Testimony of

# Mr. Jonathan M. Winer

November 20, 2002

Mr. Chairman and Distinguished Members of this Committee:

I am grateful for the opportunity to testify before you on the Administration's use of the tools provided them to fight terrorism over the past year, and to discuss the findings of the Report of the Independent Task Force on Terrorist Financing sponsored by the Council on Foreign Relations and chaired by Maurice Greenberg.

Over the past year, the Administration has undertaken a Herculean task: transforming the tools provided to the Administration by the Congress in the USA Patriot Act into practical realities. That task has included massive regulatory rulemaking, new investigations and intensification of existing investigations, domestic and international, and the integration of separate databases. The Administration has had to shift existing resources to carry out massive new tasks. The Administration has also had to coordinate this work with counterparts in other governments - counterpart investigators, counterpart regulators, counterpart prosecutors, counterpart intelligence agencies and counterpart policymakers. The sheer scope of the work is immense.

In carrying out that work, the Administration has made excellent use of the relatively small number of career people in the Departments of Justice and Treasury and the regulatory agencies with competence in this field derived from previous Administrations. People have been asked to work hard and they met their responsibilities at what has often been a superlative level. The Administration has also, in my judgment, made excellent use of its political appointees, some of whom did not have much previous experience in this field, but learned fast. Those of us on the outside who in previous Administrations learned how hard it is to effectuate change can - irrespective of limits, failures and mistakes, which are inevitable in government -- marvel at and admire the work they done at home and internationally. But there is, as always, room for improvement.

When I testified before the Senate Banking Committee last year after the September 11 attacks, I identified a series of steps I felt the government needed to take to protect the U.S. against further use of financial institutions by terrorists. These included action against hawaladars - unlicensed money services businesses and immediate enhanced scrutiny of financial institutions in under regulated jurisdictions, especially those in the Middle East. I asked that the government work to build terrorist finance intelligence from existing cases to make use of evidence from witnesses or defendants involved in such activities as money laundering, document fraud, credit card crime, alien smuggling, trafficking in women, drug smuggling, and other crimes who might be in a position to shed light on terrorist finance, or on underground banking, or both. And I advised enhanced scrutiny of Islamic charities, stating that a number of Islamic charities had either provided funds to terrorists or failed to prevent their funds from being diverted to terrorist use. Much has since been done in these areas. I expect that the Treasury's Operation Green Quest will

result in dramatic enforcement actions in time. However, more needs to be done. The following include five suggestions for immediate further action:

1. We need to consider further action on Islamic charities, such as subjecting them to the Bank Secrecy Act. The financial resources of some charities that have been linked to terrorist finance have been very large, and there remains more to do to protect the United States from abuses involving charities. After I testified before the Senate last year, one Islamic charity I listed on a chart as being alleged to have ties to terrorism was preparing to sue me for my Congressional testimony on the very day the President shut the charity down for its role in terrorist finance. I am tremendously concerned that funds from some of these charities have been used to purchase interests in otherwise legitimate U.S. businesses. Charity fraud is not limited to Islamic charities, as we have seen in the Washington area recently. I have encountered abuses of charities in many contexts during my time in government. Our regulation of charities at the federal level is minimal to non-existent, and they are not today expressly covered by U.S. money laundering regulations. I would urge consideration of whether the Administration should use its existing authorities to treat charities as financial institutions for the purposes of the Bank Secrecy Act, and thereby become subject to federal examination for compliance with our anti-money laundering laws.

2. The Secretary of the Treasury should use his powers under Section 311 of the Patriot Act to designate foreign jurisdictions or financial institutions to require special measures, such as enhanced scrutiny. The Congress gave the Secretary the power to determine whether any foreign country or financial institution should be subject to graduated sanctions, such as partial limits on market access to the U.S. financial institutions, for posing an unacceptable level of money laundering or terrorist finance risk. The Treasury has not used this power. I find it unimaginable that the Treasury has not identified even one foreign country or financial institution that poses an unacceptable level of money laundering or terrorist finance risk that the Secretary should subject to sanctions. The use of this power by the United States - even once - would send a warning to all other jurisdictions and financial institutions that the U.S. will take steps to protect itself if they do not meet minimum standards. In this area, action by the Administration will speak far louder than words.

3. We need to develop international standards for regulating and tracking gold and other precious metals and jewels that are used for transnational terrorist finance. The U.S. has had an exemplary investigation of money laundering through gold by Italian organized crime and Columbian drug traffickers in the Panama Free Zone. Dubai, used by the September 11 terrorists to handle their money, has the biggest gold market in the world. The U.S. should take a lead in developing and implementing global regulatory regimes for tracking and regulating gold and other precious metals and gemstones subject to abuse, especially across borders, through the existing G-8 anti-terrorist group led by Treasury or by other means.

4. The U.S. needs to take further action to attack alternative remittance systems or hawaldars engaged in money transfer operations in the United States. This needs to be done on a regulatory and an enforcement basis. There is no location today where the general public can go to determine whether a money transfer business has registered with the government as they are required to do under the Bank Secrecy Act. The Financial Enforcement Crimes Network (FinCEN) of the Treasury needs to publish that list now and update it frequently. Once that is

done, a financial institution trying to do due diligence or determine whether a transaction is suspicious, as well as law enforcement officials, can have an easy means of checking whether a particular money service business or hawaladar has registerd and is in compliance with the most basic requirements of U.S. law. We also need state and local as well as federal law enforcement making more well publicized cases against hawaladars.

5. The private sector must be brought in as a partner to the government in combating terrorist finance. The U.S. should work with private and non-governmental sectors to create "white lists" of financial institutions and charities that, regardless of the legal environment in their home jurisdiction, commit to the highest due diligence, anti-money laundering and anti-terrorist financing procedures, and agree to a system of external assessment of compliance. In addition to the reputational benefit from being included on such a white list, inclusion on the list could be a factor taken into consideration by the World Bank, the IMF, and other international financial institutions (IFIs) in considering which financial institutions to work with, as well as US AID and its counterparts in the rest of the world.

Mr. Chairman, each of these suggestions has endorsed by the distinguished bipartisan group who participated in the Terrorist Financing Independent Task Force sponsored by the Council on Foreign Relations. I ask the Chairman's consent that a copy of the Task Force Report be entered into the record at the conclusion of my testimony, together with an article I recently wrote for the Financial Times on how to clean up dirty money.

I thank you for the opportunity to testify and remain available to the Committee for questions.

FINANCIAL TIMES - London, UK
How to clean up dirty money
Globalisation and digital currency transfers have made money laundering simple and hard to detect - with horrific results. Jonathan M. Winer sees the solution in a white list of institutions that can prove they have cleaned up their worldwide act
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It was only a generation ago that a sitting US president was forced to resign after two investigative reporters were given whispered advice by a deep throat in a garage: "Follow the money."
One could track money then, prior to the transformation of currencies into electronic digits, and the blowing away of local controls and the overseeing of who managed the cash.
Poor Richard Nixon, having to rely on hush-money payments in local currency, and denied the money-laundering choices available to even small-timers today, not to mention the world's more significant criminals, terrorists and kleptocrats.
Read in .pdf format Jonathan M. Winer's study 'Illicit Finance and Global Conflict', commissioned by Fafo's Programme for International Co-operation and Conflict Resolution (PICCR) click here
The PICCR website click here

Where once the ability to stash your cash was limited to those sufficiently affluent to stop over in Zurich between schussing in Gstaad, globalisation has rapidly democratised money laundering. The results, in much of the world, have been horrific, as the US learned on September 11. How simple it was for al-Qaeda's terrorists to have $500,000 wired from a bank in Dubai for anonymous use in automatic teller machines in Florida and Maine. How difficult, even with the backing of United Nations resolutions and 150 nations, it has proved to find out who raised and sent those dollars.

Long before September 11, many other victims of wrongdoing have found that global evil-doers are better at taking advantage of the financial infrastructure of globalisation than the world's police and regulators are at catching them.

Indeed, with remarkable frequency, governments themselves have been infected by the money-laundering disease, with senior officials hiding wrongdoing in the same nooks and crannies of the global financial system used by the denizens of the lower depths.

Over the past decade, this pattern has been played out repeatedly, as political conflict, narcotics trafficking, arms smuggling, civil war, grand corruption and terrorism have been facilitated and sustained by illicit finance networks embedded in the world's legal financial services infrastructure.

Massive (and largely untraceable) electronic money outflows paved the way in 1994 for the collapse of the Mexican peso, costing Mexico a quarter-century of economic growth amid evidence of drug-money laundering and huge high-level corruption involving the president's family. Billions vanished as governments collapsed in Ecuador, Peru, and, most recently, Argentina. Fraudulent pyramid schemes decapitalised nations in transition in Albania, Bulgaria and Latvia.

Meanwhile, taking advantage of the archipelago of global finance, kleptocrats were able to steal and sequester the national wealth of the Congo/Zaire, Indonesia, Nigeria and Russia. The use of offshore financial centres to mask large financial losses facilitated the industrial, corporate and governmental corruption that has burdened the economies of Japan, South Korea and Taiwan.

The tiny principality of Liechtenstein was able simultaneously to handle political slush funds for former German Chancellor Helmut Kohl, the corrupt proceeds of illicit arms trafficking by the son of the late French President Francois Mitterrand, the proceeds of various West African dictators, and funds set aside by some of Latin America's most successful drug lords.

Illicit finance has also made possible the trade in diamonds that fuelled civil conflict in Liberia, Angola and Sierra Leone, and their accompanying arms deals and payoffs. It has sustained the narcotics trade and accompanying insurrections in Afghanistan, Burma and Colombia.

Spreading financial scandals have given birth to mushrooming government initiatives. The UN, the European Union, the Council of Europe, the Organisation of American States, and other international bodies have concocted new global standards to promote financial transparency and achieve the required level of international co-operation.

Leading self-regulatory organisations, such as the Basle Committee for Banking Supervision and the International Organisation of Securities Commissions, have focused on extending standards for international financial regulation to cover transparency issues. In Paris, the OECD and the Financial Action Task Force, created by the G7 in 1989 to clean up drug money, conduct assessments of who has been naughty and who has been nice.

The two organisations take turns to name jurisdictions that will face sanctions if they do not behave. Those threatened with financial isolation, including such international thoroughfares as Dominica and Nauru and the UK's Crown or Caribbean dependencies, protest at the unfairness of

it all - but have marched lock-step in compliance with regulatory demands - unable to risk loss of access to the world's most substantial financial markets.

And yet, amid all this regulatory and enforcement activity, dodgy money continues to remain an artful dodger indeed.

Is something wrong, then, with the way regulators are trying to implement financial transparency? Or is it simply over-ambition for domestic, national and public entities to join together to try to regulate the dark side of an infrastructure that is inherently cross-border, international and private?

Each existing government initiative is based on the premise that national financial service regulators have the capacity to determine whether their own "local" institutions meet the standards. Under the principle of consolidated supervision, each home country regulator of an international financial institution is solely responsible for exercising oversight over the global operations of that institution.

However, evidence is mounting to justify questioning whether global financial institutions, operating transnationally to move money instantaneously across national borders, can be readily regulated or supervised by any one country. With local branches and subsidiaries in dozens of nations, it may be beyond the capacity of any single state to police such institutions.

In practice, even the most sophisticated and best-regulated financial centres have proved incapable of adequately overseeing the global enterprises they license. Suppose the nation state of Nauru, population 18,000, wished to impose rigorous anti-money-laundering standards on banks it licenses. How, precisely, is it supposed to assess what the branch offices of those banks are doing in say, Lebanon, Liberia, Gibraltar or Macao?

In contrast to such governments, international financial institutions would seem better situated to regulate money-laundering and financial crime, and to enforce self-regulation on a global basis. Whatever the largest global financial institutions may lack, it is not human resources, or organisational capacity. Rather, what would appear to be lacking to date is an appropriate system of incentives.

Today, at any international bank, a compliance office is a cost of doing business, while a trader is a profit generator. Under the circumstances, it is easy to understand why, at any given bank on any given day, those creating a profit-making scheme involving an off-shore trust in Belize, that in turn owns a Turks and Caicos company, tend to win battles with those asking questions about the venture. In the long run, an institution faces a reputational risk in taking advantage of financial secrecy in remote parts of the world, but, in the short term, profits are to be made so that bonuses may be paid.

Thus, while governments scurry about ranking one another's efforts against financial crime, international financial institutions face no comparable review, at least at a global level. No organisation, public or private, has ranked leading international institutions for the greatest or least laundering of dirty money, although such a ranking might be compiled from court documents, public investigations and press reports.

Nor has there been a seal or certificate system to endorse institutions that have put into place a series of best practices to promote transparency. The most relevant initiative has been the adoption over the past two years of the Wolfsberg Principles by 11 of the world's largest banks. These banks, the Wolfsberg Group, have agreed to adopt "know your customer" principles to discourage abuses of private banking by those engaged in grand corruption, and, most recently, to prevent themselves from being used to facilitate terrorist finance.

The Wolfsberg Principles have been a unique development in the world of international banking.

All participating institutions have agreed to impose the principles on a global basis - from Liechtenstein to London, Nauru to New York.

However, unlike government name-and-shame exercises, the Wolfsberg Principles lack an assessment mechanism and any practical carrots or sticks for the group's members. While a reputation is a terrible thing to waste, many large international financial institutions have weathered scandals that would have felled heads of government.

The question, therefore, is whether a new initiative could bring together the principles of universal private-sector self-regulation, and the concept of lists and mutual assessment used to some effect among nation states through the OECD and the Financial Action Task Force exercises. Such an initiative could not be used to create a blacklist for private-sector institutions. Neither markets nor politics would tolerate such an intrusion into global finance. But imagine instead a white list, to make compliance a profit centre, rather than a burden on a bank. A white list - and a reward for being on it.

The World Bank and its regional cousins control billions of dollars for lending around the world. While holding these funds, these organisations deposit them not only in central banks, but also in commercial ones. The UN and other international organisations also control substantial sums in development assistance, also necessarily deposited in and handled by banks, as do government-sponsored entities such as export-import banks, the world's many national and international development programmes, private foundations, and non-governmental organisations.

Today, financial transparency is not a criterion for the selection of one financial institution over another. An international bank involved in money-laundering scandals or terrorist finance has about the same chance of obtaining a lucrative source of government resources as does an international bank that has imposed the highest standards of transparency and anti-money laundering policies. No wonder the compliance officer is seen as a profit drain.

An additional incentive for financial institutions to adhere to a comprehensive, global code of conduct would seem a logical goal for an international community increasingly focused on risks created by financial secrecy. It would supplement the work of nations by asking institutions that operate in many jurisdictions to adhere to the same standards in all of them, even where the governments themselves have little ability directly to regulate or enforce these standards.

To make a white-list system work, the UN could, for example, ask the world's financial institutions to adopt existing international anti-money laundering guidelines on a global basis throughout their institutions.

The institutions would be required to agree to maintain know-your-customer and other anti-money laundering policies and procedures in every office, regardless of location. They would accept the principle of having others conduct regular external assessments of its compliance with the standards, and the publication of comprehensive reports, describing how they had met the standards.

An institution that has agreed to an assessment, and passed it, would be named on a white list and, after a transition period, be rewarded with a preference for selection in processing funds controlled by the UN and other international organisations.

The opponents of globalisation have sometimes characterised the process as a race to the bottom when it comes to the enforcement of laws and regulations. Its supporters have promised globalisation as a deliverer of opportunity and prosperity. At this juncture, we may find ourselves like Alice. Having eaten the comfit, with hand on head, we ask ourselves: "Which way? Which way?"

The establishment of a global white list could help us insure a regulatory race to the top, so that

the benefits of globalisation are not eclipsed by its dark side.

The author is former US Deputy Assistant Secretary of State International Law Enforcement.