity (%)	Price per pure gram (\$)	Purity (%)	Price per pure gram (\$)	Purity (%)
1981	423	36	201	44	3,295	4	1,207	19
1982	433	36	184	46	3,285	5	1,159	32
1983	399	39	178	50	3,652	6	1,310	29
1984	378	44	153	55	3,485	8	1,293	36
1985	328	40	145	52	3,146	8	1,183	43
1986	315	51	127	64	3,502	9	1,153	37
1987	292	64	104	71	3,306	11	1,164	36
1988	238	75	80	73	3,123	17	960	40
1989	226	78	68	71	2,597	19	790	44
1990	267	69	77	59	2,924	16	878	32
1991	227	78	69	70	3,022	17	872	32

Almost twice as many people reported using drugs in the past year in 1985 than in 1981. And the global trade in illicit drugs was estimated to be valued at \$120 billion dollars in 1985,¹⁶ or roughly the same size as the GDP that year of India.¹⁷ The drug trade in the 1980s was of such concern that the first President George Bush singled it out in his 1989 presidential inaugural address:

There are few clear areas in which we as a society must rise up united and express our intolerance. The most obvious now is drugs. And when that first cocaine was smuggled in on a ship, it may as well have been a deadly bacteria, so much has it hurt the body, the soul of our country. And there is much to be done and to be said, but take my word for it: This scourge will stop.¹⁸

What President Bush described as a bacteria for the country, though, was a boom for money launderers. Indeed, some of the boldest and most comprehensive money laundering schemes were developed during this period. Consider, for example, Ramon Milian-Rodriguez, who from 1979 to 1983 is believed to have laundered close to a whopping \$1 billion in drug money for the Medellin drug cartel.¹⁹ Milian-Rodriguez' scheme more or less followed Wanda's pattern described above. He set up an air freight company and shipped millions of dollars in U.S. drug sales from Florida to Panama, where banking secrecy laws are notoriously customer-friendly. Once there, he placed multiple deposits in Panamanian banks, layered the funds through transactions in the Netherlands Antilles, then integrated them in the United States in the form of, among many other things, loans to Latino small business owners in the Miami area.²⁰

¹⁶ Id.

¹⁷ Comparative GDP statistics obtained from University of Groningen (Norway) Faculty of Economics, Growth and Development Centre web site. See <http://www.eco.rug.nl/ggdc/index-dseries.html>.

¹⁸ Speech by President George H.W. Bush, January 20, 1989. See <http://www.americanpresidents.org/inaugural/40.asp> (part of C-SPAN.org).

¹⁹ *U.S. v. Milian-Rodriguez*, 759 F.2d 1558, 1560. Milian-Rodriguez also gave a more detailed account of his scheme to a Senate subcommittee in 1988. That testimony is sealed, but several summaries I found on the Internet confirmed the basic details included here.

²⁰ Incidentally, after being arrested by U.S. Customs officials in 1983 Milian-Rodriguez agreed to cooperate with the government, and has since claimed to have helped the CIA funnel money to Nicaragua during the Iran-Contra affair. See "Guns, Drugs and the CIA" at PBS Frontline, <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/archive>. During a Senate subcommittee hearing, Massachusetts Senator John Kerry asked Rodriguez why there was no trail of money showing a connection between the CIA and the Nicaraguan Contras. "Because I am very good at what I do," Rodriguez replied rather succinctly.

Money launderers like Milian-Rodriguez also became increasingly creative during this period. In one Senate subcommittee hearing in 1985, U.S. customs officials described how they had caught people attempting to smuggle cash through borders in everything from televisions, teddy bears, and tennis balls.²¹

Perhaps the most convincing evidence of the implicit connection between the drug trade and money laundering involved General Manuel Noriega of Panama. Noriega used his political position, first as head of Panama's G-2 intelligence bureau and then as the country's president to turn Panama into a safe haven and transit point for drug traffickers on their way from Colombia to the United States. In return for army protection of vital airstrips and processing laboratories, Noriega received a healthy cut of the profits from a number of drug lords, most notably the infamous Pablo Escobar. Noriega placed his dirty cash into an account at the Panama branch of the Bank of Credit and Commerce International (BCCI), a notorious haven for money launderers around the world. Based in Luxembourg but with worldwide operations, it offered launderers a means to move money quickly across the entire globe under the protection of the tiny European state's strict banking secrecy laws. According to subsequent investigations, Noriega then "hid the funds through using the rather traditional mechanism in money laundering of *layering* -- moving the funds from entity to entity and from location to location until they could no longer be traced," (emphasis added).²² Before he could reach the third stage of integration and enjoy unfettered access to his funds, he was apprehended by invading U.S. forces, and is currently serving a 40 year sentence in federal prison on charges of, among many other things, money laundering.

²¹ Walter, Ingo. "The Secret Money Market: Inside the Dark World of Tax Evasion, Financial Fraud, Insider Trading, Money Laundering, and Capital Flight." pg 152. Harper & Row, Ballinger Division. New York, 1990.

²² "The BCCI Affair." Report by Senator John Kerry and Senator Hank Brown to the Senate Committee on Foreign Relations, December 1992. 102d Congress, 2d session. Senate Print 102-140.

D. What Makes a Money Launderer a Money Launderer?

All of the examples described above, from the merchants in pre-modern China to Noriega and BCCI, rely on one basic assumption: in every case, the act of laundering money only occurs *if the funds in question are already dirty*. In other words, the funds in question must have been obtained as a result of a past criminal act. This assumption is not only important, but pivotal. To illustrate, suppose that Archie, a lawyer and a decent, upstanding citizen in all respects, has just made a windfall settling a large personal injury case. Concerned that his greedy ex-wife Wendy will learn of his newfound wealth, Archie places his profits in an offshore bank that offers him a high degree of banking secrecy. Just for good measure, Archie layers his funds through a series of complex transactions so that Wendy will never be able to find them. Finally, he integrates them into a general bank account operated by his firm so that they are completely disassociated from him. In substance, Archie has performed exactly the same act as Noriega, Milian-Rodriguez, and everyone else described above. But because Archie's original funds were clean, that is, because they arose from a perfectly legitimate activity, Archie has not committed money laundering.

Conceptually, this makes sense. If the funds do not arise out of a criminal activity, then they are not dirty. If they are not dirty, then they cannot be cleaned, and the act of money laundering cannot take place. One would not throw a perfectly new white shirt into the washing machine. Likewise, one cannot launder money unless and until the funds in question are dirty. Granted, there are only a few legitimate reasons why one would want to engage in a series of transactions like Archie's. But the simple act of moving money is not and cannot be illegal. Rather, it is the act of moving *dirty* money that makes one a money launderer.

The prior crime that makes a particular set of funds dirty is known in legal terminology as a predicate offense.²³ I shall discuss predicate offenses in greater detail at the end of this chapter, but for present purposes it is sufficient to note that unless one has already committed a predicate offense, one cannot be guilty of money laundering. Lawmakers decide which kinds of criminal acts qualify as predicate offenses to money laundering. For instance, U.S. laws list over 200 different predicate offenses that would make a particular set of funds dirty, thereby triggering money laundering charges against a particular defendant²⁴. Other countries take an even more thorough approach, making any serious crime a predicate offense to money laundering²⁵.

E. Why Do Governments Care About Money Launderers?

Governments are interested in combating money launderers like Wanda for a variety of reasons. First, anti-money laundering laws act as a deterrent against crime in general. The harder it is for Wanda to access her funds, the less likely she is to commit a crime. Second, money laundering destabilizes the legitimacy of a country's banking system, and in extreme cases, even the legitimacy of a government itself. For example, the preamble to one U.S. statute states that "money laundering by international criminal enterprises challenges the legitimate authority of national governments, corrupts officials and professionals, endangers the financial and economic stability of nations, diminishes the efficiency of global interest rate markets, and routinely violates legal norms, property rights, and human rights."²⁶

More specifically, though, attacking money launderers in the 1980s offered law enforcement agencies a real and tangible weapon with which to prevent the supply of illegal drugs. Granted, at the same time they also sought to decrease demand for illegal drugs, as

²³ In the U.S. the predicate offenses that trigger money laundering laws are known as "specified criminal activities."

²⁴ 18 U.S.C. § 1956(c)(7). For a more detailed discussion, see Golumbic, Court E. and Noble, Ronald K. "A New Anti-Crime Framework for the World: Merging the Objective and Subjective Models for Fighting Money Laundering." 30 N.Y.U. J. Int'l L. and Pol. 79, 100.

²⁵ See U.N. International Money Laundering Information Network (IMoLIN) at www.imolin.org.

²⁶ Foreign Money Laundering Deterrence and Anticorruption Act, § 2. 106th Cong., H.R. 2896

anyone who lived in the U.S. in the 1980s and recalls the "This is Your Brain on Drugs" series of television commercials will readily attest. But targeting the supply side of the drug industry, especially its financial elements, offered a number of strategic advantages. First, money launderers were an easy target for law enforcement agencies from a geographic perspective. Launderers needed to be physically located close to areas where the demand for drugs was particularly sophisticated and profits were particularly high, so that they could make their cash collection process as efficient as possible. As a result, they frequently based their operations in industrialized countries with high drug demand like the United States or the United Kingdom. Thus, for law enforcement agencies, launderers were a far more attractive target than producers, for example, who were often located in distant and relatively lawless jurisdictions like Myanmar, Afghanistan, or Columbia, where the threat of a subpoena or even prosecution meant little, if anything at all.

Second, laundering drug profits was a relatively centralized process, especially when compared to the distribution of sellers and users. Large amounts of money passed through only a few hands, and even the most prolific of drug traffickers generally used no more than two or three laundering operations at any given time.²⁷ Consequently, one successful investigation could uncover millions of dollars in dirty funds and cripple an entire organization. For example, in 1988 and 1989 the U.S. Drug Enforcement Agency (DEA) carried out a money laundering sting known as Operation Polar Cap. As a direct result of Polar Cap, the DEA arrested 112 perpetrators across the country on charges ranging from laundering and conspiracy to aiding and abetting the distribution and sale of illicit narcotics. They seized \$112 million in laundered funds

²⁷ Robinson, Jeffrey. "The Laundrymen: Inside Money Laundering, the World's Third-Largest Business," pg 242. Arcade Publishing, New York, 1996. Robinson describes how Pablo Escobar relied on one primary money laundering operation involving a chain of front companies posing as jewelry merchants in New York, Los Angeles, and Montevideo to launder the majority of his profits. I will discuss this operation in further detail in Chapter 3.

from bank accounts in several countries, along with cash, real estate, automobiles, and other hard assets. They also seized over 36,000 kilograms of cocaine and marijuana, an amount about as heavy as 6 Volkswagen Beetles.²⁸ Furthermore, the dimensions of the seizures offered the Bush administration ample publicity in the media to show that they were doing something to stop the "scourge."

F. How Do Governments Stop Money Launderers?

Recognizing the prominent role that money laundering played in the illicit drug trade, governments around the world in the 1980s began passing laws specifically outlawing money laundering. These laws were developed in large part to help agencies around the world like the DEA use money laundering as an investigative tool. The U.S. Money Laundering Control Act of 1986 was one of the first such laws, followed closely by similar laws in France, the United Kingdom, and a host of other countries.²⁹ It was evident from the outset, though, that domestic legislation on its own would be inadequate. Money laundering has always been a uniquely global crime. This was true even in Seagrave's ancient China, but it is a thousand times as true in today's globalized world. The more integrated and connected the global financial system becomes, the easier it is for launderers to move dirty money across borders.

In order to deal with such an international crime, an international response was needed. Hence, in 1988 the UN adopted the Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the first multilateral agreement that specifically addressed money laundering. The convention was signed by 171 countries, and has been implemented in 168 of them. The domestic laws that these countries enacted in order to comply with the convention constitute the backbone of the global anti-money laundering regime. Naturally, these laws vary

²⁸ See <http://www.volkswagen.com>

²⁹ See U.N. International Money Laundering Information Network (IMoLIN) at <http://www.imolin.org> for a list of nations that have passed anti-money laundering statutes.

in each jurisdiction. For example, the list of predicate offenses in the U.S. covers a wide variety of crimes ranging from murder to tax evasion, while other countries list only drug-related crimes such as possession and trafficking. Nevertheless, each signatory at the very least was required to enforce the minimum standards set forth in convention's anti-money laundering provisions. I will examine these provisions below, in order to determine a lowest-common-denominator of the capabilities and limitations of the global anti-money laundering regime.

1. The 1988 UN Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

As the title indicates, the Vienna Convention dealt primarily with drug trafficking, not money laundering, and was written largely as an effort to update and combine two earlier drugs-related conventions, the 1961 UN Single Convention on Narcotic Drugs, and the 1971 UN Convention on Psychotropic Substances. But, in the preamble the drafters wrote that they were "[a]ware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels," and that they were "[d]etermined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing."³⁰

Article 3 subparagraph 1(a) generally requires countries to criminalize the "production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation" of a variety of psychotropic substances listed in the convention's annexes.

Subparagraph (1)(b) requires each signatory to make the following acts criminal offenses:

³⁰ UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Preamble. 20 December 1988. See http://europa.eu.int/comm/justice_home/doc_centre/drugs/international/printer/doc_drugs_international_cooperation_en.htm

- i. The conversion or transfer of property, knowing that such property is derived from any [subparagraph 1(a) offense], or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;
- ii. The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from [a subparagraph 1(a) offense] or from an act of participation in such an offence or offences;³¹

There are a number of interesting points to note about subparagraph (1)(b). First, the fact that it was included at all, while no such element was included in the 1961 and 1971 Conventions, indicates that "[i]n the late 1980s, a broad consensus emerged within the international community that the criminalization of money-laundering"³² was an essential part of any anti-narcotics strategy. Second, most interestingly, the drafters deliberately omitted mentioning the actual phrase "money laundering." This was because they felt the term was relatively novel and posed difficult translation problems.³³ This confirms my theory that although the act of money laundering has existed for centuries, it became a significant issue for lawmakers only in the 1980s, as a direct response to the growth in illicit drug trafficking.

More importantly, with respect to predicate offenses, the Convention makes it a criminal act to convert, transfer, or conceal property if *and only if* one knows that the property is derived from an offense described in subparagraph (a). In other words, under the Convention, while states are required to outlaw the laundering of dirty money, *only money that arises out of a subparagraph (a) offense is dirty*. To illustrate the importance of this point, suppose that Wanda, unsatisfied with her profits in the drug trade, decides to steal Archie's prized 1986 Jaguar XJ-6. She sells the car, places the proceeds into a bank account, then layers them through a series of

³¹ Id. at Article 3.

³² Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. New York, United Nations, 1998.

transactions just like she did with her drug profits. Under the minimum standards set forth by the Convention, Wanda in this case *would not be laundering money*, because automobile theft is not a drug-related subparagraph (a) offense.

In their defense, the drafters of the Convention recognized this shortcoming. "Recent years have witnessed the emergence of a trend which favours the extension of the criminal offence beyond the narcotics predicate," says the UN's 1998 commentary on Article 3. The drafters also noted that limitation to drugs-related offenses becomes apparent when one considers the "difficulties in proving that particular proceeds are attributable to drug trafficking activities... when the persons in question are involved in a broad range of criminal activities." In light of these deficiencies, the drafters advised countries implementing the Convention to consider adopting "more ambitious measures than those strictly required by the Convention."

The fact that the list of predicate offenses triggering money laundering laws differs in each country is not insignificant. For example, it could lead to regulatory arbitrage. That is, money launderers could theoretically structure their operations to take advantage of countries with lax regulations. In Wanda's case, that might mean depositing her cash proceeds from the stolen Jaguar in a bank in a jurisdiction where the money laundering laws did not list theft as a predicate offense.

Though the Convention may have caused substantial divergences between jurisdictions, it did create one important similarity. Each jurisdiction that signed and implemented the Convention was required as a minimum to establish laws outlawing the laundering of funds arising from drug-related Article 3 subparagraph (1)(a) offenses. Those offenses form a lowest common denominator. That is, one can safely say that as a result of the 1988 Convention, the

³³ Id.

global anti-money laundering regime was equipped to deal with drug-related offenses, but not necessarily any other crimes.

2. Other characteristics of the global anti-money laundering regime

Beyond the close relationship to drug-related offenses, the domestic laws passed in accordance with the Vienna Convention share some other common features. For example, of the three stages of money laundering described above, laws generally aim at the placement stage, because it is the most effective choke point in the money laundering process. After all, in a murder investigation the chances of successfully prosecuting a suspect are far higher when the suspect is apprehended holding a bloodied knife in her hands. Likewise, it is far easier to catch a money launderer when she still has dirty money in her possession. The more the layering, the harder it is to link the funds in question to the criminal activity.

In focusing on the placement stage, many governments heavily regulate the manner in which deposits are made at banks and other financial institutions. Such regulations generally take one of two approaches. The first is a subjective approach, known as the know-your-customer, or KYC, approach. In KYC jurisdictions, banks bear the onus of properly identifying their customers and reporting any suspicious money laundering-related activities to the appropriate law enforcement agencies. This approach is common in many European jurisdictions. The second approach is more objective; this approach requires banks to report any and all transactions that are valued over a particular amount. This is the approach that was adopted in the U.S. For example, any time a bank in the U.S. processes a transaction valued over \$10,000, that bank is required to file a currency transaction report, or CTR, with the Department of Treasury.

Of course, both approaches are fraught with difficulties. In KYC jurisdictions, one bank could deem a particular transaction suspicious, while a bank across the street could find the same transaction perfectly legitimate (thus the subjective element of the KYC approach).

Furthermore, the cost of knowing one's customer is borne by the bank itself, providing a disincentive to investigate. If a particular bank gains a reputation for being especially vigilant, it stands to lose a great deal of legitimate customers who happen to value confidentiality. In effect, there would be a race to the bottom, with capital flowing to those banks that are satisfied knowing the least about their customers.

The objective, U.S. approach is as inefficient as the European approach is unpredictable. The sheer volume of CTRs filed each year makes their utility as an investigative tool somewhat dubious. Furthermore, intrepid money launderers in the U.S. have learned to carefully structure their deposits so as not to surpass the \$10,000 threshold. This practice is known as smurfing, and has proved to be a major weakness in U.S. money laundering regulations. In 1992, Congress tried to eliminate smurfing by requiring banks to file suspicious activity reports, or SARs, for a particular transaction if the bank "'knows, suspects, or has reason to suspect' [the transaction]: (i) involves or is an attempt to disguise proceeds from illegal activity; (ii) is designed to evade [reporting requirements]; or (iii) appears to have no business or apparent lawful purpose."³⁴ However, because SARs are filed at the discretion of banks, they are subject to the same weaknesses inherent in the subjective, European approach described above.

³⁴ Matthew Morgan, "Money Laundering: The American Law and its Global Influence." 3 SUM-NAFTA: L. & Bus. Rev. Am. 24 at 36. Id. at 46, citing 31 C.F.R. § 103.21(a)(2) (1995).

Chapter 2. Money Laundering Since September 11: The War on Terrorism

A. Why does Al Qaeda need money?	25
B. Where does Al Qaeda's money come from?	28
1. General Patterns	28
A. Financing from legitimate business profits	29
B. Financing from illegal activities	31
B(1). Heroin and Opium trafficking	32
B(2). Credit card fraud and other illegal activities	34
B(3). Kidnapping	35
C. Charitable donations form individuals	36
D. Donations from Islamic charities	39
2. Specific Patterns	43
C. How does al Qaeda move its money?	44
1. Legal transactions using traditional financial institutions and the global financial system	45
2. Informal transactions: hawalas and Islamic charities	49
3. Illegal transactions: smuggling of currency and commodities	50

In this chapter I discuss how al Qaeda uses the global financial system to fund its operations. I first examine al Qaeda as an organization to determine *why* it *needs* money to carry out its terrorist attacks. Then I examine *where* al Qaeda *raises* that money, focusing on general patterns of financing from both legitimate and illegitimate sources. I also look at specific patterns that were used to finance the September 11 attacks. Finally, I examine *how* al Qaeda *moves* its money to cells across the globe, from financial institutions and offshore bank accounts to underground money remittance networks and currency smuggling. My purpose in this chapter is to develop a snapshot of al Qaeda's financial capabilities and requirements, in order to determine how the organization evades detection by the global anti-money laundering regime.

A. Why does Al Qaeda need money?

Terrorism is not a profit-motivated crime. For most terrorists, money is merely a means to an end, the end being acts of terror. Nevertheless, for a large group like al Qaeda planning multiple high-visibility attacks in several countries, money is an essential element of the organization's lifeblood. Jamal al Fadl, a former al Qaeda operative, testified at the U.S. embassy bombing trial that al Qaeda was divided into four main committees: the military committee, the fatwah or Islamic study committee, the media committee, and the "money and business committee."³⁵

Al Fadl described this last committee in detail for prosecutors, painting a chilling picture of al Qaeda as a carefully structured, fiscally conservative organization. The committee clearly recognized the importance of maintaining a steady, reliable cash flow to finance al Qaeda's day-to-day operations as well as its long-term projects, just like a legitimate business entity. Among its day-to-day costs, al Fadl described how operatives in Sudan received a monthly salary to

³⁵ Trial tr. at 209 (February 6, 2001), United States v. Usama bin Laden, et. al., 146 F.Supp.2d 373.

cover living expenses.

Q: And what was that salary for?

A: That salary for from [sic] the al Qaeda members.

Q: And where did you go to get that salary?

A: I go to Sayyid el Masry office and he give it to me...

Q: And how much were you paid per month for your work for al Qaeda?

A: It's around \$300.

Q: And how often would you be paid for al Qaeda work?

A: Monthly.³⁶

In addition to wages, al Fadl testified that al Qaeda also covered its members' health and travel expenses.

Q: What if you had hospital expenses, how would you pay for them, medical expenses?

A: If somebody, the al Qaeda members, he go to doctor or he buy his medicine and he brings a receipt and we pay him the money.

Q: And if you took a business trip from the Sudan to someplace else, who would pay the expenses of the trip?

A: The al Qaeda membership, the al Qaeda committee money.³⁷

Remarkably,³⁶ al Qaeda suffered from the same kind of internal bickering about salary structures that might exist in any legitimate business. Al Fadl recounted for prosecutors a conversation that he had with Osama bin Laden in which he asked why he received a lower salary than other operatives, even though he had been a member since al Qaeda's inception.

Q: Can you tell us what you said to Usama Bin Laden about those salaries compared to yours?

A: I tell him the people complain about that, that some members, they complain about that, and me, too, I say why not the members together that same salary?

Q: What did Usama bin Laden say to you when you complained about the salaries of Abu Fadhl al Makkee, Abu Hajer, and Abu Abdallah Lubnani?

A: He say some people, they travelling a lot and they do more work and also they got chance to work in the country. Some people, they got citizenship from and [sic] another country and they go back over there for regular life, they can make more money than in group. And he says that's why he try to make them happy and give them more money.³⁸

Later, al Fadl described the day-to-day costs that al Qaeda incurred in a typical guerilla operation

³⁶ Id. at 253.

in Chechnya.

Q: Did you have any discussion . . . about how much the efforts in Chechnya were costing al Qaeda?

A: Yes.

Q: Can you tell us what that discussion was?

A: I remember Abu Fadhl al Makkee and another member, we are in McNimr Street office, and he make a map for each person, amount, how much cost for each person his carfare, his ticket, and his weapon, Kalashnikov, until he go to camp over there, how much it cost.

Q: Do you recall how much it would cost to send each person with a weapon to the camp in Chechnya?

A: Yes.

Q: How much?

A: \$1,500.³⁹

Like any enterprise, al Qaeda needed funds not only to cover salary and day-to-day costs, but also to finance large-scale projects. For example, al Fadl described how the organization bought several farms in the Khartoum area in the early 1990s. These farms served a dual purpose, on the one hand earning legitimate income through agricultural production, and on the other hand providing much-needed private land for military training grounds. Al Qaeda also set up a number of legitimate non-agricultural businesses, mostly relating to trading and merchant activities. I will examine some of these businesses in greater detail in the following section, but for the time-being it is sufficient to note that during the initial startup phase all of these entities caused a considerable drain on al Qaeda's cash.

Another government witness, Essam el Ridi, provided investigators with a detailed inside look at the financing of one specific large-scale al Qaeda project. El Ridi, an Egyptian-born flight instructor based in Fort Worth, Texas, became acquainted with some of al Qaeda's top members through his participation in various Muslim youth organizations. In 1993 he received a phone call from Wadi al Hage, one of Osama bin Laden's closest officers, asking him to find a

³⁷ Id. at 254.

³⁸ Id. at 257.

³⁹ Id. at 302.

small plane with range of about 2000 miles costing no more than \$250,000, that al Qaeda would use to smuggle Stinger missiles from Afghanistan to the Sudan. Al Hage and el Ridi haggled over prices, but al Hage ultimately told him "this is the budget and let's try to work with that budget." El Ridi found a plane in Arizona at the right price, and al Hage sent a wire transfer to his account at a bank in Texas. El Ridi then flew the plane to Khartoum himself to deliver it personally to Osama bin Laden, and described how bin Laden reimbursed him for costs that he incurred on his flight from Arizona.

Q: Did you get paid – you mentioned before that you needed to get reimbursed for other billings outstanding for the airplane. Did you accomplish that when you were in Khartoum?

A: Yes.

Q: How did you do that?

A: I took the authorization of Usama. I was then sent to Abu Jaffer to revise the items, got another authorization from Abu Jaffer, and then took it to the accountant to do a complete, well, actually a receipt including all the items, signed it again from Usama, and took a check to the bank where I had money.⁴⁰

B. Where does Al Qaeda's money come from?

1. General Patterns

In the last section I showed that al Qaeda needed a steady stream of financing to support both day-to-day costs and large projects. In this section, I will analyze from where the organization raises those finances. My research indicates that al Qaeda relies on at least four main sources of funding. First, as mentioned briefly in the last section, al Qaeda owns and operates a number of legitimate businesses from which it earns income. Second, al Qaeda engages in a wide variety of financially profitable criminal activities. Third, al Qaeda receives direct donations from wealthy individuals sympathetic to the organization's cause. Finally, various Islamic charities redirect a portion or the entirety of their collected contributions into al

⁴⁰ Trial tr. at 576 (February 14, 2001). United States v. Usama bin Laden, et. al., 146 F.Supp.2d 373.

Qaeda's coffers. I will discuss the characteristics of each of these sources below.

A. Financing from legitimate business profits

Osama bin Laden's original wealth stems from his interest in his family's construction empire. Mohammed Awad BinLadin, Osama's father, emigrated to Saudi Arabia from Yemen in the 1930s and founded a construction company in response to a request by King Abdul Aziz to conduct renovations on the Saudi royal place. Soon thereafter the company received sole rights from the Saudi government for all repair and construction work on religious sites, not a minor contract in Saudi Arabia.

Mohammed BinLadin died in 1968 in a plane crash, leaving behind control of his company to his 20 sons. The current CEO is Bakr BinLadin, who took control in 1988 after his elder brother and then CEO Salem died, also in a plane crash.⁴¹ The company is currently known as the Saudi BinLadin Group (SBG) and little information about it is publicly available. One French intelligence report says "rarely... does one know in advance just what the next BinLaden project will be: generally, the information is there when it is all over."⁴² The same report says SBG has secured a number of high profile construction projects in Saudi Arabia, including a \$296 million project to construct a ring freeway around Riyadh and a \$1 billion project to expand Mecca's holy sites. Today, SBG has diversified its assets across a number of industries including agriculture and finance.⁴³

Osama bin Laden's personal wealth as a result of his interest in the company has been difficult to estimate, though many have tried. The family publicly disowned him and severed all

⁴¹ Incidentally, my research indicates that Salem may have had ties with current U.S. President George W. Bush. James Bath, one of Salem bin Laden's personal financial representatives, served with Bush in the Texas Air National Guard during the Vietnam War. Bath also owned 5 percent of Bush's failed Arbusto Energy Corporation. Bath told reporters that he never directed any of Salem BinLadin's money to Arbusto. On the other hand, Bath did reportedly advise BinLadin to invest several other Houston-area ventures, including the Houston Gulf Airport. See Streuli, Ted. "Airport with bin Laden, Bush ties to close." Galveston County Daily News, January 28, 2002.

⁴² PBS Frontline, "About the BinLadin Family." Downloaded from <http://www.pbs.org/wgbh/pages/frontline/shows/binladen/who/family.html>.

⁴³ Id. I also relied in this section on a number of publicly available U.S. State Department press releases and fact sheets about Osama bin Laden and the BinLadin Group, as well as the BinLadin Group's website, at <http://saudbinl01.uuhost.uk.uu.net/>.

financial ties in 1991, following his opposition to the stationing of U.S. troops during and after Operation Desert Storm, but never revealed how much money he may have amassed by that time. Intelligence reports available on the Internet value his net worth in 1991 at anywhere between \$30 million to \$300 million.

What is known for certain, however, is that bin Laden left Saudi Arabia for the Sudan and set up several legitimate, functioning businesses whose profits were most likely used to finance al Qaeda's terrorist operations. Those businesses include:



The airport bin Laden constructed in Port Sudan is clearly visible from satellite images.

Wadi al Aqiq. Wadi al Aqiq was the first company bin Laden set up in the Sudan. It served as a parent or holding company for the rest of the businesses described below. Jamal al Fadl testified that he purchased a number of buildings in Khartoum under the company's name.

Hijra Construction

Hijra performed various infrastructure construction projects for the Sudanese government, no doubt benefiting from that regime's tacit support and sympathy for bin Laden. Among other projects, Hijra constructed a new airport at Port Sudan (see left⁴⁴), an 800-mile long highway between Khartoum and Port Sudan, and an 83-mile long road between Damazine City and Kormuk City. According to al

Fadl, Hijra also purchased explosives, ostensibly for construction purposes, though it seems logical to conclude that at least some of those explosives were

redirected to al Qaeda for other purposes.

Ladin International Company. Established shortly after Wadi al Aqiq, this firm is believed to have engaged in the import/export business in the Sudan. According to Al Fadl, Ladin International, was involved in trading a wide variety of products, including butcher equipment, canned mushrooms and tomatoes, cement, wood, lathing machines, lemons, insecticides, and sugar.

Taba Investment. Taba was a currency trading firm that operated under the Wadi al Aqiq umbrella. Al Fadl said the company primarily exchanged Sudanese pounds, presumably including those earned from domestic sales by Ladin International, into hard currency, especially U.S. dollars and British pounds. A report from the Washington Post suggested that Taba also engaged in investing activities in stock markets around the world.⁴⁵

⁴⁴ Images obtained from www.nima.mil and www.spaceimaging.com.

⁴⁵ DeYoung, Karen, Hilzenrath, David, and O'Harrow Jr., Robert. "Bin Laden's Money Takes Hidden Paths to Agents of Terror." *Washington Post*, September 21, 2001.

Al Ikhlas, al Shifa, and al Nur honey producers

The first of these three companies, al Ikhlas, was cited by al Fadl as a bin Laden operation in the Sudan that manufactured sweets and honey. The latter two companies, al Shifa and al Nur, are Yemeni honey traders that the *New York Times* asserted were possible fronts for al Qaeda. The *Times* article suggested that not only were the companies suspected of diverting profits to al Qaeda, but they also smuggled weapons and cash inside shipments of honey.⁴⁶

Al Themar al Mubaraka

Al Themar al Mubaraka was set up to operate some of the farms that I described in the previous section, including one outside Damazine City that was approximately 50,000 acres in size. Al Fadl testified that 2/3 of this particular farm was used for agricultural purposes, to grow corn, sesame, and peanuts, among other products, while the remainder of the area was used by al Qaeda as a military training ground and bomb-making laboratory.⁴⁷

In sum, al Qaeda operated a network of legitimate businesses in diverse industries, ranging from agriculture to construction. That bin Laden chose to diversify indicates a rather sophisticated level of financial savvy. After examining al Fadl's testimony, the *Guardian* of London wrote,

Like any other multinational enterprise in the era of globalisation, al Qaeda appears to have diversified its product, producing roads and bridges as well as bombs and booby traps. It is arranged, not in an old-fashioned vertical hierarchy, but in a modern horizontally integrated array of loosely affiliated groups, drawing shared goals and philosophy from the centre but operating independently. It is as if Mr Bin Laden had been consulting the most up-to-date management gurus.⁴⁸

Al Qaeda probably invested in many other industries, besides those described above. For instance, I have come across several media and intelligence reports suggesting bin Laden-related businesses engaged in diamond trading in east Africa and ostrich farming in Tajikistan, among other activities. In fact, one report in the *Sydney Morning Herald* suggested that bin Laden operated as many as 70 to 80 businesses during the 1990s.⁴⁹

B. Financing from illegal activities

In addition to bin Laden's panoply of legitimate businesses, al Qaeda also derived income

⁴⁶ Miller, Judith and Gerth, Jeff. "Trade in Honey is Said to Provide Money and Cover for Bin Laden." *New York Times*, October 11, 2001.

⁴⁷ See generally trial transcripts of testimony of Jamal al Fadl (February 6-7, 2001) in United States v. Usama bin Laden, et. al., 146 F.Supp.2d 373 for more information on bin Laden's legitimate businesses.

⁴⁸ Borger, Julia. "Defector Lifts Lid on the Business of Terror." *The Guardian*, February 17, 2001.

from a wide range of illegal activities. The organization was long suspected of assisting the Taliban in controlling Afghanistan's opium trade. But post-September 11 investigations have revealed a number of other illegal activities designed to raise funds for the organization, ranging from credit card fraud to kidnapping. I discuss some of these activities below.

B(1). Heroin and Opium trafficking

Upon moving from Sudan to Afghanistan in 1996, Al Qaeda became involved in the lucrative Afghani opium trade. Opium in its pure form is rarely used anymore as a narcotic. But after a refining and reducing process, it is easily converted into its more potent, popular, and dangerous sister drug, heroin.⁵⁰ Opium is by no means a new crop in Afghanistan. It was being harvested as early as the nineteenth century on the Pakistan-Afghanistan border under British supervision and later in the 1980s with the alleged encouragement of the CIA, seeking to destabilize the occupying Soviet regime and finance Afghani mujahideen rebels.⁵¹

But production reached its zenith under the Taliban, around the same time that bin Laden and al Qaeda arrived in the country after being expelled from the Sudan. A report by the United Nations Office of Drug Control and Crime Prevention (UNODCCP) shows that Afghanistan's opium production skyrocketed during the 1990s.⁵² By the year 2000, the country produced 70% of the world's opium, far surpassing its closest competitors Myanmar, Thailand, and Laos, the triumvirate that forms the infamous "Golden Triangle" of narcotics production.⁵³ Afghani opium was particularly dominant in Western European markets. British Prime Minister Tony Blair said "The biggest drugs hoard in the world is in Afghanistan, controlled by the Taleban. Ninety per

⁴⁹ McGeough, Paul. "Business Empire at Odds with Desert Warrior Image." *Sydney Morning Herald*, September 24, 2001.

⁵⁰ See <http://www.dea.gov/concern/heroin.html>.

⁵¹ Booth, Martin. "Opium: A History," pg. 251. St. Martin's Press, New York, 1998.

⁵² United Nations Office for Drug Control and Crime Prevention. "Global Illicit Drug Trends: 2002," pg. 11. Vienna, Austria 2002. Downloaded from http://www.undcp.org/odccp/global_illicit_drug_trends.html

⁵³ Id.

cent of the heroin on British streets originates in Afghanistan."⁵⁴ That figure was more or less confirmed by Pino Arlacchi, UNODCCP's executive director, who said "Afghan heroin supplies 80 percent of Europe's supply of heroin and 50 percent of the world's supply."⁵⁵ The total value of opium-generated income to Afghanistan from 1994 to 2000 ranged from between \$50 million to \$200 million per year, depending on the condition of the harvest⁵⁶.

Al Qaeda is believed to have benefited from this income primarily through its association with the Taliban, not through any specific production itself. The Taliban, until at least 2000, fully supported the opium trade as a lucrative means to bring cash into the country, which otherwise was suffering from the ongoing civil war against the Northern Alliance. "The taxes on opium exports became the mainstay of Taliban income and their war economy... drugs money funded the weapons, ammunition, and fuel for the war [against the Northern Alliance]."⁵⁷ The Taliban is believed to have excised as much as a 20% tax on all opium exports⁵⁸.

It is difficult to estimate how much al Qaeda might have benefited from this tax. Numerical figures are difficult to confirm in no small part because Mullah Mohammed Omar, the Taliban's secretive head of state, is reported to have stored a large percentage of his government's tax revenues in large tin boxes underneath his bed.⁵⁹ But many law enforcement agencies believe that there was an implicit agreement that al Qaeda would help protect the Taliban and rebuild Afghanistan's war-torn infrastructure in exchange for a cut in the Taliban's opium revenues. Asa Hutchinson, director of the U.S. Drug Enforcement Agency (DEA) was particularly adamant that such a link existed. He testified before the Senate Judiciary subcommittee on Technology, Terrorism, and Government Information that

⁵⁴ Speech by Prime Minister Tony Blair to Labour Party Conference, October 2, 2001. See "Full Text: Tony Blair's Speech (part one)." *The Guardian*, October 2, 2001..

⁵⁵ Rashid, Ahmad. "Taliban," pg. 123. Yale University Press, London, 2000.

⁵⁶ Id. at 119. I also consulted the U.N.'s Global Illicit Drug Trends: 2002 report cited earlier. (See note 15).

⁵⁷ Id. at pg. 123.

⁵⁸ Id., at pg. 118.

DEA has received multi-source information that Bin Laden has been involved in the financing and facilitation of heroin trafficking activities. While the activities of the two entities do not always follow the same course, we know that drugs and terror frequently share the common ground of geography, money, and violence. In this respect, the very sanctuary previously enjoyed by Bin Laden was based on the existence of the Taliban's drug state, whose economy was exceptionally dependent on opium.⁶⁰

B(2). Credit card fraud and other illegal activities

Drugs aside, al Qaeda also relies on petty crimes as a source of income. Dennis Lormel, chief of the FBI's Financial Crimes Section, testified before the U.S. House of Representatives that "terrorist cells often resort to traditional fraud schemes to fund their terrorist activities."⁶¹ Post-September 11 investigations in several countries have revealed that identity theft and credit card fraud were a particularly common source of funding for many al Qaeda cells. For example:

- Spanish authorities arrested 11 suspected al Qaeda members on November 18, 2001, charging 8 of them. Searches of the group's residences uncovered forging equipment and several false passports. Investigating judge Baltazar Garzón charged them with possession of falsified documents, in addition to various crimes relating to terrorist activity. Intelligence reports later revealed the group used those passports to obtain credit cards, make phone calls to Afghanistan and Pakistan, and open bank accounts⁶².
- German authorities arrested 5 suspected al Qaeda members on December 25, 2001, accusing them of plotting to blow up several churches in Strasbourg, France. The five allegedly used stolen credit card numbers to rent a small car and purchase expensive suits from an exclusive clothing store. Their credit card shopping spree continued as they collected various chemicals to manufacture explosives, a shopping list that included aluminum powder, acetone, sodium carbonate and 29 kilograms of potassium permanganate.⁶³
- British authorities detained 17 suspected al Qaeda members on January 19, 2002. The suspects allegedly operated a comprehensive forgery scheme that "produced hundreds of fake credit cards and passports for use by the (al Qaeda) network."⁶⁴

Along with identity theft and credit card fraud, at least one al Qaeda member resorted to

⁵⁹ Id., at pg. 124.

⁶⁰ Testimony of Asa Hutchinson before the Senate Judiciary Committee, Subcommittee for Technology, Terrorism and Government Information, March 13, 2002.

⁶¹ Testimony of Dennis J. Lormel before the House Committee on Financial Services, Subcommittee on Oversight and Investigations, February 12, 2002.

⁶² "La Fiscalía pide prisión para 8 de los islamistas detenidos en España." *El Mundo*, November 18, 2001.

⁶³ Johnson, Ian. "Terrorism Trial May Provide Details of al Qaeda Network; Frankfurt Cell Members Accused in Plot to Bomb Cathedral in Strasbourg." *The Wall Street Journal – European Edition*. April 16, 2002.

⁶⁴ Guthrie, Jonathan. "Police Question al Qaeda suspects." *Financial Times*, January 21, 2002.

petty larceny to finance terrorist operations. Ahmed Ressam was an al Qaeda operative who was convicted of attempting to blow up Los Angeles International Airport (LAX). He agreed to cooperate with prosecutors and at a trial in 2001 of one of his co-conspirators described how from 1994 until 1998 he financed the preparations for his planned attack on LAX:

Q: During that four-year period you were in Montreal, did you have any jobs?

A. I worked only one week distributing advertising leaflets.

Q. How did you support yourself during that four-year period?

A. I lived on welfare and theft.

Q. What do you mean by "theft"?

A. I used to steal tourists [sic], rob tourists. I used to go to hotels and find their suitcases and steal them when they're not paying attention.

Q. And what would you do with the contents of those suitcases?

A. I used to take the money, keep the money, and if there are passports, I would sell them, and if there are Visa credit cards, I would use them up, and if there were any traveler's checks, I would use them or sell them.

Q. Now, did you do this alone or with others?

A. Mostly with others.

Q. Approximately could you estimate how many times you did that during that four-year period in Montreal?

A. Maybe 30 to 40 times.⁶⁵

B(3). Kidnapping

Al Qaeda's involvement in kidnapping appears to be limited to its relationship with one particular terrorist subgroup, the Abu Sayyaf of the Philippines. Abu Sayyaf is a militant Muslim separatist group claiming to fight for an independent Muslim state on the Philippine island of Mindanao that has kidnapped and extorted ransom payments from dozens of Philippine and foreign victims over the past several years. According to Philippine Justice Secretary Hernando Perez, al Qaeda has benefited financially from its relationship with Abu Sayyaf. He told the *Bangkok Post* that his office had traced ransom money paid to Abu Sayyaf through banks in the Philippines and Hong Kong, and concluded flatly that "Al Qaeda is getting a cut of

⁶⁵ Trial Tr. 538 (July 3, 2001), United States v. Mokhtar Haouari, __ F.3d __ (2003).

the funds."⁶⁶ The *Post* report said there was no way to estimate how much Abu Sayyaf had earned in ransom fees, but pointed out that in 2000 alone, the group received \$5.5 million from the Malaysian government and \$25 million from the Libyan government to release a small group of foreigners it was holding hostage at a hotel resort.⁶⁷ Press releases from the U.S. State Department confirm that Abu Sayyaf was probably funneling at least a portion of its ransom fees to al Qaeda.

C. Charitable donations form individuals

A third major source of Al Qaeda funding apparently emanates from direct donations by wealthy individuals sympathetic to Al Qaeda's cause. Many of these wealthy individuals come from the oil-rich Gulf states, especially Saudi Arabia. This poses a very serious reputation problem for the governing regimes in those countries, since the alleged donors are often members of the royal family, or are included on the government's distribution list of dividends from national oil profits. Ahmad Rashid writes that in the mid 1990s, the "Saudis preferred to leave Bin Laden alone in Afghanistan because his arrest and trial by the Americans could expose the deep relationship that Bin Laden continued to have with sympathetic members of the Royal Family."⁶⁸

My research has uncovered only circumstantial evidence of this "deep relationship," mostly in the form of speculative and inconclusive media investigations. On the other hand, in a complaint filed in U.S. federal court over 700 relatives of victims of the September 11 attacks alleged that such a deep relationship does in fact exist, accusing several members of the Saudi royal family of supporting bin Laden and al Qaeda financially. It is important to remember that the claims set forth in their complaint have not yet been proven or disproven in a court of law,

⁶⁶ Dawson, Alan. "Al-Qaeda Link Runs Deep." *Bangkok Post*, May 29, 2002.

⁶⁷ Id.

⁶⁸ Rashid, Ahmad. "Taliban," pg. 138.

and until a trial takes place they should be considered contested allegations at best.

Nevertheless, the Federal Rules of Civil Procedure impose a strict responsibility upon attorneys to file a complaint if *and only if* they can certify to the best of their knowledge that after reasonable inquiry, they believe the complaint's "allegations and other factual contentions have evidentiary support."⁶⁹ In plain English, this means that the lawyers representing the September 11 victims could only file their complaint if they had done enough research to believe that the allegations would be proven true. The complaint reveals that the plaintiffs' attorneys in fact relied on a wide range of reliable sources, including bank records, statements and reports from U.S. Treasury and U.S. State Department officials, and French intelligence memorandums.⁷⁰ In other words, though the allegations in the complaint should by no means be considered true as yet, there is at least cause to believe that they *could reasonably* be true.

With that extremely important caveat in mind, the complaint makes some compelling claims that there was indeed a strong financial link between wealthy Saudi citizens and al Qaeda. Citing various intelligence sources, the complaint alleges that members of the Saudi royal family met in Paris in 1996 and agreed to "continue contributing, sponsoring, aiding and abetting Osama bin Laden's terrorist network."⁷¹ More damning, the complaint also asserts that Saudi intelligence chief Prince Turki bin Faisal al Saud negotiated a deal in Kabul with bin Laden in which he agreed to provide money and supplies for al Qaeda's operations, if bin Laden promised not to attack the Saudi infrastructure.

Prince Turki's deal could conceivably be considered more a case of extortion by, rather than complicity with, al Qaeda. But the degree of alleged participation by other wealthy Saudis suggests that in at least a small portion of Saudi's elite, al Qaeda enjoyed a high degree of

⁶⁹ Federal Rules of Civil Procedure 11(b)(3)

⁷⁰ Schmidt, Susan. "September 11 Families Join to Sue Saudis; Banks, Charities, and Royals Accused of Funding Al Qaeda Terrorist Network." *Washington Post*, August 16, 2002.

support. The complaint claims that Prince Sultan bin Abdulaziz al Saud, Saudi Arabia's inspector general, donated approximately \$6,000,000 to a number of Islamic charities with the direct knowledge that those charities were financing al Qaeda operations.⁷² The complaint also alleges that Saudi citizen Khalid bin Salim bin Mahfouz, ranked in 1991 by Forbes Magazine as one of the wealthiest individuals in the world, allegedly made a number of donations totaling several millions of dollars to known bin Laden organizations.⁷³ Considering that bin Mahfouz, the former head of the largest bank in Saudi Arabia, is possibly related to bin Laden by marriage, the case for a financial link between al Qaeda and Saudi's ruling class becomes compelling.⁷⁴

Besides the complaint filed by the relatives of the September 11 attacks, my research indicates a number of non-Saudi individuals who have been accused of financially aiding al Qaeda. For instance, in April of 2002 Spanish authorities arrested a group of wealthy Spanish-Syrian dual citizens engaged in the real estate business. The Spanish Interior Ministry reported that at least \$600,000 of their company's profits had been funneled into al Qaeda accounts, profits that otherwise were earned in the legitimate course of business.⁷⁵ The Miami Herald reported that many Spaniards were taken aback with the chief financier of the operation, a "dapper businessman with a neatly trimmed beard."⁷⁶ "As far as we know, the suspects dedicated themselves to real estate, constructing residences, etc., which is obviously legal activity," said the Spanish interior minister, "but it's another thing that they dedicated the profits to activities that weren't legal."⁷⁷

⁷¹ Complaint, pg. 231, No. 1:02CV0616(JR), *Burnett v. Al Baraka*, D.C. (August 15, 2002).

⁷² *Id.*, at pg. 236.

⁷³ *Id.*, at pg. 202. Bin Mahfouz was also

⁷⁴ Whether bin Mahfouz' sister is one of bin Laden's wives seems to be a matter of some contention. I came across several newspaper articles and summaries of intelligence reports on the Internet that assumed such was the case, including one article in the *Washington Post*. See Farah, Douglas. "Al Qaeda's Road Paved with Gold." *Washington Post*, February 17, 2002. But the *Post* later issued a correction saying that it could not confirm the bin Mahfouz-bin Laden relationship. See Corrections, *Washington Post*, March 2, 2002.

⁷⁵ Lázaro, Fernando. "Detenido en España un segundo responsable de la red que financiaba a Al Qaeda en el mundo." *El Mundo*, April 25, 2002.

⁷⁶ Rotella, Sebastian. "Al Qaeda suspects arrested in Spain." *Miami Herald*, April 26, 2002.

⁷⁷ *Id.*

D. Donations from Islamic charities

Islamic charities represent the fourth major source of Al Qaeda's financing. They also pose perhaps the most politically controversial question of the financial battle in the War on Terrorism. Giving to charity, known as *zakat* in Arabic, is one of the five basic pillars of Islam, along with praying five times a day, fasting during the holy month of Ramadan, believing in God and the Prophet Muhammad, and making the pilgrimage to the holy city of Mecca at least once in one's lifetime. Under the basic rules of the religion, all Muslims who are able to do so must give 2.5% of their net current assets to charitable causes. Thus, freezing the accounts of Islamic charities is one of the most unpopular elements of the War on Terrorism in the eyes of many Muslim communities.

A cursory search on the Internet reveals hundreds of organizations across the globe set up to assist Muslims perform their *zakat* duties. To take just one example, "Convoy of Mercy" describes itself as a U.K.-based group of "professionals and businessmen" who provide humanitarian assistance to "beleaguered Muslims."⁷⁸ Operating largely in the Balkans but with at least one project in Afghanistan since September 11, the web site says the organization "has transported food, school and educational materials, medicines, medical equipment, clothes, shoes, vegetable seeds, recycled spectacles, building tools and materials and computers. The convoys have comprised second-hand trucks and ambulances, that are then left for local use where appropriate."⁷⁹ The web site includes a detailed section on how to make donations, both monetary and in-kind, including via the Internet.

No doubt the large majority of Islamic charities like Convoy of Mercy perform entirely legitimate and necessary charitable activities. But the structure of many such organizations can make them highly vulnerable as conduits for transferring money to al Qaeda. First, Islamic

⁷⁸ <http://www.convoyofmercy.org.uk/aboutus.htm>

charities receive thousands of donations from Muslims all over the world (especially now that many charities are online), making it relatively easy to commingle transactions to and from al Qaeda members. Second, many Islamic charities maintain offices both in developed countries where tax regulations and freedom of expression laws allow them to operate relatively unhindered, and in crisis areas in the Islamic world where their charitable activities are most needed. Third, because their charitable work most often takes place in regions with little or no banking infrastructure, many Islamic charities are heavily cash-oriented. Cash is of course anonymous, making it easy to transfer funds to al Qaeda members who might otherwise come under suspicion at a financial institution. Fourth, and most importantly, post September 11 investigations have revealed that some organizations that collect money on many occasions either do not know or cannot account for how donations are distributed⁸⁰.

In a particularly problematic case involving an Islamic charity, U.S. prosecutors recently charged Enaam Arnaout, the head of the Benevolence International Foundation (BIF), with violation of the Racketeer-Influenced Corrupt Organization (RICO) statutes. The indictment alleged that "Arnaout and his co-conspirators fraudulently solicited and obtained funds from donors and prospective donors to the [BIF] enterprise by falsely representing that the BIF Enterprise would use donated funds solely for humanitarian purposes, with a small amount being used for administrative expenses, while concealing the material fact that a portion of the money raised... was being used to support groups engaged in armed confrontations and violence overseas," including Al Qaeda.⁸¹

Arnaout worked in Afghanistan in the 1980s for an organization known as the Islamic

⁷⁹ Id.

⁸⁰ See, eg. Purvis, Andrew. "Money Trouble." *Time*, July 1, 2002, vol. 160 No. 1, describing how head of Benevolence International Foundation would periodically withdraw \$50,000 cash from the charity's accounts without recording how it was spent. See also Schmitt, Christopher; Kurlanzick, Joshua; Smucker Phillip. "When Charity Goes Awry." *U.S. News and World Report*, October 29, 2001, quoting head of one U.S.-based Islamic charity saying "there's no control over the money once it gets there."

⁸¹ Indictment, No. 02 CR 892, *U.S. v Arnaout*, N.D. Ill. (April 12, 2002).

Benevolence Committee, BIF's precursor. Prosecutors alleged that while in Afghanistan he distributed aid and weapons to mujahideen soldiers at the direction of Osama bin Laden and others. Upon returning to the U.S., Arnaout became the head of BIF and incorporated it as a tax-exempt charitable organization, but prosecutors alleged that he continued to maintain close ties to al Qaeda and bin Laden. To prove their case, before Arnaout's trial date prosecutors filed a motion asking the judge to allow into evidence several exhibits that would normally be excluded under U.S. evidentiary rules as hearsay evidence. The proposed exhibits were scanned images of documents located in a folder labeled "Tarikh Osama" (Osama's history, in English) that were saved on a computer seized by IFOR forces from BIF's offices in Sarejevo. Among the images saved in the "Tarikh Osama" folder:

- Handwritten notes of a meeting held in Afghanistan on August 11, 1988, during which Al Qaeda is believed to have been founded. The notes described the members present during the meeting, conversations that took place, and the agreed-upon oath that the new group would use to swear in members, known as a *bayat* in Arabic.
- A document showing a list of people referred to as "the Golden Chain, wealthy donors to *mujahideen* efforts . . . At the top of the list is a Koranic verse stating: 'And spend for God's cause.' . . . The list contains twenty names, and after each name is a parenthetical, likely indicating the person who received the money from the specified donor. 'Usama' appears after seven of the listings, including the listing 'Bin Laden Brothers.' 'Baterji', [the Islamic Benevolence Committee's] and BIF's founder, appears after six of the listings."⁸²
- Four letters allegedly written by Osama bin Laden to BIF president Mohammed Bayazid. Bin Laden concludes the first letter by asking Bayazid to "communicate my greeting to [the head of another Islamic charity] and I also hope that you bring 500,000 rupees at a minimum."⁸³ In the second letter, bin Laden asks Bayazid to give the bearer of the letter 500,000 rupees. In the third letter, bin Laden asks Bayazid to give Abu Ubaidah, a military commander with al Qaeda, 5000 Saudi riyals "or their equivalent, from my account."⁸⁴ In the fourth letter, bin Laden asks Bayazid to pay Mohammed Atef, a top member of al Qaeda, 4500 Saudi riyals on a monthly basis.
- A letter to Arnaout asking him to send food and clothing for 1200 mujahideen and a bank draft for someone referred to as Engineer Abu Abdullah.
- Two receipts for cash from Arnaout, one showing the purchase of 250 rockets, the other for the purchase of mortars.

⁸² Prosecution Evidentiary Proffer Supporting the Admissibility of Co-Conspirator Statements, pg. 30, No. 02 CR 892, U.S. v. Arnaout, N.D. Ill. (January 6, 2003)

⁸³ *Id.*, at pg. 31.

⁸⁴ *Id.*, at pg. 32.

- A receipt from a member of Hezb-i-Islami⁸⁵ showing 100,000 Pakistani rupees received from Arnaout.⁸⁶

As compelling as the link between Arnaout, BIF, and bin Laden appears, the court ultimately *denied* the prosecution's motion to admit the exhibits mentioned above. The legal reasoning behind the decision is rather technical, but in plain English, the court ruled that scanned images were all considered hearsay evidence. Hearsay evidence is defined as any statement (including letters, receipts, notes, etc.) made *out of court* and not under oath that a party seeks to use *in court* to prove the truth of that statement (i.e. that there was a relationship between Arnaout, BIF, and bin Laden).⁸⁷ Hearsay evidence is generally not allowed in U.S. courts because there is no way for juries to gauge the reliability or truthfulness of the out-of-court statement. Prosecutors argued that the scanned images fell under one of the many exceptions to this rule, which allows for hearsay evidence to be admitted if it contains statements by a co-conspirator. But in order for that exception to apply, the prosecution was required to show by a preponderance of non-hearsay evidence that a specific conspiracy existed, a burden the court decided they simply had not shouldered.⁸⁸

After the prosecution's motion was denied, Arnaout pled guilty to minor charges and is now cooperating with the government. Nevertheless, legal jargon aside, his case demonstrates

⁸⁵ Note – Hezb-I-Islami was one of the many armed mujahideen groups that fought against Soviet forces in the 1980s. Its leader, Gulbuddin Hekmatyar, was recently identified by the U.S. State Department as a "Specially Designated Global Terrorist." See Press Statement by Richard Boucher, State Department Spokesman, "Designation of Gulbuddin Hekmatayr as Terrorist," February 19, 2003. On the other hand, in Arnaout's defense, my research indicates that Hekmatyar and Hezb-i-Islami for many years were supported at least tacitly and possibly directly by the CIA. See Rashid, Ahmad, "Taliban" at pg. 19. Arnaout's attorneys repeatedly argued that "most of the allegations - even if they can be proved by the government -date from periods when the US was supporting the same groups that Mr Arnaout is alleged to have financed." See Alden, Edward. "The Money Trail: How a Crackdown on Suspect Charities Is Failing to Stem the Flow." *Financial Times*, October 18, 2002.

⁸⁶ Note – The government's motion was available online, but the actual exhibits that they sought to admit were not. However, the exhibits are were not sealed, so they are presumably part of the public record. If so, they could conceivably be viewed and copied at the U.S. District Court in Chicago, Illinois, where they were filed.

⁸⁷ Federal Rules of Evidence 801(c). As a simple example, one could not enter into evidence a statement that said "Ken told me that a car accident occurred at the corner of Park and Newbury streets," for the purpose of proving that an accident did in fact occur at the corner of Park and Newbury streets.

⁸⁸ The party filing the motion, in this case the prosecution, is allowed to rely on the hearsay evidence that it seeks to admit in order to show that such a conspiracy exists. However, they must also show non-hearsay evidence that confirms the existence of the conspiracy. See generally, Bourjaily v. United States, 483 U.S. 171 (1987). Here, the court ruled that the prosecution's evidence proving a specific conspiracy between Arnaout, BIF, and bin Laden was based entirely on hearsay. Thus, the conspiracy exception to the hearsay did not apply, the hearsay evidence was not admissible, and the court ruled in favor of Arnaout.

many of the reasons why law enforcement agencies suspect Islamic charities of being susceptible to terrorist financing, and many of the difficulties they face in proving such charges.

2. Specific Patterns

No study of al Qaeda's financing would be complete without examining the specific transactions used to finance the September 11 attacks. Volumes of research have been produced tracing the financial path of the 19 hijackers, both by government agencies and by the media. The most comprehensive and detailed of these studies appears to be the report given by Dennis Lormel, chief of the FBI's financial crime section, to the House of Representatives subcommittee for oversight and investigations. Lormel summarized the FBI's findings as follows:

ACCOUNT PROFILE

- Accounts were opened with cash/cash equivalents in the average amount of \$3,000 to \$5,000.
- Identification used to open the accounts were visas issued through Saudi Arabia or the U.A.E.
- Accounts were opened within 30 days after entry into the U.S.
- All accounts were normal checking accounts with debit cards.
- None of the hijackers had a social security number.
- They tended to open their accounts in groups of three or four individuals.
- Some of the accounts were joint accounts with other hijackers.
- Addresses used usually were not permanent (i.e. mail boxes, etc.) and changed frequently.
- Hijackers would often use the same address/telephone numbers on the accounts. No savings accounts or safe deposit boxes were opened.
- Hijackers would open their accounts at branches of large well known banks.
- The majority of hijackers (12) opened accounts at the same bank.

TRANSACTION PROFILE

- Some accounts would directly receive/send wire transfers of small amounts to foreign countries - UAE, Saudi Arabia, Germany.
- Hijackers would make numerous attempts of cash withdrawals which often would exceed the limit of the debit card.
- High percentage of withdrawals were from debit cards vs. low percentage of checks written.
- Numerous balance inquiries were made.
- Hijackers would often travel domestically.
- There was a tendency to use Western Union to wire money.
- One deposit would be made and then the money would trickle out a little at a time.
- Account transactions did not reflect normal living expenses for rent, utilities, auto payments,

insurance, etc.

- There was no normal consistency with timing of deposits/disbursements.
- Funding for normal day to day expenditures was not evident from transactions.
- Overall transactions are below reporting requirements.
- Funding of the accounts dominated by cash and overseas wire transfers.
- ATM transactions occur where more than one hijacker present (uninterrupted series of transactions involving several hijackers at the same ATM).
- Use of debit cards by hijackers who did not own affected accounts.

INTERNATIONAL ACTIVITY

- Three of the hijackers supplemented their financing by opening foreign checking accounts and credit card accounts at banks located in the UAE.
- While in the U.S., two of the hijackers had deposits made on their behalf by unknown individuals.
- Hijackers on all four flights purchased traveler's checks overseas and brought them to the U.S. These traveler's checks were partially deposited into their U.S. checking accounts.
- Three of the hijackers (pilots/leaders) continued to maintain bank accounts in Germany after moving to the U.S.
- Two of the hijackers (pilots/leaders) had credit cards issued by German banks and maintained those after moving to the U.S.
- It is suspected that other unknown foreign accounts exist that were opened by the hijackers to further supplement the financing of the September 11, 2001 attacks.
- One of the hijackers (pilot/leader) received substantial funding through wire transfers into his German bank account in 1998 and 1999 from one individual.
- In 1999, this same hijacker opened an account in the UAE, giving power of attorney over the account to this same individual who had been wiring money to his German account.
- More than \$100,000 was wired from the UAE account of the hijacker to the German account of the hijacker- in a 15-month period.⁸⁹

C. How does al Qaeda move its money?

Once al Qaeda has raised money, whether from legitimate businesses, criminal activities, donations from wealthy individuals, or Islamic charities, it then has to move that money to its members around the world. My research suggests that the diverse methods the organization uses to move money fall roughly into three separate categories. First, some transactions appear to be entirely legal on their face, making use of traditional financial institutions and the global financial system. Second, some transactions use informal financial networks to move cash, such

⁸⁹ Statement for the Record of Dennis J. Lormel, Chief, Financial Crimes Section, Federal Bureau of Investigation. House Committee on Financial Services, Subcommittee on Oversight and Investigations, February 22, 2002.

as the ancient money transfer network known as *hawala*, or the Islamic charities I described in the previous section. Finally, some transactions are entirely illegal, such as such as currency and commodity smuggling. Below I discuss each one of these categories in further detail.

1. Legal transactions using traditional financial institutions and the global financial system

With respect to this first category, al Qaeda appears to have a very sophisticated and intricate knowledge of the global financial system, allowing it to move its money just like any legitimate multinational organization. Many of the financial tools that al Qaeda used, such as wire transfers, correspondent accounts, and offshore banks, are perfectly acceptable and legal tools used by legitimate business entities across the globe. As a result, the list of reputable financial institutions through which al Qaeda money is suspected to have passed reads like a Who's-Who of the banking community: Citibank, Barclays Bank, Credit Lyonnais, Commerzbank, Bank of America, and subsidiaries of ABN Amro, just to name a few.⁹⁰

For the most part, al Qaeda's legitimate banking transactions appear to have followed a fairly consistent pattern. First they placed the funds in a bank located in a jurisdiction with lax banking regulations or a high degree of banking secrecy. Then they layered the funds through a series of transactions, often involving large, well-known institutions like those mentioned above, in a manner very similar that employed by drug money launderers described in Chapter 1.

For example, according to a 1996 U.S. State Department fact sheet confirmed by French intelligence, upon arriving in the Sudan in 1991 bin Laden invested approximately \$50 million in al Shamal Bank.⁹¹ Al Shamal was a Khartoum-based bank that had begun banking operations

⁹⁰ Willman, John. "Trail of Terrorist Dollars that Spans the World." *Financial Times*, November 29, 2001.

⁹¹ I was unable to locate the text of this fact sheet on the State Department's web site. However, I found substantive summaries of it in numerous reliable sources, including the *Financial Times*, the *Washington Post*, and a statement made on the Senate floor by Senator Carl Levin. See <http://levin.senate.gov/floor/101101fs3.htm>. All of those sources mentioned the French intelligence report as a reliable source.

only one year earlier.⁹² However, despite its infancy, al Shamal had developed correspondent banking privileges with a number of respectable institutions across the globe. This means that al Shamal, the home bank, would open an account with another bank, or corresponding bank, and allow its customers to withdraw from its account at the corresponding bank as if they were withdrawing from their own personal accounts. The catch is that in correspondent relationships, the corresponding bank never learns the identity of the home bank's customers. Thus, it seems at least possible that al Shamal's correspondent banks, including Citibank, American Express, South Africa's Standard Bank, and the Dutch ING Bank, were unwittingly providing banking privileges to al Qaeda operatives.⁹³

Al Shamal played a key role in financing some of al Qaeda's largest transactions. For example, in a transaction I described in detail at the beginning of this chapter, Essam el Ridi purchased a small aircraft on behalf of al Qaeda so the organization could transport Stinger missiles from Afghanistan to the Sudan. El Ridi testified that his reimbursement of \$250,000 entered his Bank of America checking account via wire transfer from al Shamal Bank.

Q. You testified on direct that the plane, that the purchase of the plane occurred in '93. Isn't it a fact that it began earlier, probably August '92?

A. Could be, because actually the process of negotiating and talking about the different types and changing the budget a few times must have taken some time.

Q. And during the course of that few months, money was wired into your account from the Sudan, correct?

A. Yes, that's correct.

Q. And about \$250,000?...

A. ... Yes.

Q. And from the Shamal Bank in the Sudan?

A. I can't recall the name.

[Defense counsel showed the witness a document relating to the transaction.]

Q. Thank you. Does that refresh your recollection that the wire transfers came from the Shamal Bank in the Sudan?

⁹² I viewed old versions of Al Shamal Bank's web site, www.shamalbank.com, in October 2002, by looking at pages stored in the "cache", or archive, of the popular search engine Google. However, Al Shamal's site was reportedly hacked into by a group of German computer programmers, who claim to have forwarded information about bin Laden's accounts to U.S. authorities. See Anderson, Kevin, "Hacktivists Take Sides in War," *BBC News.com*, October 23, 2001. Now neither Al Shamal's site nor the archived Google copy are available on the Internet.

⁹³ "Terror Money Trail Leads Home." *CBSNews.com*, October 5, 2001.

A. Yes, it does.⁹⁴

According to an investigation by the *Financial Times*, el Ridi's wire transfer was sent from al Shamal through the Bank of New York, possibly through a correspondent account, before being transferred to el Ridi's account at Bank of America.⁹⁵

The al Shamal transactions were relatively simple, when compared to the transactions al Qaeda engaged in at another financial institution, Bank al Taqwa. Bank al Taqwa was founded in the Bahamas by Youssef Nada, an Egyptian and Italian citizen with strong suspected links to Egypt's Muslim Brotherhood, an organization that began as a peaceful civic group in the 1920s but today is believed to have strong ties both to al Qaeda and to the Palestinian terrorist group Hamas. Bank al Taqwa reportedly never had a physical presence in the Bahamas, operating merely as a shell to conduct financial transactions for its parent company, the al Taqwa Group, under the cloak of Bahamian banking secrecy laws.⁹⁶

The bank closed its Bahamian operations in 1999 after authorities there began enforcing a law requiring all financial institutions to maintain an actual physical presence on the islands.⁹⁷ Nada moved the bank to Lugano, Switzerland,⁹⁸ where the al Taqwa Group was headquartered. According to its Swiss lawyer, the al Taqwa Group engaged in conducting "feasibility studies" for Middle Eastern investors. But Swiss and Italian authorities had suspected Al Taqwa of financing Al Qaeda and other terrorist groups. One intelligence official said "these are not enterprises that buy things, add value to them through manufacturing and then resell them... Rather, they provide services that do not necessarily result in a concrete product at the end. The

⁹⁴ Trial Tr. 614 (February 14, 2001), United States v. Usama bin Laden, et. al., 146 F.3d 373 (2003).

⁹⁵ See note 54 above.

⁹⁶ Bounds, Andrew. "Survey – Bahamas: Flow of Hot Money Dries Up." *Financial Times*, December 19, 2001.

⁹⁷ Id.

⁹⁸ Lugano has long been considered a haven for money launderers, even by Swiss standards. Technically a part of Italy but surrounded by Swiss territory, it has one of the highest banks-per-capita ratios in the world, all of which are governed by Swiss laws, not Italian. See Robinson, Jeffrey, "The Laundrymen," pg. 188.

value of the services are arbitrary, as are the fees." For example, the official continued, "someone provides \$50,000 for research into a project. Does the study really cost \$50,000 to produce? Is it really a study? Or is it just a way to transfer 50,000 in disguise? . . . Basically, money is given and the giver doesn't want a return."⁹⁹

The official's suspicions of al Taqwa's feasibility studies seems to be confirmed by a list of the Bahamian bank's shareholders, which was obtained by the Italian intelligence agency DIGOS.¹⁰⁰ Several notable names appear on the list:

- Hassan Al Banna, one of the founders of Egypt's Muslim Brotherhood.
- Ahmed Huber, a wealthy Swiss citizen who converted to Islam, who is reported to be an admirer of Hitler and a proponent of the theory that the Holocaust was a hoax. More importantly, Huber is known to have associated with al Qaeda operatives at various Islamic conferences.
- Huta and Iman BinLadin, two of Osama bin Laden's sisters (which, incidentally, undercuts the BinLadin family's claim that they have cut all ties with the estranged Osama).
- Several high level Hamas terrorists, according to U.S. intelligence sources.¹⁰¹

Al Taqwa had offices in three of the world's banking secrecy havens: the Bahamas, Switzerland, and Liechtenstein.¹⁰² Investigators have alleged that at least one Islamic charity used Al Taqwa to divert approximately \$20 million in donations to Al Qaeda through two other jurisdictions with long histories of money laundering, Panama and the Isle of Man.¹⁰³ Moreover, Al Taqwa had a correspondent relationship with a small but highly influential private Swiss bank, Banca Gottardo, through which it also obtained correspondent relationships at Citibank and the Bank of New York. In short, by using al Taqwa as a conduit to move money, it appears that al Qaeda possessed a highly sophisticated degree of financial savvy, allowing it to exploit

⁹⁹ Williams, Daniel. " Swiss Probe Illustrates Difficulties in Tracking Al Qaeda's Cash." *Washington Post*, November 12, 2001.

¹⁰⁰ I could not obtain a copy of the DIGOS list. However, Lucy Komisar, a journalist who specializes in financial crimes, summarized its contents in an article in the Internet magazine *Salon.com*, and Matthew Levitt, an expert in terrorist financing, referred to it in testimony he gave at a U.S. Senate hearing. See Komisar, Lucy, "Shareholders in the Bank of Terror?" *Salon.com*, March 15, 2002. See also prepared statement of Matthew Levitt, "The Role of Charities and NGOs in the Financing of Terrorist Activities," before Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on International Trade and Finance, August 1, 2002.

¹⁰¹ Komisar said in her *Salon.com* article that she had shown the DIGOS list to an American intelligence official who recognized the names of several Hamas figures. Levitt testified that Treasury Department officials believed Bank al Taqwa had a very close relationship with Hamas. See note 64.

¹⁰² See note 64.

the global financial system to its fullest advantage.

2. Informal transactions: hawalas and Islamic charities

Besides formal transactions using traditional financial institutions, al Qaeda also made use of less formal money transfer networks. For example, I have already discussed at some length how al Qaeda used Islamic charities to move money to its members. Another informal, non-financial network that it is believed to have used extensively is the ancient money transfer systems known as hawalas. In a hawala transaction, money is submitted to a hawala dealer in one country, and disbursed from a hawala dealer in another country, but with no actual movement of money. Hawalas are a particularly popular method for recent immigrants in developed countries to send money back to their families in underdeveloped countries with little or no banking system. For example, a Yemeni immigrant in New York goes to a hawala dealer and gives him \$500 to send to his family in Sana'a. The New York hawala dealer then communicates with a hawala dealer that he knows in Sana'a and tells him to disburse the local equivalent of \$500 to the immigrant's family. The communication between the two dealers can occur in any number of forms: over the phone, via slips of paper, on a fax machine or via e-mail. They settle their accounts with each other at a later date, perhaps when the family in Sana'a wants to send money back to New York.

Based on the above description, the potential for misuse by terrorist organizations should be obvious. Hawalas completely circumvent the global financial system, and thus largely evade supervision by law enforcement agencies fighting financial crime. Moreover, they are largely paperless, so even if law enforcement agencies suspect a particular dealer of moving money for al Qaeda, there would be no paper trail. Not surprisingly, one of the first organizations whose accounts were frozen by the U.S. Treasury Department after September 11 was al Barakaat, a

¹⁰³ Farah, Douglas and Mintz, Stephen. "U.S. Traces Va. Muslim Money, Ties." *Washington Post*, October 7, 2002.

hawala that had particularly strong ties to Somalia. Prosecutors said that the al Baraakat network was founded in 1989 by a Somali, Ahmad Nur Jim'ale, whom they alleged was close associate both of Osama bin Laden and Mohammed Farah Aideed, the Somali warlord whom the U.S. unsuccessfully attempted to overthrow in 1993.¹⁰⁴ Prosecutors further accused al Baraka of moving "tens of millions" of dollars for al Qaeda since 1989 by skimming 5 to 10 percent off the top of each hawala transaction. On the morning al Baraakat's accounts were frozen, government officials in the U.S. and the U.K. claimed they had inflicted a "major blow" on al Qaeda.¹⁰⁵ U.S. Treasury Secretary Paul O'Neill condemned al Baraakat as "the quartermasters of terror," and called the group "a pariah in the civilized world."¹⁰⁶

Again, though, as with the case of Enaam Arnaout, prosecutors have had a very difficult time substantiating their allegations. No legal proceedings have been initiated as yet by the government against al Baraakat, and U.S. prosecutors have been forced to admit that it was not a center of terrorist financing, but rather "a piece of a larger mosaic."¹⁰⁷ The Canadian government refused to extradite Liban Hussein, the president of al Baraakat North America, saying that "based on the information provided by the U.S. authorities... there was no reasonable ground to proceed with extradition."¹⁰⁸ Al Baraakat remains on the U.S. list of suspected terrorist organizations, however, and hawalas in general remain high on the list of organizations suspected of moving money for al Qaeda.

3. Illegal transactions: smuggling of currency and commodities

Al Qaeda relied on a variety of smuggling operations to move assets to operatives around the world. At the embassy bombing trials, Jamal al Fadhli testified that he personally carried

¹⁰⁴ Alden, Edward and Huband, Mark. "Case not Proved Against Terror's Quartermasters." *Financial Times*, February 19, 2002.

¹⁰⁵ Day, Kathleen and Millbank, Dana. "Businesses Linked to Terrorists are Raided." *Washington Post*, November 8, 2001.

¹⁰⁶ See note 70 above.

¹⁰⁷ Id.

¹⁰⁸ Washington Post Foreign Service. "Canada Halts Suspect's Extradition." *Washington Post*, June 5, 2002.

\$100,000 in small U.S. bills from bin Laden's office in Khartoum to Amman, Jordan.

Q. Now, while you were in the Sudan with al Qaeda, did you ever take trip [sic] to Jordan?

A. Yes...

Q. And who sent you to Jordan?

A. I remember Abu Rida al Suri and Abu Fadhl al Makkee, they told me we need you to go to meet Abu Akram...

Q. What did they tell you they wanted you to do when you went to meet with Abu Akram in Jordan?

A. They told me we have some money for him, give it to him...and that's when you go to Abu Ali group.

Q. Abu Ali group, can you tell us what the Abu Ali group was?

A. It's a group from Damazine and some of the members from Jordan.

Q. Are they a jihad group?

A. Yes, it's under al Qaeda membership...

Q. And did you actually take the trip from Khartoum in the Sudan to Jordan to meet with Abu Akram?

A. Yes.

Q. And did you bring money with you?

A. Yes. They give me \$100,000 cash...

Q. Do you recall what passport you used to travel outside of Khartoum?

A. Sudanese... but not under my real name...

Q. How did you carry the \$100,000?

A. In my bag with my clothes.

Q. Do you recall what kind of bills the \$100,000 was in?

A. I remember they all hundred bill [sic]...

Q. Who gave you the money?

A. Abu Fadhl, he bring it from Shamal Bank and he bring it to me...

Q. And what happened when you got off the airplane in Jordan?

A. I remember when I went to the Khost, after the immigration, I met Abu Akram Urdani.

Q. You met Abu Akram Urdani. Did you meet him inside the place, the airport, where people are, or outside?

A. In the Custom counter.

Q. What happened then?

A. When I went over there, he talk with one of the Custom people and they didn't check my bag.

Q. Did you actually give him the money?

A. When we went to his car, I give him the money and we went to his farm.¹⁰⁹

In recent months, al Qaeda is also suspected of smuggling commodities in order to move cash. In particular, al Qaeda is believed to have moved over \$20 million by buying so-called "conflict diamonds" mined by rebel forces in Sierra Leone and Liberia, then reselling them for a

¹⁰⁹ Trial Tr. 316 (February 6, 2001). United States v. Usama bin Laden, et. al., 146 F.3d 373 (2003).

substantial profit in diamond centers in Western Europe. "Diamonds don't set off alarms at airports, they can't be sniffed by dogs, they are easy to hide, and are highly convertible to cash. It makes perfect sense," said one unidentified U.S. intelligence official.¹¹⁰ The same report points to a significant spike in the price of diamonds in West Africa beginning in July 2001, suggesting that al Qaeda was preparing to find alternative ways to move money in the event its assets were frozen after September 11.

¹¹⁰ Farah, Douglas. "African diamonds bankroll bin Laden." *Sydney Morning Herald*, November 3, 2001.

Chapter 3. Fitting Square Pegs into Round Holes... How to Make the Global Anti-Money Laundering Regime a Useful Tool in the War on Terrorism

A. Four reasons why anti-money laundering strategies developed in the War on Drugs are ill-suited to the War on Terrorism

In Chapter 1 I explained the origins and abilities of the global anti-money laundering regime. In Chapter 2 I developed a snapshot of al Qaeda's financial profile. In this chapter I will analyze why the global anti-money laundering regime is ill-equipped to stop terrorist money laundering. In the first section of this chapter, I identify four reasons why al Qaeda has been able to expose and exploit weaknesses in the global anti-money laundering regime. In the second section, I propose four reforms that could eliminate those weaknesses. If the global anti-money laundering regime is to remain a useful weapon in the War against Terrorism, it is vital for law enforcement agencies and financial institutions to acknowledge these weaknesses and implement these reforms.

1. Reverse money laundering

The most important difference between drug money laundering and terrorist money laundering is that conceptually speaking, most of al Qaeda's financial transactions take the traditional three-step money laundering process and turn it upside down. Recall from Chapter 1 that the first step in Wanda's money laundering operation was the commission of another crime, the sale of crack cocaine. Only because Wanda's money was dirty, or associated with a *prior* criminal act, did Wanda become guilty of money laundering. In contrast, many of al Qaeda's transactions involve clean money being used to commit a *future* crime, presumably a terrorist attack. Because the crime associated with the funds occurs at the end, and not the beginning, of the process, one U.S. Department of Justice official has referred it as "reverse money

laundering."¹¹¹

By applying traditional anti-money laundering laws to reverse money laundering operations, the scope of the global anti-money laundering regime may become overly broad. For example, in Chapter 1 Archie engaged in a series of complex transactions to hide his legitimately earned legal fees from his ex-wife. Many of al Qaeda's transactions follow a pattern similar to Archie's, with clean funds being placed into the global financial system and then layered to hide their origins, even though those origins may be perfectly legal. Archie was not and should not be guilty of money laundering, since his funds did not arise from a criminal activity. Can one reach the opposite verdict for clean funds used to finance a future terrorist attack? If so, how does one differentiate between Archie's funds and al Qaeda's? How much proof would prosecutors need to show to that a terrorist attack was being planned in the future? What if the planned attack is abandoned? Is the money still dirty? Prosecution of reverse money laundering could give rise to an Orwellian-like financial thought police, with investigators accusing defendants of thinking about committing future terrorist acts. This stands in direct contradiction to one of the basic elements of Anglo-American criminal law, that "no crime can be committed by bad thoughts alone."¹¹²

Islamic charities illustrate how some of these legal and moral dilemmas can arise in reverse money laundering cases. Certainly, the large majority of people who donate money to Islamic charities do so because they honestly desire to perform acts of goodwill. Equally certain, the large majority of Islamic charities do in fact perform such acts. Should donations to a charity be considered dirty if organizers later redirect some of the funds to terrorist organizations? If so,

¹¹¹ The earliest use of the phrase "reverse money laundering" that I have found appears to be in an article by Stephan D. Cassella, assistant chief of the U.S. Department of Justice's Asset Forfeiture and Money Laundering Section. See Cassella, Stephan. "Money Laundering Has Gone Global: It's Time to Update the Federal Laws." *Federal Lawyer*, January 2002.

¹¹² La Fave, Wayne R. & Scott, AustinW. "Criminal Law." 2d ed. 1986.

when do the funds become dirty, and who bears legal responsibility? The donors are the source of the dirty money, but in many cases they could argue before a court that they had no knowledge that they were financing terrorism. Some governments have eliminated direct knowledge as a requirement for certain kinds of money laundering charges, making it a criminal act to negligently participate in such an operation.¹¹³ But prosecuting donors for negligently donating to charities that fund al Qaeda would put governments in the unenviable position of discouraging donations to charity in the name of anti-terrorism. Does one then prosecute the charities instead? That could prove to be politically impossible not just in Muslim countries, where there runs a deep suspicion that the War on Terrorism is nothing more than a war against Islam, but also in the United States, where the American Muslim community becomes larger and more politically mobile every year. The Arnaout case served as a warning to U.S. prosecutors that without clear, non-hearsay evidence proving a direct link between a charity and a terrorist group, prosecuting charities is a risky strategy.¹¹⁴ Establishing such a direct link could be a very difficult task, especially considering the lack of recordkeeping and financial accountability of charities working in disaster zones such as Chechnya.

2. Different end goals

Closely related to the problem of reverse money laundering, law enforcement agencies and financial institutions must acknowledge that the end goal of laundering money for terrorists is very different from the end goal for drug traffickers. Pablo Escobar laundered money for one purpose and one purpose only: to accumulate as much wealth as possible and make it appear to

¹¹³ Magliveras, Konstantinos. "The European Community's Combat Against Money Laundering: Analysis and Evaluation." *Journal of International and Comparative Law*, Fall 1998, citing British, Dutch, and Irish laws.

¹¹⁴ According to the *Financial Times*, after the motion to admit hearsay evidence was denied and Arnaout accepted a plea bargain, the U.S. government has since resurrected the idea of prosecuting al Qaeda suspects in military tribunals, where evidentiary procedures may be less stringent. Alden, Edward. "Al Qaeda Suspects May Face Military Tribunal." *Financial Times*, February 28, 2003.

come from legitimate origins. For drug traffickers, then, the means used to launder is the same as the ends: money. Therefore, by attacking their laundering operations, law enforcement can effectively remove the ultimate incentive to engage in drug trafficking.

In contrast, for al Qaeda the end goal is not to accumulate wealth, but to commit acts of terrorism. As a result, by attacking the laundering operations of terrorists, law enforcement does *little if anything* to remove the incentive to engage in terrorist acts. As long as that incentive exists, terrorist acts can be financed on a shoestring budget. Alex Standish, editor of Jane's Intelligence Weekly, says "[i]t is erroneous to think that terrorist acts are very expensive - most terrorism is very low-budget."¹¹⁵ Therefore, it is absolutely vital for law enforcement agencies to acknowledge that freezing terrorist funds does not prevent terrorists from reaching their end goal. In fact, because the act of freezing funds is a very public, drastic measure that can cause a great deal of animosity, it may actually *encourage* more terrorist acts. Governments that tout the freezing of terrorist finances as a means to prevent terrorists from achieving their end goal risk being lulled into a false sense of security.

This is not to say that law enforcement agencies should pay no attention to terrorist financing. On the contrary, tracing finances can yield a wealth of information from an investigative standpoint about the structure of a hydra-like organization such as al Qaeda. Financial investigations can also play a crucial role in identifying and physically locating known terrorists. I shall discuss more about the benefits of tracing terrorist finances in the second section of this chapter. But tracing assets and freezing them are two very different strategies. And freezing assets will not prevent terrorists from achieving their end goals in the same way that it did for drug traffickers.

¹¹⁵ Ford, Peter. "Tough Trail of Terror's Money." *Christian Science Monitor*, October 19, 2001.

3. Geographic decentralization

Another important difference law enforcement agencies and financial institutions must take into consideration is that terrorist money laundering is, geographically speaking, a highly decentralized process. The placement into the global financial system of funds ultimately destined to finance a terrorist operation could and has taken place in dozens of jurisdictions across the globe. Placement of terrorist funds could also conceivably take place in any country where an al Qaeda related Islamic charity has an office and takes donations.

Critics might argue that money laundering in the War on Drugs was no less decentralized. This is true in some respects. For example, in the second stage of the money laundering process, the layering stage, drug money launderers were certainly adept at moving funds across the world in order to "wash" their illicit origins. A typical money laundering operation by someone involved in drug trafficking might involve transferring the same set of funds through banks in the Cayman Islands, the Bahamas, Switzerland, and several countries in Latin America before reintegrating them as legitimate business profits.

However, during the first stage of the process, the placement stage, there is no question that terrorist money launderers can operate on a global scale that would make even the most skillful of drug money launderers envious. This is because in drug-related contexts, the placement stage is generally restricted to the same country or legal jurisdiction where drug deals are taking place. To illustrate, let us return to Wanda, who has collected \$1 million in cash from her drug deals in South Boston. To start the money laundering process, Wanda has two options: either place the cash in financial institutions in the United States, or smuggle it out of the country to place it in non-U.S. financial institutions, perhaps to a nearby country with very tight banking secrecy laws such as Panama or the Cayman Islands. But smuggling \$1 million dollars in cash is

no easy task: "a million dollars in \$100 bills stands five feet high and weighs over twenty two pounds."¹¹⁶ Moreover, given the burgeoning growth in the global drug trade over the past few decades, Wanda may well need to launder several millions of dollars a week. Unless she can set up her own airfreight company, like Ramon Milian-Rodriguez in Chapter 1, her easiest course of action is to place her money into U.S. financial institutions. Consequently, just like the saying "where there's smoke, there's fire," in countries where there is a high level of drug selling activity, there is probably a corresponding high level of launderers placing money into financial institutions.

This correlation is very important from a strategic point of view. Robinson writes that drug money launderers are most vulnerable to detection during the placement stage. Drug money is "like a stone tossed into a pond... If [the launderer] can't get his dirty money into a washing cycle, he can't clean it. However, once his cash is converted into numbers – blips on a computer screen – and those numbers are flashed back and forth across the globe, the ripples have disappeared and the stone is buried in the silt."¹¹⁷ This means that law enforcement agencies have a double advantage over drug money launderers. First, they know that launderers are likely to be located in the same jurisdictions where they are already combating illegal drug sales, making investigations and prosecutions much easier. Second, they can catch money launderers in those same jurisdictions during the most vulnerable stage of the money laundering process, the placement stage.

No such advantages exist over terrorist money launderers. Al Qaeda is in no way geographically restricted to placing its funds in the same jurisdictions where it plans to carry out terrorist attacks, such as the U.S. In fact, it is likely that the organization would begin the

¹¹⁶ Robinson, pg 10. See Chapter 1, note 12 above.

¹¹⁷ Id., at pg 24.

laundering process as far away from the U.S. as possible. For example, much of the money supplying the September 11th hijackers was placed into the global financial system in Germany and the United Arab Emirates. After September 11, the odds of al Qaeda placing money into a U.S. financial institution are even less likely, now that U.S. investigators are highly sensitive to any such activity. It seems far more likely that al Qaeda would place funds in a jurisdiction far out of reach of any U.S. law enforcement agencies. The Sudanese al Shamal Bank that I discussed in Chapter 2 is a perfect example. That bank in particular is too exposed today to be used again in to finance a future terrorist attack, but it seems at least possible that al Qaeda could gain similar influence in a bank any number of countries, Pakistan, Saudi Arabia, or Indonesia, just to name a few. Even assuming in a best-case scenario that the ruling regimes in those countries possess the will to prevent al Qaeda from placing money into the global financial system, their intelligence communities lack the resources and their central banks lack the financial regulatory regimes to enforce such a will. In short, law enforcement agencies fighting the financial war on terror must acknowledge that the placement stage in terrorist money laundering operations is far more geographically decentralized, and thus far less vulnerable, than the placement stage in drug money laundering operations.

That al Qaeda can begin the money laundering process in financial institutions across the world has several important implications. First, it means that stopping the placement of terrorist funds in U.S. banks does not equate to stopping terrorism. In contrast, in the War on Drugs it was reasonable for law enforcement agencies to force U.S. banks to look out for money launderers, since it was likely that the proceeds of U.S. drug sales would be placed in U.S. banks. CTR reports, which banks were required to file any time a customer deposited over \$10,000 in cash, were of some utility when law enforcement agencies knew that there was a high probability

of money launderers depositing large amounts of cash in U.S. banks. But when al Qaeda is not restricted by geography and can place its funds in any bank in the world, regulations on U.S. banks are likely to be of little use in stopping terrorist money laundering.

Second, in the War on Drugs, even if drug money launderers managed to avoid U.S. banks and smuggle their cash out of the country, law enforcement agencies could at least point to a handful of jurisdictions where it was likely to be placed. Caribbean countries with strict banking secrecy laws or lax enforcement mechanisms in close geographic proximity to the U.S., such as the Bahamas, the Cayman Islands, and Panama, were obvious destinations. But for terrorist money launderers, there is no single geographic region upon which to focus. In Chapter 2 I examined al Qaeda related transactions where funds were placed in the United States, Spain, Switzerland, Germany, Saudi Arabia, the United Arab Emirates, and the Sudan. Further research I have conducted suggests that al Qaeda may have also placed funds in Paraguay and the Philippines, meaning that the organization can conceivably begin the money laundering process on any one of five continents.

4. Structural decentralization

Terrorist money laundering is very different from drug money laundering in a number of conceptual and theoretical ways. But the most significant difference may be a practical one. Drug traffickers often launder millions of dollars in profits through one or two operations. In contrast, al Qaeda usually moves small amounts of funds being through several different laundering operations. For example, it is believed that the 19 hijackers needed approximately \$500,000 to carry out the worst terrorist attacks ever committed on American soil. They appear to have obtained those funds from a variety of different sources.¹¹⁸ A crime of similar scope in a

¹¹⁸ Willman, John. "Trail of Terrorist Dollars that Spans the World." *Financial Times*, November 29, 2001.

drug trafficking context would likely have involved the movement at the very least of several millions of dollars, since drug crimes by nature are far more cash-intensive. Investigating multi-million dollar criminal enterprises is difficult enough; investigating criminal enterprises that operate on a budget roughly equal to that of a corner store grocery requires an entirely different level of scrutiny.

Even if law enforcement agencies and financial institutions are able to look for small-scale transactions, their task is further complicated by the fact that single terrorist cells often derive their income from several different sources, with little or no apparent communication between them. In contrast, in Operation Polar Cap, which I briefly mentioned in Chapter 1, the DEA took aim at Pablo Escobar's chief money laundering operation, known as "La Mina", or "The Mine" in English. The Mine was a relatively simple operation. Cash from Escobar's U.S. drug sales was collected at a front company in New York and shipped to Escobar's chief launderer, a man named Raul Vivas, in Los Angeles. Vivas then used the cash to buy gold, resold the gold on the open market under a different front company, then transferred the profits via a third front company back to Escobar¹¹⁹. By taking down Vivas and La Mina, DEA agents seized \$115 million in Escobar's unlaundered drug profits and shut down his main channel for laundering, through which \$1.2 billion dollars is estimated to have passed from 1988 to 1990.

There is simply no equivalent to La Mina in the terrorist context. Unlike Pablo Escobar, al Qaeda has no need to move large amounts of cash quickly and efficiently. Al Qaeda moves small amounts of cash, and in many cases, since the money is not yet dirty, there is no urgency to move it quickly. In short, Al Qaeda has no need to set up an elaborate, highly centralized system for laundering cash. It can make use of any of the available means described in Chapter 2,

¹¹⁹ Robinson, pg. 240. See Chapter 1, note 12 above.

without having to rely on a single launderer like Raul Vivas or a single operation like La Mina.

Seizing one or two of al Qaeda's laundering operations will have little or no effect on the organization's ability to commit acts of terror. Because al Qaeda's transactions are usually small and distributed across several different laundering operations, any seizure of assets is unlikely to result in the crippling type of blow that the arrest of Vivas and the closure of La Mina had on Escobar's ring. Moreover, stings like Operation Polar Cap were very useful from a media perspective, bringing a great deal of positive publicity to the government agencies involved and providing some much-needed momentum for the War on Drugs. But in the War on Terrorism, because al Qaeda moves its money in such a decentralized manner, law enforcement agencies will have little opportunity to "net a big fish," so to speak.

Besides moving small amounts of money through several different laundering operations, al Qaeda also circumvents the global anti-money laundering regime by dispersing its transactions across a wide range of entities besides banks and traditional financial institutions. This stands in stark contrast to drug money laundering, where banks played an essential role. For drug money launderers, since the end goal of money laundering was to make criminally-obtained funds appear legitimate, those funds almost invariably would pass through at least one bank or traditional financial institution at some point during the laundering process. After all, a suitcase filled with \$1 million in cash looks far less legitimate than \$1 million commingled into six checking accounts belonging to legitimate businesses that engage in a high volume of cash transactions on a daily basis. As a result, banks, voluntarily or otherwise, were placed at the forefront of the fight against drug money laundering. As early as 1980, the Council of Europe concluded that ". . . the banking system can play a highly effective preventive role while the cooperation of the banks also assists in the repression of such criminal acts by the judicial

authorities and the police."¹²⁰ Numerous other initiatives, including the establishment of the Financial Action Task Force (FATF), the Egmont Group of financial intelligence units (FIUs), and the Wolfsberg Principles against Money Laundering, acknowledge that banks and financial institutions play an essential role in traditional money laundering operations.

Unlike drug money launderers, for al Qaeda there is no requirement that terrorist funds ever enter a bank or financial institution. When the organization *did* use banks to move money to cells and operatives across the world, I believe it probably did so only for expediency or convenience. My analysis of al Qaeda's financial picture in Chapter 2 revealed at least four examples of transactions that totally avoided banks or traditional financial institutions. First, Jamal al Fadl testified that he personally smuggled \$200,000 in cash in a suitcase from the Sudan to Jordan. A number of al Qaeda–related incidents have occurred recently in Jordan, including the assassination of a USAID official and the uncovering of a plot to blow up the Amman embassies of the United States and Israel¹²¹ (though I must stress that I have discovered no evidence directly relating al Fadhl's cash to either of those incidents). Second, al Qaeda allegedly used hawalas and other non-bank money transfer services to move money. Third, al Qaeda allegedly used Islamic charities to funnel cash to operatives. This process could very well have been conducted without the use of any bank or financial institution, particularly if the charity in question was working in a region without a developed financial system, such as Chechnya or Afghanistan. Fourth, Dennis Lormel's testimony indicates that the bank accounts used by the 19 hijackers did not "reflect normal living expenses for rent, utilities, auto payments, insurance, etc," and that "funding for normal day to day expenditures was not evident from transactions."¹²²

¹²⁰ Basle Committee on Banking Supervision – Prevention of criminal use of the banking system for the purpose of money-laundering, obtained from Financial Action Task Force (FATF) website, www.fatf-gafi.org. (Basle, December 1988)

¹²¹ Pelham, Nicolas. "Jordan Foils Al Qaeda Plot to Attack US." *Christian Science Monitor*, July 1, 2002.

¹²² See Chapter 2, pg. 41 above.

This strongly suggests that they had an alternative source of cash extraneous from the banking system.

In sum, though law enforcement agencies could reasonably conclude in the War on Drugs that drug money would at some point be funneled through a bank in order to make it look legitimate, that assumption is no longer valid in the War on Terrorism. Focusing on banks and financial institutions offers at best only a partial look at al Qaeda's finances.

B. Four Recommendations to help Law Enforcement Agencies and Financial Institutions Cope with Money Laundering in the War on Terrorism

Based on the differences I have described above, I have identified four key strategies that law enforcement agencies and financial institutions alike should consider implementing in order to combat terrorist money laundering.

1. Stopping terrorist money laundering must be a truly global effort

One analyst likened money laundering in the drug context to pushing one's finger on an inflated balloon: "you simply displace the activity to wherever there is least resistance."¹²³ If this is true in a drug-related context, it is doubly so in the War on Terrorism. Because al Qaeda's finances are geographically and structurally decentralized, smaller and therefore less traceable transactions are taking place in dozens of countries where there may be no overt threat of terrorist acts. Even in the past, when law enforcement agencies could identify individual jurisdictions or regions where drug money laundering was a particular problem, the War on Drugs was still fought using multilateral, global mechanisms like the UN Vienna Convention Against Illicit Traffic in Narcotics and Psychotropic Substances. A similar global approach must be taken immediately if governments are serious about attacking terrorist money laundering.

¹²³ "Money Launderers on the Line; International Efforts to Reduce Money Laundering." *The Economist*, June 25, 1994.

Any such global effort must begin at the UN, the only body that possesses the breadth of membership and the depth of legal authority and legitimacy to carry out such a task. In fact, the UN rather presciently began such an effort almost eighteen months *before* the September 11 attacks, when the General Assembly adopted the Convention for the Suppression of the Financing of Terrorism on December 9, 1999. That treaty contains several notable provisions:

- Article 2(3) addresses the difficulties posed by reverse money laundering. It says that a particular set of funds can be considered "dirty" even if the terrorist act or acts it was intended to finance have not occurred yet.
- Article 4(a) requires each member state to criminalize the act of financing terrorist organizations. In other words, all member states would be required to either outlaw reverse money laundering, or add the act of financing terror to their list of predicate offenses to trigger their already-existing money laundering statutes.
- Article 7 addresses some of the problems posed by geographic decentralization. It says that states *shall* be able to establish jurisdiction over any criminal act of financing terrorism that occurs within its territory, on a vessel registered under its laws, or by a national of that state. Article 7 also says a state *may* establish jurisdiction if it chooses over any criminal act of financing terrorism, when the intended act of terror is directed at that state, or at that state's embassies and other facilities abroad.
- Article 8 requires each member state to allow for the legal identification, detection, freezing, seizure, and forfeiture of funds used to finance terrorism, even if the intended act of terrorism hasn't occurred.
- Article 12 says that one member state cannot refuse to cooperate with another member state on grounds of bank secrecy.

At the very least, though the Convention has some flaws, it attempts to set forth a minimum standard for all countries to follow when conducting investigations into terrorist finances, in much the same way that the Vienna Convention set forth a minimum standard for investigations into drug money laundering. Unfortunately, though momentum to sign and ratify naturally increased after September 11, it appears that the Convention is far from applicable on a global basis. The following 46 countries did not sign the treaty:

Afghanistan	Haiti	Nepal	Swaziland
Angola	Iran	Niger	Syria
Bangladesh	Iraq	Oman	Timor L'este
Burkina Faso	Kiribati	Pakistan	Trinidad and Tobago
Cameroon	Kuwait	Papua New Guinea	Turkmenistan
Chad	Kyrgyzstan	Qatar	Tuvalu
Dominica	Laos	Saint Lucia	UAE
El Salvador	Lebanon	Sao Tome and Principe	Vanuatu
Eritrea	Malawi	Senegal	Yemen
Ethiopia	Malaysia	Solomon Islands	Zambia
Gambia	Maldives	Suriname	Zimbabwe
Guyana	Mauritania		

Some of the countries, such as Iran, Iraq, Syria, and Yemen, may have refused to sign the treaty on political grounds. Other countries, such as Bangladesh, Kuwait, Kyrgyzstan, Lebanon, Malaysia, Pakistan, and the United Arab Emirates have at least outwardly expressed a desire to cooperate in the global coalition against terrorism, thus making their absence from the Convention particularly noteworthy. Also, a number of small island nations with notoriously lax banking regulations and poor reputations as money laundering havens did not sign the treaty, including Dominica, Kiribati, Saint Lucia, the Solomon Islands, Trinidad and Tobago, Tuvalu, and Vanuatu. Clearly, someone seeking to launder terrorist funds has a number of options available before them where the Convention does not apply.

Equally concerning is the list of nations that as of March 2003 have signed but not ratified the Convention. Below is a partial list of those nations.

Argentina	Czech Republic	Kenya	Seychelles
Bahamas	Egypt	Liechtenstein	Somalia
Bahrain	Germany	Luxembourg	Sudan
Barbados	Greece	Nauru	Switzerland
Belgium	India	Netherlands	Tajikistan
Bosnia and Herzegovina	Indonesia	Nigeria	Thailand
Brazil	Ireland	Paraguay	Tunisia
China	Italy	Philippines	Venezuela
Cook Islands	Jordan	Saudi Arabia	

This list contains several countries that I mentioned in Chapter 2 as suspected sources or conduits of terrorist financing, including the Bahamas, Bosnia and Herzegovina, Germany, Jordan, Saudi Arabia, and the Sudan. In addition, it contains several other countries that I have come across in the course of my research as possible sources or conduits of terrorist financing, including:

- Argentina, Brazil, and Paraguay. At the intersection of the borders of these three countries lies Ciudad del Este, a major currency smuggling thoroughfare and thought to be one of Al Qaeda's newest hiding locations.¹²⁴
- China. Jamal al Fadl testified that he believed certain members of al Qaeda held accounts in China's "special autonomous region" (SAR) of Hong Kong. Al Qaeda activity has also been suspected in another Chinese SAR, the island of Macau.¹²⁵
- Indonesia. Bin Laden is believed to have personally transferred \$74,000 to al Qaeda members in Jakarta to purchase from the Indonesian military C4 explosives that were used in the Bali nightclub bombing.¹²⁶

Article 18 of the Vienna Convention on the Law of Treaties discusses the rights and obligations owed by states such as those listed above that have signed but not ratified a treaty.¹²⁷ According to the Vienna Convention, though such states are not yet bound by the actual terms of the unratified treaty, they are nevertheless "obliged to refrain from acts which would defeat the object and purpose of the treaty."¹²⁸ Article 18 has been the subject of volumes of academic discourse, and there exists considerable disagreement about the degree of responsibility owed by a state between the time it signs a treaty and the time it ratifies it.¹²⁹ However, that there exists such ambiguity about the rights and obligations of non-ratifying signatories only confirms that the Convention for the Suppression of the Financing of Terrorism as currently applicable leaves far too many holes in its geographic coverage to be of much significance to law enforcement

¹²⁴ Catan, Thomas. "Border Town Where Hardliners Hide." *Financial Times*, September 21, 2001.

¹²⁵ Gallo, Peter. "The Terrorist Buck Stops Here." *South China Morning Post*, September 4, 2002.

¹²⁶ Cambell, Matthew; Fielding, Nick; and Rufford, Nicholas. "Bin Laden Paid for Bali Bombing." *Sunday Times of London*, October 20, 2002.

¹²⁷ For clarification purposes, the Vienna Convention on the Law of Treaties that I mention here is entirely different from the Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances that I discussed in Chapter 1, though both are sometimes referred to as "The Vienna Convention."

¹²⁸ Vienna Convention on the Law of Treaties, Article 18.

¹²⁹ Charne, Joni S. "The Interim Obligation of Article 18 of the Vienna Convention of the Law of Treaties: Making Sense of an Enigma." 25 *Geo. Wash. J. Int'l L & Econ.* 71 (1992).

agencies and financial institutions. The analogy to the balloon is as applicable as ever, since some jurisdictions have heightened their level of banking secrecy under the Convention, others have stayed at their pre-Convention levels, and yet others seem to be in an Article 18-induced state of limbo. Without a set of minimum standards that establishes that full cooperation on a truly global and scale, al Qaeda will be able to move money and finance terrorism more or less at will. Leaders in the fight against terrorism such as the United States and the United Kingdom must use their diplomatic and political influence at the UN and other multilateral arenas to push other countries to ratify the Convention on a global scale as soon as possible.

2. Focus on the Layering and Integration Stages, as well as the Placement Stage, by Implementing "Know-Your-Customer" Standards.

The placement stage in a terrorist money laundering operation is, like the placement stage in drug money laundering operations, a crucial point in the process at which law enforcement agencies may be tempted to aim the bulk of their resources. But aiming at the placement stage in terrorist money laundering operations raises several unique problems:

- Money entering the placement stage in terrorist operations may not be "dirty" in the traditional sense, and thus very difficult to identify. This is particularly true where Islamic charities are involved.
- Money may be placed in any jurisdiction around the globe, by no means restricted to those jurisdictions that will later be the target of a terrorist attack.
- Money may be placed in small amounts to avoid raising any suspicions.

For these reasons, I believe law enforcement agencies and financial institutions should devote at least as much attention to monitoring transactions at the layering and integration stages as they do to the placement stage.

The lynchpin of this strategic reform should be a shift away from customer transaction reports and towards a know-your-customer (KYC) regime. This will be a controversial move, especially in the United States, where law enforcement agencies and financial institutions alike

have for many years trumpeted the virtues of objective reporting mechanisms such as currency transaction reports (CTRs) over the more subjective KYC approach, which is the approach used in many European jurisdictions. Brian Bruh, the first director of the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) says that the KYC approach is "essentially a voluntary system. If someone walks into a bank, a narcotics trafficker or a money launderer, and wants to conduct a financial transaction, and he sees that the bank officer is very alert, he simply says, 'I forgot something,' and walks down the street to another bank, until he's able to conduct a transaction where the bank official is not so suspicious. [In the U.S.], if someone walks into a bank, conducts a large cash transaction, a report must be filed. If I were a money launderer, I would prefer to do business in a country with [KYC] reporting."¹³⁰

CTRs, though, are of little if any use in a terrorist context. In fact, contrary to Bruh's analysis, terrorist money launderers would probably prefer to do business in a country with CTR reporting. First, CTRs do little to prevent crime, whether drug-related or terrorism-related. The financial institution that accepts a large cash deposit may be required to file a report, but the Treasury Department receives millions of reports every year. They are of little use in uncovering illegal operations, unless there is already an investigation or prosecution underway and the government seeks to establish a paper trail of money.¹³¹ In other words, unless a would-be terrorist has already blown his cover and come under the watchful eye of investigators for another reason, his cash transactions are unlikely to tip anyone off of an impending terrorist attack. There is no better evidence of the inefficiency of the CTR system than the September 11 attack itself. When Mohammed Atta, the suspected ringleader of the 19 hijackers, opened an account at SunTrust Bank in Florida in June of 2000 with a \$60,000 wire transfer, the bank filed

¹³⁰ Robinson, pg 38. See Chapter 1, note 12 above.

¹³¹ Id., at pg. 33.

a CTR with the Treasury Department.¹³² That CTR was not reviewed until well after the attacks took place. Moreover, as I have shown many al Qaeda-related transactions involve small sums of cash, far less than the \$10,000 cap currently in place in the United States. Lowering the cap to create a paper trail for these kinds of transactions would only increase the backlog of CTRs.

A comprehensive KYC approach, on the other hand, will increase the likelihood of identifying terrorist funds before any attack occurs. Generally speaking, in a KYC system, banks report to authorities any time they subjectively suspect that a customer is engaging in money laundering, rather than relying on objective standards such as currency transaction thresholds. More specifically, in a successful KYC jurisdiction, banks should be required to understand who their customers are and what the nature of their business is. Identification alone is not sufficient; banks should be required to maintain some kind of evidence that such businesses actually exist, and perform some sort of legitimate purpose. For example, if al Taqwa's bankers had been required to keep an updated company prospectus or a sample "feasibility study" in their files, they may have suspected the company of dealing in terrorist finances well before the September 11 attacks. Banks should also be required to report to a central authority if a customer receives multiple or extraordinary transfers for no obvious business purpose from countries suspected of financing terrorism. For example, a banker operating under a strict KYC regime would likely have directly reported to the authorities Essam el Ridi's \$250,000 wire transfer from the Sudan, or at the very least investigated further herself. In short, since the KYC approach relies on the suspicions and judgment calls of the bankers who open accounts and directly interact with clients, rather than investigators sifting through piles of CTR reports, it would likely be far more useful to detect would-be terrorists.

¹³² Willman, John. "Trail of Terrorist Dollars that Spans the World." *Financial Times*,

KYC rules do have detractors, however. The banking industry in the United States has been particularly reluctant to implement such a system. For example, in 1998 the four government agencies primarily responsible for banking oversight, the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of Currency, and the Office of Thrift Supervision, jointly proposed a series of new regulations that ultimately would have required banks to implement KYC standards.¹³³ Shortly thereafter, on March 23, 1999, the agencies withdrew their proposal. They said that they had "received an unprecedented number of comments on the proposal from the public, banking organizations, industry trade associations, and members of Congress." Most of these comments reflected "the expected burden the proposed rule would impose on banks and savings associations," and "public concern over the privacy of information that would be collected and held by financial institutions."¹³⁴

With respect to the first concern, there are mixed signals whether the banking community in the post-September 11 world will now be willing to bear the costs of implementing a KYC system. One industry magazine wrote that banks were lining up to assist the government fight terrorism. "They spent millions lobbying against money-laundering legislation and so-called know-your-customer bills proposed in 1999, calling them intrusive and burdensome. Today, they're scrambling to search and seize accounts, partly to dodge stiff administrative fines but also to ensure that their reputations aren't sullied."¹³⁵ On the other hand, banks are slowly beginning to show some resistance to new terrorist-related regulations. For example, 11 major trade groups in the banking industry sent a letter to the U.S Treasury Department arguing that new terrorism-related regulations were "costly and unworkable."¹³⁶ Similarly, with respect to the second

¹³³ Lustgarten, Isaac. "USA: Banking Regulation – Know Your Customer (KYC)." *Journal of International Banking Law*, 1999.

¹³⁴ Federal Deposit Insurance Corporation (FDIC). Press release PR-14-99, March 23, 1999.

¹³⁵ McNamee, Mike and Timmons, Heather. "Freeze Now, Ask Questions Later." *BusinessWeek*, October 15, 2001.

¹³⁶ Alden, Edward. "Banks Attack Terror Money Campaign." *Financial Times*, July 2, 2002.

concern regarding privacy of information, the banking industry may still be reluctant to divulge too much information about their customers to the government, even in the name of anti-terrorism. My research indicates that no bank has publicly raised such concerns, at least not yet, but given the critical attention now being focused on other government intrusions on privacy in areas such as wiretapping and registration of immigrants, complaints about privacy from the banking community are surely not far behind.

One important area in which post-September 11 legislation has shifted the burden on banks to know their customers is in the field of correspondent banking. The USA PATRIOT¹³⁷ Act ("Act") was passed by Congress on October 26, 2002, in direct response to the September 11 attacks. Sections 312 and 313 of the Act impose strict new due diligence standards for U.S. financial institutions that maintain correspondent accounts with foreign entities. First, correspondent accounts with foreign shell banks, or banks that have no physical presence, are completely prohibited. Second, U.S. financial institutions are required to identify anyone who draws funds from a correspondent account held by an offshore bank, or any bank located in a jurisdiction of "prime money laundering concern." This applies also to transactions where banks draw from other banks' correspondent accounts. For example, suppose Wanda deposited her funds at the First National Bank of Aleppo, which holds a correspondent account at the First National Bank of Damascus, which holds a correspondent account at Citibank in New York. If Wanda tried to withdraw funds from the First Damascus correspondent account in New York, Citibank is now required to trace the origin of her funds back to her account at First Aleppo.

Compliance with the Patriot Act could impose an extremely heavy financial cost on U.S. banks, and it seems likely that as in 1999 they will again resist any substantial shift to a know-

¹³⁷ The name of the act is actually an acronym: USA PATRIOT is short for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism."

your-customer regime. However, there are several things that governments can do to encourage their cooperation and make such a transition easier and less costly.

- **Guarantee regular and frequent communication between banks and law enforcement.** Financial institutions should be required to report transactions that they believe are unusual for the customer's profile, likely to be involved in terrorist financing, or otherwise suspicious. If they are not required to report, then the utility of the know-your-customer approach as a preventive anti-terrorist tool would be largely negated. Communication must also flow in the other direction, though. Intelligence agencies must provide financial institutions with guidelines on how to recognize possible terrorism-related transactions. It is also critical that law enforcement agencies regularly provide feedback to banks and financial institutions, to help them evaluate the effectiveness of their KYC programs. Keeping banks and financial institutions involved and informed will encourage them to maintain effective KYC programs.
- **Provide training for bank employees.** Given the new face of money laundering in terrorist contexts, many banks simply do not know what to look for or how to look for it. No bank wants to get caught accepting terrorist money into its books. However, training employees can be a costly and time-consuming affair, especially considering the diverse means used by al Qaeda to move money. If governments want full cooperation of banks and financial institutions, they should assist in and if possible assume responsibility for the training process.
- **Expand legal "safe havens" for banks,** immunizing them from customer litigation resulting from reporting suspicious activity to authorities. Many countries already offer such safe havens for traditional money laundering crimes. Governments should ensure that such havens also cover reporting for terrorist-related activity.

3. Don't Freeze Funds; Follow Them.

The tactic of freezing terrorist assets has been trumpeted by investigators in the War on Terrorism as a key element of preventing future attacks. For example, John Ashcroft, U.S. Attorney General, recently identified "dismantling the terrorist financial network" as a key pillar of the U.S. "integrated prevention strategy," citing that \$124 million had been frozen in over 600 accounts in 160 countries.¹³⁸ Indeed, considering that as of March 1, 2004, Osama bin Laden apparently has yet to be captured or killed, freezing assets makes for much-needed positive publicity to show that some successes have been achieved in the War on Terrorism.

¹³⁸ Prepared Remarks of Attorney General John Ashcroft, Senate Judiciary Committee Hearing: "The Terrorist Threat: Working Together to Protect America", March 4, 2003. From <http://www.usdoj.gov/ag/testimony/2003/030403senatejudiciaryhearing.htm>

The problem, however, is that freezing funds does not stop terrorism. It may have been useful strategy in fighting drug trafficking: after all, without access to one's profits, there is little reason to engage in drug trafficking. But freezing terrorist assets may be more of an inconvenience than a deterrent for would-be terrorists. For example, despite the impressive size and global distribution of suspected terrorist funds that have been frozen, the new U.S. Department of Homeland Security has raised its color-coded terrorist "threat advisory" system to orange, indicating a high risk of terrorist attacks, on several occasions since its inception, twice in 2003 alone. Moreover, since governments began to freeze suspected terrorist assets in October of 2001, there have been major al Qaeda-related attacks in Spain, Indonesia and Kenya, smaller-scale attacks in Jordan, Kuwait, Yemen, and Saudi Arabia, and foiled attempts in the United States, one to blow up an American Airlines transatlantic flight from Paris to Miami, and another to explode a "dirty" bomb, or a conventional weapon used to disperse radioactive material. Finally, some U.S. government officials have seriously questioned the evidence against some of the accounts that the Treasury Department has been frozen. "There are going to be huge problems," one law enforcement official told the *Los Angeles Times*. In many of the cases, "I don't think there's a lot there. . . . It's pretty thin." Another anonymous U.S. official in the same article said that the "Treasury Department's rush to take action last fall may have been 'politically driven' and premature. 'They were running and gunning,' the official said."¹³⁹ Clearly, then, freezing assets is not an efficient method to prevent al Qaeda from committing further acts of terrorism.

Rather, the main thrust of law enforcement agencies should be to use terrorist finances to identify, trace, and locate suspected terrorists. This is especially important with respect to al

¹³⁹ Lichtblau, Eric, and Meyer, Josh. "Crackdown on Terror Funding is Questioned." *Los Angeles Times*, April 7, 2002.

Qaeda, considering the dearth of information about its structure and governments' professed lack of human intelligence within the organization.¹⁴⁰ Some governments have acknowledged the importance of following funds. Gordon Brown, the U.K. Chancellor of the Exchequer, said "it is not necessarily the size of the money that matters, it is actually being able to track the source of the money, and that is why even small sums of money have got to be tracked back."¹⁴¹

The tactic of following financial assets instead of freezing them in order to identify and locate terrorists is similar to a tactic used in drug trafficking investigations known as "controlled delivery." Controlled delivery refers to "the technique of allowing prohibited substances or prohibited articles to pass from, towards, or through the territory of one or more countries with the knowledge and under the supervision of the competent authorities with a view to identify persons involved in the commission of prescribed offences."¹⁴² Instead of immediately freezing suspected terrorist assets, law enforcement agencies should encourage the use of a kind of controlled delivery of terrorist financial assets. There would be at least two major reasons why this approach would be better than merely freezing assets. First, it would allow investigators to trace funds more thoroughly and establish a much more accurate financial and organizational structure of the organization. This is especially important considering that al Qaeda has adopted many new financing strategies since the September 11 attacks, such as utilizing the West African diamond trade to launder funds. Second, and perhaps more importantly, freezing assets has proven to be one of the most politically controversial elements of the War on Terrorism. In the United States numerous entities whose assets have been frozen have argued that their constitutional rights to due process have been violated. And in a country like Saudi Arabia,

¹⁴⁰ BBC News.com, "Congress Damns US Intelligence Agencies," July 17, 2002.

¹⁴¹ Huband, Mark. "Brown at Odds with US over Terrorist Finances." *Financial Times*, October 25, 2002.

¹⁴² United Nations Office on Drugs and Crime website, http://www.unodc.org/odccp/legal_library/cy/legal_library_1996-09-16_1996-41.html. This is the definition used in a Cypriot law specifically dealing with controlled deliveries, but it is by and large similar to most other definitions I was able to find.

where many citizens are already suspicious of U.S. designs in the War on Terrorism, the image of Saudi and U.S. treasury officials jointly freezing assets of Islamic charities will likely only foment public anger. A controlled delivery approach, on the other hand, would allow law enforcement agencies to reap the benefits of investigating terrorist financing without any of the public relations pitfalls associated with freezing assets.

The controlled delivery approach comes with one important caveat, however. In order to trace funds effectively, there needs to be an extraordinary degree of domestic and international cooperation. The U.S. Treasury Department can only employ a controlled delivery approach if it knows that the Justice Department will have the resources necessary to follow the funds in question. And both Treasury and Justice will only allow those funds to leave U.S. jurisdiction if they are confident that the government in country X is equally willing and able to continue monitoring the funds as soon as they arrive in X.

The recent capture of a number of high-profile al Qaeda members, such as Khalid Sheikh Mohammed on March 1, 2003, suggests that a high degree of cooperation may in fact exist, and that the U.S. is already employing a controlled delivery approach to al Qaeda's finances. Very little tangible information has been revealed in the media about the circumstances leading up to Sheikh Mohammed's discovery and capture, presumably because law enforcement authorities do not want to divulge too much about their strategies. However, it seems at least possible that monitoring and tracing funds played some role in locating Sheikh Mohammed.

On the other hand, my research suggests the controlled delivery approach has been severely hampered by domestic turf battles between U.S. government agencies. For instance, in the investigation into BIF and Enaam Arnaout that I discussed in Chapter 2, the Treasury Department refused to allow the FBI access to financial records they had seized from BIF's

offices.¹⁴³ My research also suggests that the controlled delivery approach is increasingly being hampered by a growing resistance in the international community to cooperate with the U.S. For example, Swiss Attorney General Valentin Rorschacher recently complained that "U.S. officials told him to freeze the assets of several suspected terrorist organizations but then said they couldn't hand over the underlying evidence because it is classified."¹⁴⁴ Granted, Switzerland has historically been a difficult country for the United States to deal with when it comes to financial crime, but the Swiss are not alone; several other countries in Europe and the Middle East have recently expressed reluctance to cooperate with U.S.-led investigations. If controlled delivery and tracing funds is to play a meaningful role in the War on Terrorism, these kinds of conflicts must be resolved.

4. Avoid publicizing the financial war on terrorism

Law enforcement agencies may have made a tactical error in the first few weeks after September 11 when they made the financial War on Terrorism a highly publicized affair. Freezing assets certainly allowed governments to show that measures were being taken to confront al Qaeda. But it also placed pressure on law enforcement to produce results, to uncover and dismantle a real and tangible financial network that would spell victory in the War on Terrorism. For numerous reasons I have shown above, the likelihood of this ever occurring is slim at best. Al Qaeda has no equivalent to Pablo Escobar's La Mina; consequently, the War on Terrorism has no equivalent to Operation Polar Cap. Publicizing the attack on al Qaeda's finances may thus lead to a wide range of false hopes and expectations. Granted, it is easy to criticize with hindsight the strategies taken by law enforcement agencies. But even in the first few days after September 11, law enforcement agencies should have recognized that terrorist

money laundering was fundamentally different drug money laundering, and required a more subtle, less visible approach.

It will be doubly important to avoid publicity if law enforcement agencies accept my third proposal, to follow funds instead of freezing them. The ultimate objective of my controlled delivery approach to al Qaeda's finances is to use the flow of money to identify, locate and capture al Qaeda members. If those members are tipped off that law enforcement agencies are closely examining their financial records, they may shift their transactions into businesses that operate entirely outside the framework of the global anti-money laundering regime. I showed in Chapter 2 that the organization has already started trading in diamonds and other commodities since September 11. The more publicity the financial war on terrorism is given, the more likely al Qaeda is to move its financing operations to these types of undetectable activities.

¹⁴³ Lichtblau, Eric, and Meyer, Josh. "Crackdown on Terror Funding is Questioned." *Los Angeles Times*, April 7, 2002.

¹⁴⁴ *Id.*

Conclusion

I believe that given the range of sources of al Qaeda's funds, its means of distributing them, and its ability to finance terrorist attacks on a very small budget, the organization will continue to be able to move money largely at will. The global anti-money laundering regime shuts off some important avenues, such as correspondent accounts at offshore shell banks, but much work needs to be done before the financial elements of the War on Terrorism can be deemed a success. As one U.S. government official familiar with al Qaeda's finances recently said, September 11 was "the Super Bowl of terrorist acts, and even in retrospect, knowing what we know now, we would never have caught that."¹⁴⁵

The reforms that I have proposed would reinforce the global anti-money laundering regime and make it a useful tool to curb terrorist financing. However, my proposed reforms could take years to enact. For example, the U.S. and the U.K. have lost a great deal of credibility at the UN and other multilateral institutions over the past several months with the invasion of Iraq. As a result, global cooperation to curb terrorist finances has likely been hampered for some time. On the other hand, law enforcement authorities can only curb terrorist financing if they know how al Qaeda moves its money and what weaknesses it can exploit in the global anti-money laundering regime. In this respect, I sincerely hope that this paper proves to be an asset to the anti-money laundering community.

¹⁴⁵ Lichtblau, Eric and Meyer, Josh. "Crackdown on Terror Funding is Questioned." *Los Angeles Times*, April 7, 2002.

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