

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY, AND HOMELAND SECURITY**

**SENATOR JON KYL
CHAIRMAN**



Two Years After 9/11: Keeping America Safe

1ST SESSION, 108TH CONGRESS

March 2004

Report Submitted by Majority Staff

We calculated in advance the number of casualties from the enemy, who would be killed based on the position of the [World Trade Center] tower. We calculated that the floors that would be hit would be three or four floors. I was the most optimistic of them all . . . due to my experience in this field, I was thinking that the fire from the gas in the plane would melt the iron structure of the building and collapse the area where the plane hit and all the floors above it only. This is all that we had hoped for.

— *Osama bin Laden*¹
November 2001

This new enemy seeks to destroy our freedom and impose its views. We value life; the terrorists ruthlessly destroy it. We value education; the terrorists do not believe women should be educated or should have health care, or should leave their homes. We value the right to speak our minds; for the terrorists, free expression can be grounds for execution. We respect people of all faiths and welcome the free practice of religion; our enemy wants to dictate how to think and how to worship even to their fellow Muslims.

— *President George W. Bush*²
November 8, 2001

¹“*I Was the Most Optimistic*”; *Transcript of the Osama bin Laden Videotape*, NEWSWEEK, Dec. 24, 2001, at 14.

²President’s Address to the Nation on Homeland Security from Atlanta, 37 WEEKLY COMP. PRES. DOC. 1614 (Nov. 8, 2001).

CONTENTS

Introduction by Chairman Jon Kyl.....	i
Summary.....	1
Wahhabism.....	3
Extremist Ideology.....	3
The Spread of Wahhabism and The Threat from Al Qaeda.....	4
Epicenter of Terrorist Financing.....	5
Saudi Arabia.....	6
Connect the Dots	6
Saudis Playing a Double Game	8
End Game.....	9
Radical Islamist Influence Over U.S. Military and Prison Chaplains.....	10
Terrorist Exploitation of a Free Society.....	10
Bureau of Prisons and Department of Defense.....	11
First Responders	13
Responding to Terrorist Attacks	13
Faster and Smarter Funding.....	14
Keeping Terrorists Out of the United States.....	15
Border Technology.....	15
The Enhanced Border Security and Visa Reform Act	16
Border Security Challenges.....	16
Looking Ahead.....	18
Narco-Terrorism.....	19
Cooperation Between International Terrorists and International Drug Traffickers.....	19
Global Phenomenon	21
Narco-Terror Problem Also an Opportunity.....	22
Database Security.....	22
Preventing Unauthorized Access	22
The Notification of Risk to Personal Data Act.	23

Document Security	24
Identity Theft: A “Key Catalyst” for Terrorist Groups.....	24
GAO Report.....	25
Key Methods for Terrorist Infiltration	25
Cyber Terrorism	26
A Frightening Possibility.....	26
Government Actions to Improve Cyber Security.....	27
“Lone Wolf” Fix to Foreign Intelligence Surveillance Act	28
Monitoring “Lone Wolf” Terrorists.....	28
Changed World Requires a Change in FISA	29
Islamist Terrorist Threat.....	29
Senate Passage	30
Pretrial Detention of Terrorists	31
Filling Gaps in the Law.....	31
Appendix: Hearings During the 1st Session of the 108th Congress	32

INTRODUCTION

Five years ago, at the end of my first term as chair of the Senate Judiciary Committee's Terrorism Subcommittee, I noted in the Subcommittee's report that, during the Cold War, the source and nature of threats to the United States were well understood: The Soviet strategic nuclear threat determined American defense and intelligence planning. The offensive posture of the Warsaw Pact nations and Soviet regional subversion were answered by the strength of the NATO Alliance, the determination of the Reagan Doctrine, and a U.S. military designed and ready for force projection anywhere in the world. Many lives were lost in the hostilities during the Cold War, but for the most part, Americans felt safe at home. I concluded by warning that, although the Cold War was over, Americans were not secure from foreign threats because "[i]t no longer takes a superpower to threaten the American homeland Many terrorist groups have a newfound interest in weapons that can cause a great number of casualties . . . and more sweeping social objectives for their terrorist campaigns."³ The terrorist attacks of September 11 have borne out this warning.

On the morning of September 11, 2001, the nation and the world changed forever. Nineteen terrorists hijacked four commercial planes: American Airlines Flight 11, which crashed into the North Tower of the World Trade Center; United Airlines Flight 175, which crashed into the South Tower of the World Trade Center; American Airlines Flight 77, which crashed into the Pentagon; and United Airlines Flight 93, which crashed in Somerset County, Pennsylvania.⁴ Masterminded by Osama bin Laden and his Al Qaeda terrorist network, the attacks killed 3,016 people,⁵ and wounded thousands more.⁶

On that day, we were, in President Bush's words, "a country awakened to danger and called to defend freedom."⁷ The President quickly realized that the key to victory was to take the fight to the terrorists. If we did not take the offensive — draining terrorist "swamps" by eliminating and capturing terrorists wherever they sought haven — then we would be forever on

³SENATE COMM. ON THE JUDICIARY, SUBCOMM. ON TECHNOLOGY, TERRORISM, AND GOVERNMENT INFORMATION, 105th Cong., Nov. 1998, "Crime, Terror, & War."

⁴*A Nation Challenged; Indictment Chronicles "Overt Acts" That It Says Led to Sept. 11 Attacks*, N.Y. TIMES, Dec. 12, 2001, at B6.

⁵James Barron, *Two Years Later: Ceremonies; Another 9/11, and a Nation Mourns Again*, N.Y. TIMES, Sept. 12, 2003, at A1.

⁶David Chen, *Man Behind Sept. 11 Fund Describes Effort as a Success, With Reservations*, N.Y. TIMES, Jan. 1, 2004, at B1.

⁷147 CONG. REC. S9553 (daily ed. Sept. 20, 2001) (Address by President Bush to Joint Session of Congress).

the defensive, and the primary battlefield would not be in Iraq or Afghanistan, but right here at home. One obvious sign of the success of our actions over the past two years is that, defying many predictions, we have not had another terrorist attack on our soil. Terrorists have instead gone after easier targets abroad. Nonetheless, our actions so far are not sufficient; there is much to be done. The magnitude of the challenge is illustrated by the 1984 assassination attempt on Prime Minister Margaret Thatcher by IRA terrorists. Their warning — and one that remains relevant today — was: “Remember, we only have to get lucky once; you have to be lucky always.”⁸ As Vice President Cheney said more recently, “if we’re 99 percent successful, the one percent that gets through can still kill you.”⁹ We have done much to turn the odds in our favor — but terrorists remain a grave threat to national security and public safety.¹⁰

Believing that we could not effectively fight terrorists unless we understand them, the Subcommittee focused its efforts in 2003 on learning what motivates them, where they derive their support, and how they operate. To this end, hearings were held on the growing Wahhabi influence in the United States, the terrorist links to Saudi Arabia, and the radical Islamist influence in the United States, including in the chaplaincy of the U.S. military and in U.S. prisons. Other Subcommittee hearings examined border technology to keep terrorists out of the United States, first responders, and database security. The attached report is a summary of the Subcommittee’s efforts to understand the terrorist threats to the United States and what needs to be done to win the War on Terrorism. Much credit for our work goes to the strong bipartisanship of this subcommittee, exemplified by the contributions of the ranking Democrat, Senator Dianne Feinstein.

JON KYL
Chairman
Subcommittee on Terrorism, Technology,
and Homeland Security
Committee on the Judiciary
United States Senate

⁸See, e.g., Paul Brown, *Cabinet Survives IRA Hotel Blast*, SUNDAY UK GUARDIAN, Oct. 13, 1984.

⁹Warren Cornwall et al., *Cheney Rallies Troops, Woos Voters in 1-Day Visit to State; Vice President Draws Strong Reaction*, SEATTLE TIMES, Dec. 23, 2003, at B1.

¹⁰Indeed, the United States ended 2003 and began 2004 with the threat level at “HIGH” (orange) because of concerns about terrorist attacks that, according to the Secretary of Homeland Security, Tom Ridge, could “either rival, or exceed, the attacks that occurred in New York and the Pentagon and the fields of Pennsylvania.” Press Release, U.S. Department of Homeland Security, *Threat Level Raised*, at <http://www.whitehouse.gov/news/releases/2003/12/20031221.html> (Dec. 21, 2003) (last visited Jan. 22, 2004). Additionally, according to a front-page *Washington Post* story, the U.S. government at the end of 2003 “dispatched scores of casually dressed nuclear scientists with sophisticated radiation detection equipment hidden in briefcases and golf bags to scour five major cities [Washington, New York, Las Vegas, Los Angeles, and Baltimore] for radiological, or ‘dirty,’ bombs . . .” John Mintz & Susan Schmidt, *“Dirty Bomb” Was Major New Year’s Worry*, WASH. POST, Jan. 7, 2004, at A01.

TWO YEARS AFTER 9/11: KEEPING AMERICA SAFE

Summary

In 2003, at the direction of Chairman Jon Kyl, the Senate Judiciary Committee's Subcommittee on Terrorism, Technology, and Homeland Security held a series of three hearings to investigate the roots of terrorist ideology, terrorist support networks, and state sponsorship of terrorism. Additionally, the Subcommittee pursued ways to respond to terrorist attacks; to keep terrorists out of the country; to fight the plague of narco-terrorism; to ensure database security, document security, and cyber security; to investigate "lone wolf" terrorists; and to detain suspected terrorists before trial.

Key findings:

- ▶ **Wahhabism sows the seeds of terror.** Wahhabism — a separatist, exclusionary, and violent form of Islam — provides the ideological inducement, recruitment, training, and support infrastructure for international terrorists and terrorist groups, such as Al Qaeda. All 19 of the terrorists who committed the horrific 9/11 attacks were Wahhabi followers.
- ▶ **Wahhabism maintains connections to the Saudis.** Saudi Arabia has a deep historical and symbiotic relationship with the radical Islamic ideology of Wahhabism that has impeded Saudi government cooperation with the United States in the war against terrorism.
- ▶ **The Saudis provide financing of the Al Qaeda terrorist network.** According to the testimony of a senior Treasury Department official before the Subcommittee, Saudi Arabia is the "epicenter" of terrorist financing. A task force commissioned by the Council on Foreign Relations reported that "[f]or years, individuals and charities based in Saudi Arabia have been the most important source of funds for Al Qaeda. And for years, Saudi officials have turned a blind eye to this problem."¹¹
- ▶ **Wahhabism recruits support in U.S. prisons and the military.** Wahhabi activity in the United States has included efforts to influence the selection and teaching of Muslim clerics in U.S. prisons and the U.S.

¹¹Council on Foreign Relations, *Terrorist Financing*, at 1 (Oct. 2002), at http://www3.cfr.org/pdf/Terrorist_Financing_TF.pdf.

military. The chaplaincy programs for these institutions were vulnerable to intrusion, but some action has been taken to reduce this influence. Since U.S. government reaction to the threat was somewhat confused, the Subcommittee will continue to monitor progress and report further on whether the threat still seems underappreciated by those in charge.

- ▶ **Resources for first responders need to be allocated based on a threat analysis.** At a Subcommittee hearing, former Senator Warren Rudman, and Dick Clarke, Senior Advisor to the Council on Foreign Relations, presented the Council's report and its chilling conclusion: "[T]he United States must assume that terrorists will strike again" and "the United States remains dangerously ill-prepared to handle a catastrophic attack on American soil."¹² To ensure that the nation is prepared in case of a terrorist attack, the government must allocate money wisely, based on accurate threat analysis, not on a political or formulaic basis.

- ▶ **Steps to prevent terrorists from entering the United States have been implemented.** According to testimony before the Subcommittee by the Department of Homeland Security Under Secretary, Asa Hutchinson, "[t]echnology is a critical tool that enables the . . . Department of Homeland Security to balance our national security imperative with the free flow of goods and people across our Nation's borders . . ."¹³ After September 11th, DHS implemented improvements in technology and infrastructure (such as the implementation of the National Security Entry Exit Registration System and non-intrusive cargo inspection systems) to prevent terrorists and terrorist related goods from entering the United States. Still, more must be done to ensure that the Department of Homeland Security has adequate personnel and funding to meet deadlines for additional terrorism prevention technology and infrastructure.

- ▶ **The illegal drug trade provides terrorists with a significant source of funding.** Terrorists have turned to drug trafficking as a major source of funding. In so doing, they have become more susceptible to law-enforcement actions that target drug trafficking, money laundering, and smuggling. The federal government should enhance intelligence capabilities and training supporting these law-enforcement activities. The

¹²Council on Foreign Relations, *Drastically Underfunded, Dangerously Unprepared: Report of the Indep. Task Force on Emergency Responders*, at 1 (June 2003) [hereinafter "*Emergency Responders Report*"].

¹³*Border Technology: Keeping Terrorists Out of the United States: Joint Hearing Before the Subcomm. on Terrorism, Technology, and Homeland Security and the Subcomm. on Immigration, Border Security and Citizenship of the Senate Comm. on the Judiciary*, 108th Cong., 1st Sess., at 15 (Mar. 12, 2003) (S. Hrg. 108-148, Serial No. J-108-5) (statement of Honorable Asa Hutchison) [hereinafter "*Hearing of Mar. 12, 2003*"].

Subcommittee will continue to periodically reexamine the progress against narco-terrorist activity, and the suitability of federal laws to the evolving narco-terrorist threat.

- ▶ **“Lone Wolf” terrorists represent a new threat.** According to testimony by the Attorney General, “[s]ingle, lone wolf terrorists act and can act in ways that are very, very damaging.”¹⁴ Legislation introduced by Chairman Kyl, S. 113, would update the Foreign Intelligence Surveillance Act to permit surveillance of individual foreign visitors to the United States who appear to be involved in international terrorism, without regard to whether such persons are affiliated with a foreign government or terrorist group. Both the FBI Director and the Attorney General testified in support of this bill.¹⁵ It passed the Senate on May 8, 2003 and is ready for consideration in the House.

Wahhabism

Extremist Ideology

To understand our enemy in the war on terrorism, the Subcommittee conducted three hearings examining the nature of the international terrorist movement. The first of the hearings¹⁶ focused on Saudi involvement in terrorism; specifically the Islamic sect that provides the ideology, recruitment, training, and support infrastructure for today’s international terrorists. This extremist sect is Wahhabism — named for its founder Muhammad ibn Abd al-Wahhab.¹⁷ All 19 of the September 11 suicide hijackers were Wahhabi followers. Fifteen of the 19 were Saudi subjects.

Throughout the Subcommittee’s hearings, senators were careful to differentiate between Wahhabi extremism (and its ties to terrorism) and the vast majority of Muslims who peacefully practice their faith. For example, Chairman Kyl in opening the hearings said:

¹⁴*The War Against Terrorism: Working Together to Protect America: Hearing Before the Senate Comm. on the Judiciary*, 108th Cong., 1st Sess., at 19 (Mar. 4, 2003) (transcript) (statement of Honorable John Ashcroft) [hereinafter “Hearing of Mar. 4, 2003”].

¹⁵Hearing of Mar. 4, 2003, at 19 (transcript) (statements of Honorable John Ashcroft and Honorable Robert Mueller).

¹⁶*Terrorism: Growing Wahhabi Influence in the United States: Hearing Before the Subcomm. on Terrorism, Technology, and Homeland Security of the Senate Comm. on the Judiciary*, 108th Cong., 1st Sess. (June 26, 2003) [hereinafter “Hearing of June 26, 2003”].

¹⁷*See generally* Bernard Lewis, *THE CRISIS OF ISLAM: HOLY WAR AND UNHOLY TERROR* 121-164 (2003).

Analyzing Wahhabism means identifying the extreme element that, although enjoying immense political and financial resources thanks to support by a sector of the Saudi state, seeks to globally hijack Islam, one of the world's three great Abrahamic faiths. It means understanding who our worst enemies are, and how we can support the majority of the world's Muslims — ordinary, normal people who desire to live in a safe, secure, and stable environment — in their own effort to defeat terror. In the end, Islamist terror must be defeated, to a significant extent, within Islam, by Muslims themselves.¹⁸

Senator Charles Schumer (D-NY) described the purpose of the hearings:

Mr. Chairman, by holding these hearings . . . you are doing what is necessary to ensure that we do not look back after the next terrorist attack and say, “Why did we not stop it when we had the chance?” My worry is that the Saudis, and many in this administration, are not heeding these warning signs. My worry is, by not heeding these signs, we are once again letting those who hate freedom recruit disciples in our country that might potentially do us harm. My fear, Mr. Chairman, in conclusion is that if we do not wake up and take action now, those influenced by Wahhabism's extremist ideology will harm us in, as of yet, unimaginable ways.¹⁹

The Spread of Wahhabism and the Threat from Al Qaeda

The Subcommittee gathered a great deal of information about the spread of Wahhabism. According to the noted scholar of Islam, Bernard Lewis, Saudi oil revenues have “allowed the Saudis to spread this fanatical, destructive form of Islam all over the Muslim world and among the Muslims in the West. Without oil and the creation of the Saudi kingdom, Wahhabism would have remained a lunatic fringe.”²⁰ Al Qaeda, a Wahhabi-influenced movement, has succeeded in penetrating the United States. For example:

To foil the heightened security after 9/11, Al Qaeda began to rely on operatives who would be harder to detect. They recruited U.S. citizens or people with legitimate Western passports who could move freely in the United States. They used women and family members as “support personnel.” And they made an effort to find African-American Muslims who would be sympathetic to Islamic extremism. Using “mosques, prisons and universities throughout the United

¹⁸Hearing of June 26, 2003, at 3-4 (transcript) (statement of Senator Jon Kyl).

¹⁹*Id.* at 14-15 (transcript) (statement of Senator Charles Schumer).

²⁰Michael Steinberger, *Fundamental Truths, Bernard Lewis, 85 Year-Old Scholar of Arab World and Unlikely Media Star Shares His New Found Celebrity with Michael Steinberger*, FIN. TIMES (London), Aug. 10, 2002, at P3.

States,” according to the documents, [Khalid Sheikh Mohammed (KSM), the former Al Qaeda director of global operations who was captured in Pakistan last March] reached deep into the heartland, lining up agents in Baltimore, Columbus, Ohio, and Peoria, Ill. The Feds have uncovered at least one KSM-run cell that could have done grave damage to the United States.²¹

Epicenter of Terrorist Financing

The Subcommittee’s concerns about Al Qaeda’s link to Saudi Arabia and access to Saudi financing were proven to be well founded. Larry Mefford, Assistant Director of the FBI’s Counterterrorism Division, and David Aufhauser, General Counsel of the Department of Treasury, testified about a well-organized, foreign-funded terrorist support enterprise that is networked across our country and around the world. Mr. Mefford testified that the “Al Qaeda terrorist network remains the most serious threat to U.S. interests both here and overseas.”²² Mr. Aufhauser of the Department of Treasury, a senior official who tracked terrorist financing networks, testified that Saudi Arabia is the “epicenter” of terrorist financing.²³

Two scholars, Dr. Alex Alexiev of the Center for Security Policy and Stephen Schwartz of the Foundation for the Defense of Democracies, testified before the Subcommittee that Wahhabism is an extreme form of Islam that distorts Muslim teachings, has been Saudi Arabia’s official and sole sanctioned religion for more than two centuries, and advocates violence against non-Wahhabi Muslims and against the peaceful majority of Muslims who consider Wahhabism an aberration.²⁴

²¹Evan Thomas, *Al Qaeda in America: The Enemy Within*, NEWSWEEK, June 23, 2003, at 40, 42.

²²Hearing of June 26, 2003, at 24 (transcript) (statement of Mr. Larry Mefford).

²³*Id.* at 30 (transcript) (statement of Mr. David Aufhauser). This view of Saudi Arabia was confirmed later in the year by *U.S. News & World Report*, which ran a cover story announcing that a five-month investigation by U.S. News found that “[o]ver the past 25 years, the desert kingdom has been the single greatest force in spreading Islamic fundamentalism, while its huge, unregulated charities funneled hundreds of millions of dollars to jihad groups and [A]l Qaeda cells around the world. . . . Al Qaeda, says William Wechsler the task force director [of the CIA’s Illicit Transactions Group], was ‘a constant fundraising machine.’ And where did it raise most of those funds? The evidence was indisputable: Saudi Arabia.” David E. Kaplan et al., *The Saudi Connection*, U.S. NEWS & WORLD REP., Dec. 15, 2003, at 18, 18. The story also noted that “[t]he charities were part of an extraordinary \$70 billion Saudi campaign to spread their fundamentalist Wahhabi sect worldwide.” *Id.* at 20.

²⁴*Id.* at 34-67 (transcript) (statements of Dr. Alex Alexiev and Mr. Stephen Schwartz).

Saudi Arabia

Connect the Dots

The second in the series of hearings occurred on the eve of the second anniversary of the September 11 terrorist attacks.²⁵ A week before the hearing, an FBI official warned of the presence of active Al Qaeda cells in 40 states — from Washington, D.C. to the plains of the heartland.²⁶ Chairman Kyl set forth the hearing’s objective: “The Terrorism Subcommittee is gathered here today to do its part to ensure that Americans are not attacked again. Defense of our people and our way of life at home requires that law enforcement agencies, members of Congress, and the government at large take an offensive approach to trace the roots of terror and terrorist financiers overseas and here in the U.S. homeland.”²⁷ He continued: “To defeat this threat, we must improve our ability to ‘connect the dots’ between terrorists and their supporters and sympathizers.”²⁸

Additionally, in his opening statement, Chairman Kyl commented that he was troubled by “the presence of radical Islamist groups and cells here in the United States that often have the support financially, ideologically, and even diplomatically, of the Saudi regime.”²⁹ He noted that Saudi Arabia has a deep historical and symbiotic relationship with the radical Islamist ideology of Wahhabism and that Saudis continue aggressively to export this intolerant, violent form of Islam to Muslims across the globe, and to inculcate it in the major institutions of Islam

²⁵*Terrorism: Two Years After 9/11, Connecting the Dots: Hearing Before the Subcomm. on Terrorism, Technology, and Homeland Security of the Senate Comm. on the Judiciary*, 108th Cong., 1st Sess. (Sept. 10, 2003) [hereinafter “Hearing of Sept. 10, 2003”].

²⁶Eric Lichtblau, *Al Qaeda Still Active in U.S., Counterterrorism Official Says*, N.Y. TIMES, Sept. 5, 2003, at A11.

²⁷Hearing of Sept. 10, 2003, at 1 (written statement of Senator Jon Kyl).

²⁸*Id.* at 2 (transcript) (statement of Senator Jon Kyl). In late July, Special Agent John Pistole, Acting Assistant Director for Counterterrorism for the FBI, said that the “jury [was] still out” on whether Saudi Arabia was fulfilling its promises to combat terrorist financing. Linda Robinson et al., *What’s in the Report?*, U.S. NEWS & WORLD REPORT, Aug. 11, 2003, at 20, 20 (quoting statement of Mr. Pistole before the Senate Governmental Affairs Committee).

²⁹Hearing of Sept. 10, 2003, at 4 (transcript) (statement of Senator Jon Kyl).

worldwide.³⁰ In his opening statement, Senator Schumer noted: “Experts agree that Saudi Arabia is the epicenter of Wahhabist belief and its extremist teachings.”³¹

The Subcommittee heard from two witnesses. Simon Henderson — a veteran journalist and respected expert on the Saudi Arabian royal family and related Middle Eastern subjects³² — exposed a history of activity in the Kingdom that has culminated in its current role in financing terror. He described a number of Saudi entities, some run by the government, that are involved in financing terror around the world.³³ Mr. Henderson testified that the Saudis send billions of dollars each year to spread Wahhabism throughout the world.³⁴ Some of this money is funneled through Islamic charities like the Muslim World League and the International Islamic Relief Organization, which have been linked to Al Qaeda.³⁵

Matthew Epstein — a terrorism expert, a lawyer specializing in terror finance, and assistant director of the Investigative Project in Washington, D.C. — testified on the network of American Muslim organizations, many of them recipients of the Saudi largesse described by Mr. Henderson. Mr. Epstein highlighted Saudi Arabia’s long history of sympathy, coordination, and support for terrorist groups.³⁶ As an example, he focused on the Council on American-Islamic Relations, most often known as CAIR.³⁷ Mr. Epstein testified that CAIR receives hundreds of

³⁰*Id.* at 3 (transcript) (written statement of Senator Jon Kyl). The United States Commission on International Religious Freedom similarly has expressed concern about “numerous credible reports that the Saudi government and members of the royal family directly and indirectly fund the global propagation of an exclusivist religious ideology, Wahhabism, which allegedly promotes hatred, intolerance, and other abuses of human rights, including violence. The concern is not about the propagation of Islam *per se*, but about allegations that the Saudi government’s version of Islam promotes abuses of human rights, including violent acts, against non-Muslims and disfavored Muslims.” U.S. Comm’n on Int’l Religious Freedom, *Report on Saudi Arabia*, May 2003, at 13.

³¹*Id.* at 15 (transcript) (statement of Senator Charles Schumer).

³²Mr. Henderson was a veteran journalist with the *Financial Times* of London, where he covered the 1978 Iranian revolution and the 1979 hostage crisis. He has written a biography of Saddam Hussein, *Instant Empire: Saddam Hussein’s Ambition for Iraq*, and a widely praised study of the Saudi royal family, *After King Fahad: Succession in Saudi Arabia*. In addition, Mr. Henderson recently completed a three-year term on the council of Chatham House, the Royal Institute of International Affairs.

³³Hearing of Sept. 10, 2003, at 6-12 (written statement of Mr. Simon Henderson).

³⁴*Id.* at 24 (transcript) (statement of Mr. Simon Henderson).

³⁵*Id.* at 7-8, 10 (written statement of Mr. Simon Henderson).

³⁶Hearing of Sept. 10, 2003, at 1-2 (written statement of Mr. Matthew Epstein).

³⁷Members of the CAIR were invited to testify at the Subcommittee hearing so that the organization could have its say about the serious allegations concerning its funding, ideology, leadership, and foreign and domestic networks. CAIR declined the Subcommittee’s invitation, but submitted a statement for the record. *See* Hearing of Sept. 10, 2003 (written statement of Mr. Nihad Awad). Also, Matthew Levitt — a Senior Fellow in Terrorism

thousands of dollars from Saudi individuals and organizations, that CAIR leaders had expressed support for Hamas in public meetings, and that CAIR officers had recently been indicted on terrorism-related charges throughout the United States.³⁸

Saudis Playing a Double Game

Saudi Arabia must do more to help the United States win the War on Terrorism. Consider the following:

- ▶ From 1973 through 2002, the Saudi Kingdom spent \$87 billion to promote Wahhabism abroad, as estimated by Reza F. Safa, the author of *Inside Islam*.³⁹
- ▶ MSNBC reported that members of the Saudi royal family met with, and paid homage to, Osama bin Laden both before and after the September 11 attacks.⁴⁰
- ▶ According to a task force commissioned by the Council on Foreign Relations, a leading U.S. foreign policy think tank, “[f]or years, individuals and charities based in Saudi Arabia have been the most important source of funds for [A]l-Qaeda. And for years, Saudi officials have turned a blind eye to this problem.”⁴¹

As Peter Beinart, editor of the *New Republic*, said, “There are . . . elements connected to the Saudi government that have been supporting [A]l Qaeda . . . And the Saudis for a long time have been playing a very dangerous double game. It has to stop if we're going to stop seeing these

Studies at the Washington Institute for Near East Policy, and a former FBI terror analyst — submitted written testimony entitled, “Subversion from Within, Saudi Funding of Islamic Extremist Groups: Undermining U.S. Interests and the War on Terror from Within the United States.” Mr. Levitt noted that “the foreign funding of subversive domestic organizations [in the United States] linked to designated terrorist groups poses immediate dangers to the national security of the United States.” *Id.* (written statement of Mr. Matthew Levitt).

³⁸Hearing of Sept. 10, 2003, at 34 (written statement of Mr. Matthew Epstein).

³⁹Rachel Ehrenfeld, *FUNDING EVIL, HOW TERRORISM IS FUNDED AND HOW WE CAN STOP IT* 175 (2003).

⁴⁰Andrea Mitchell, *How Strong are Saudi al-Qaida Ties?* (MSNBC television broadcast, Sept. 4, 2003) (“Two years after Osama bin Laden gave the final order to attack the World Trade Center, current and former U.S. officials tell NBC News, members of the Saudi royal family met frequently with bin Laden, both before and after 9/11.”).

⁴¹Council on Foreign Relations, *Terrorist Financing*, at 1 (Oct. 2002), at http://www3.cfr.org/pdf/Terrorist_Financing_TF.pdf. See also Lisa Beyer & Scott MacLeod, *Inside the Kingdom*, *TIME*, Sept. 15, 2003, at 38, 43 (“the Saudis have offered only ‘selective cooperation’ on the financial front, according to a senior U.S. official” and “[o]ne of the Administration’s top counterterrorism officials says the Saudis still appear to be protecting charities associated with the royal family and its friends”).

terrorist attacks.”⁴² In a *Washington Post* op-ed, Senators Kyl and Schumer expressed a similar view:

The House of Saud has for decades played a double game with the United States, on the one hand acting as our ally, on the other supporting a movement — Wahhabism — that seeks our society’s destruction. Because of other strategic interests, our government has long indulged the Saudis, overlooking their financial and structural ties to one of the world’s most violent terror organizations. After the attacks of 9/11, President Bush made clear that he would no longer play that game. He said: “Every nation will have a choice to make: Either you are with us, or you are with the terrorists.”⁴³

End Game

Chairman Kyl urged the government of Saudi Arabia to take four steps to end the double game:

- ❑ **Acknowledge the Problem:** Acknowledge that there exists a significant terrorist movement, including terrorist cells, on its soil. Also admit that Wahhabi financing of mosques and schools — and the teachings disseminated therein — have a direct correlation to violent acts of terrorism around the world.
- ❑ **Cooperate:** The Saudi government must immediately and fully cooperate with U.S. requests for law enforcement assistance and intelligence sharing, including allowing U.S. investigators access to individuals suspected of terrorist involvement. It must proactively apprehend and turn over to United States authorities individuals known to be involved in or who have carried out terrorist plots against the United States.
- ❑ **Investigate Suspected Sources of Terrorist Financing:** The Saudi government must regulate charities under Saudi control, especially those with branches disbursing funds abroad. Crucial to this is an examination of the *hawala* system, or underground banking system, which permits money transfers without actual wire transfers, making this system susceptible to abuse by terrorists. Registration, licensing, and record keeping would go far to discourage illicit *hawala* activities. And Saudi efforts must be closely coordinated with the United States and other international endeavors.

⁴²*Buchanan & Press* (MSNBC television broadcast, May 13, 2003), *cf.* Jim Hoagland, *Can Anything Change the Saudi Syndrome?*, WASH. POST, Dec. 18, 2003, at A23.

⁴³Jon Kyl and Charles Schumer, *Saudi Arabia’s Teachers of Terror*, WASH. POST, Aug. 18, 2003, at A19 (quoting President George W. Bush, Address to Joint Session of Congress, 147 CONG. REC. S9553 (daily ed. Sept. 20, 2001)).

- **Attack Incitement to Terrorism:** It must curtail all activities that reward “martyrdom,” and that instill hatred toward the West and toward those whom the extremists have branded as “infidels.” Specifically, this includes adopting measures to stop clerics who incite terrorism, and ceasing its prison *dawa*, or outreach program in the United States.⁴⁴

Radical Islamist Influence Over U.S. Military and Prison Chaplains

Terrorist Exploitation of a Free Society

For the third hearing in the series, Chairman Kyl directed the Subcommittee to focus on Wahhabist penetration of two key U.S. institutions: the military and the prison system.⁴⁵

Leading up to the hearing, media reports noted that the two groups that accredit and recommend Muslim chaplains to the military — the Graduate School of Islamic and Social Sciences and an organization under the umbrella of the American Muslim Foundation⁴⁶ — have long been suspected of links to terrorist organizations.⁴⁷ Another group accused of ties to Islamic extremists — the Islamic Society of North America — refers Muslim clerics to the U.S. Bureau of Prisons.⁴⁸

Shortly before the hearing, one of the key architects of the U.S. military’s chaplain program, Abdurahman Alamoudi, was arrested and charged with an illegal relationship with Libya, a longtime state sponsor of terror.⁴⁹ Earlier, Jose Padilla, a terrorist accused of trying to

⁴⁴“The Need for U.S.-Saudi Cooperation to Win the War on Terrorism,” Senate Republican Policy Committee, June 2, 2003, at 14.

⁴⁵*Terrorism: Radical Islamic Influence of Chaplaincy of the U.S. Military and Prison: Hearing Before the Subcomm. on Terrorism, Technology, and Homeland Security of the Senate Comm. on the Judiciary*, 108th Cong., 1st Sess. (Oct. 14, 2003) [hereinafter “Hearing of Oct. 14, 2003”].

⁴⁶American Muslim Armed Forces and Veterans Affairs Council.

⁴⁷See Laurie Goodstein, *Pentagon Says It Will Review Chaplain Policy*, NEW YORK TIMES, Sept. 28, 2003, Sec. 1, at 1.

⁴⁸See Michael Kilian, *Guantanamo Translator Held as a Spy*, CHI. TRIB., Sept. 24, 2003, at C1.

⁴⁹Douglas Farah & John Mintz, *U.S. Charges Activist Over Links to Libya; Muslim Leader Lobbied on Sanctions*, WASH. POST, Sept. 30, 2003, at A01 [hereinafter “Farah & Mintz”]. Alamoudi was detained by British authorities in London as he was about to board a plane for Syria, another state sponsor of terror, with \$340,000 in his suitcase. Farah & Mintz, at A01. Prosecutors charged Alamoudi with illegally accepting money from Libya, and also alleged that he had attempted to funnel \$340,000 to terrorists in Syria. Douglas Farah, *U.S. Says Activist Funded Terrorists; Leader of Muslim Groups Denied Bail*, WASH. POST, Oct. 1, 2003, at A06. Alamoudi is currently awaiting trial in a Virginia jail. Mary Beth Sheridan & Douglas Farah, *Jailed Muslim Had Made a Name in Washington; Alamoudi Won Respect as a Moderate Advocate*, WASH. POST, Dec. 1, 2003, at A01. Alamoudi was

build a “dirty bomb” to unleash in the United States, and who had been exposed to radical Islam in the U.S. prison system, was also arrested.⁵⁰ And Richard Reid, the so-called “shoe bomber,” who converted to fundamentalist Islam while serving time in a British prison had also been arrested.⁵¹ Noting the actions of Alamoudi, Padilla, and Reid, Chairman Kyl said, “we must understand their goals, their resources, and their methods, just as well as they understand our system of freedoms and how to exploit them for their terrible purposes. . . . We must ‘connect the dots.’”⁵²

Bureau of Prisons and Department of Defense

On October 14, 2003, the Subcommittee heard testimony from John Pistole, Assistant Director of the Counterterrorism Division of the FBI; Charles Abell, Principal Deputy Under Secretary of Defense for Personnel and Readiness at the Department of Defense; and Harley Lappin, Director of the Bureau of Prisons.

After noting that the collective assessment of the intelligence community and the FBI was that Al Qaeda remains the greatest terrorist threat to the United States,⁵³ Mr. Pistole testified that, based on a review of training manuals and interviews with detainees, the FBI believes that Al Qaeda is seeking to recruit individuals within the United States.⁵⁴ Mr. Pistole added that terrorist groups like Al Qaeda seek to exploit our freedom of religious expression to their advantage by using radical forms of Islam to recruit operatives and that U.S. correctional institutions are a viable venue for such radicalization and recruitment.⁵⁵ (Prison inmates, because they are often ostracized or isolated from family and friends, are susceptible to such recruitment.⁵⁶)

a vocal supporter of terrorist groups such as Hamas and Hezbollah. *Id.* But in the years prior to his arrest, Alamoudi had met with senior U.S. government officials to create the Islamic chaplain program, and also founded a group to recommend young Muslims to serve as clerics. *Id.*

⁵⁰Bob Drogin et al., *The Nation: “Dirty” Bomb Probe Widens; Terrorism: A Suspect Is Interrogated in Pakistan: Officials Say Plot May Have Involved an Effort to Steal Nuclear Material from a University Lab*, L.A. TIMES, June 12, 2002, at A1.

⁵¹Daniel McGrory et al., *U.K. Mosques Are Prey to Terror*, TIMES (London), Dec. 27, 2001, at Home News 1.

⁵²Hearing of Oct. 14, 2003 (written statement of Senator Jon Kyl).

⁵³*Id.* at 18-19 (transcript) (statement of Mr. John Pistole).

⁵⁴*Id.* at 19 (transcript) (statement of Mr. John Pistole).

⁵⁵*Id.* at 19 (transcript) (statement of Mr. John Pistole).

⁵⁶*Id.* at 20 (transcript) (statement of Mr. John Pistole).

The hearing elicited information that demonstrates that the terrorist threat to the chaplaincy programs is underappreciated by those in charge. For example, the Subcommittee was troubled by responses to questions about who funds the accrediting groups. Senator Feinstein (D-CA) asked: “Do you know who funds [these] organizations? Do you know where the money comes from?” Mr. Abell of the Department of Defense replied: “Only what I read in the papers.”⁵⁷ Mr. Lappin of the Bureau of Prisons replied: “I am not familiar with who funds them.”⁵⁸

At the hearing, witnesses from the Department of Defense and the Bureau of Prisons both conceded that the existing criteria used to select accrediting groups were not good enough.⁵⁹ Mr. Abell of the Department of Defense and Mr. Lappin of the Bureau of Prisons admitted that they rely on only two groups each to accredit and recommend Muslim chaplains.⁶⁰ Mr. Abell testified that the Department of Defense would no longer give one or two organizations sole authority to recommend chaplains, and that this would be a major part of the Department’s new chaplain policy.⁶¹ Mr. Abell also stated that if an accrediting group was funded by Saudi Arabia and promoted the religious beliefs of Wahhabism, the Department would cease to recognize that group as an accreditor.⁶² Mr. Lappin of the Bureau of Prisons stated that chaplain candidates would not be hired if they were referred by a group under investigation.⁶³

Mr. Abell testified that the morning of the hearing he had signed a Department of Defense memorandum that requires that an organization have IRS 501(c)(3) tax exempt status before it can certify individuals as acceptable chaplains.⁶⁴ This is a minor change, unrelated to the terrorist relationship; and the Subcommittee was, therefore, concerned that the witness failed to appreciate what would really be required to fundamentally reform the military’s chaplaincy program of recruitment.

Finally, the Subcommittee also heard from Dr. Michael Waller, Annenberg Professor of International Communication at the Institute of World Politics, who testified that foreign states and movements have been financing the promotion of radical, political Islam within America’s

⁵⁷*Id.* at 43 (transcript) (statement of Honorable Charles Abell).

⁵⁸*Id.* at 43 (transcript) (statement of Honorable Charles Abell).

⁵⁹*Id.* at 58 (transcript) (statements of Honorable Charles Abell and Mr. Harley Lappin).

⁶⁰*Id.* at 39-42 (transcript) (statements of Honorable Charles Abell and Mr. Harley Lappin).

⁶¹*Id.* at 39 and 43 (transcript) (statement of Honorable Charles Abell).

⁶²*Id.* at 44 (transcript) (statement of Honorable Charles Abell).

⁶³*Id.* at 44-45 (transcript) (statement of Mr. Harley Lappin).

⁶⁴*Id.* at 25-26 (transcript) (statement of Honorable Charles Abell).

armed forces and prisons.⁶⁵ He said that this radical Islam preaches extreme intolerance and hatred of American society, culture, government, and the principles enshrined in the U.S. Constitution; it seeks the ultimate overthrow of our Constitution.⁶⁶ Finally, he pointed out that terrorists have exploited Americans' religious tolerance, and the chaplain programs in particular, as key elements of infiltrating the military and the prisons.⁶⁷

To identify means of preventing terrorists from continuing to penetrate important government institutions, such as the military and prisons, Chairman Kyl requested briefings after the hearing and asked the Office of the Inspector General at both the Department of Defense and the Department of Justice to review the chaplain programs and report back to the Subcommittee in the first part of 2004 with changes in procedures.

First Responders

Responding to Terrorist Attacks

In addition to investigating the roots of terrorist ideology and terrorist support networks, the Subcommittee examined the nation's ability to respond to terrorist attacks. The Subcommittee held a hearing⁶⁸ to review the report, "Drastically Underfunded, Dangerously Unprepared,"⁶⁹ which was prepared by the Independent Task Force on Emergency Responders sponsored by the Council on Foreign Relations.

The chairman of the task force, former Senator Warren Rudman, and Dick Clarke, Senior Advisor to the Council on Foreign Relations, presented the task force's report and its chilling conclusion: "[T]he United States must assume that terrorists will strike again" and "the United States remains dangerously ill-prepared to handle a catastrophic attack on American soil."⁷⁰ They recommended that sufficient resources within our limited budget be allocated to address

⁶⁵*Id.* at 2 (written statement of Dr. Michael Waller).

⁶⁶*Id.* at 2 (written statement of Dr. Michael Waller).

⁶⁷*Id.* at 3 (written statement of Dr. Michael Waller).

⁶⁸*Terrorism: First Responders: Hearing Before the Subcomm. on Terrorism, Technology, and Homeland Security of the Senate Comm. on the Judiciary*, 108th Cong., 1st Sess., at 1 (Sep. 3, 2003) (written statement of Dr. Paul Posner) [hereinafter "Hearing of Sept. 3, 2003"]; see also *Domestic Preparedness in the Next Millennium: Joint Hearing of the Subcomm. on Youth Violence and the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 106th Cong., 1st Sess. (Apr. 20, 1999) (S. Hrg. 106-424, Serial No. J-106-18).

⁶⁹Available at <http://www.cfr.org/pubs.php?year=2003&type=reports>.

⁷⁰*Emergency Responders Report* at 1.

identified threats and vulnerabilities. As the report says, “the federal government should consider such factors as population, population density, vulnerability assessment, and presence of critical infrastructure within each state.”⁷¹

At the hearing, Dr. Paul Posner of the General Accounting Office (GAO) made a similar point: “Given the many needs and high stakes involved, it is all the more important that the structure and design of federal grants be geared to fund the highest priority projects with the greatest potential impact for improving homeland security.”⁷²

Chairman Kyl concurred with the need for the government to allocate sufficient money wisely, based on an accurate threat analysis:

[I]n its report, the Council says, “In some respects, there is no natural limit to what the United States could spend on emergency preparedness. The United States could spend the entire gross domestic product (GDP) and still be unprepared, *or wisely spend a limited amount and end up sufficiently prepared.*” If it does the former, if it just throws money at the problem, then, as the Council observed, “the United States will have created an illusion of preparedness based on boutique funding initiatives without being systematically prepared. The American people will feel safer because they observe a lot of activity, not be safer because the United States has addressed its vulnerabilities.”⁷³

A targeted, needs-based system should be developed for high-risk states and counties; border counties and states, which are high-risk by definition, should receive a more equitable proportion of first responder funding.⁷⁴

Faster and Smarter Funding

Representative Christopher Cox, Chair of the House Select Committee on Homeland Security, testified before the Subcommittee about ways to improve funding allocations. His proposal is based on the following principles:

⁷¹*Id.* at 4.

⁷²Hearing of Sept. 3, 2003, at 1 (written statement of Dr. Paul Posner).

⁷³*Id.* at 3 (written statement of Senator Jon Kyl (quoting *Emergency Responders Report* at 8 (emphasis added))).

⁷⁴*See id.* at 4 (written statement of Senator Jon Kyl).

- *Threat analysis:* Federal grants should be distributed to state and local governments based on an authoritative assessment of the greatest risk.⁷⁵
- *Rapid distribution of funding:* Funding should reach its intended first responders as quickly as possible.⁷⁶
- *Regional cooperation:* Funding priorities should reward communities that successfully develop interoperability plans and work across jurisdictional lines.⁷⁷

The Cox bill (H.R. 3266) was introduced after the hearing, at the end of the first session of the 108th Congress. The Subcommittee will consider this bill after the House acts on it.

Keeping Terrorists Out of the United States

Border Technology

In the aftermath of September 11, the Department of Homeland Security was created and 22 different agencies were brought together to better coordinate efforts to protect the United States and its citizens against terror threats. Among the Department's core responsibilities is preventing terrorists from entering the country. The September 11 hijackers entered the United States through a legitimate immigration process which failed to catch inaccuracies in their student and tourist visa applications, and which failed to alert officials at the Immigration and Naturalization Service (INS) to the fact that they remained in the country after those visas expired. Had certain databases and other immigration and visa security measures been in place, INS could have known that the terrorists had overstayed their visas and might have been able to prevent the tragedy of September 11 by expelling the hijackers from the country.⁷⁸

On March 12, 2003, the Subcommittee held a joint hearing with the Subcommittee on Immigration, Border Security, and Citizenship, entitled "Border Technology: Keeping Terrorists Out of the United States."⁷⁹ This hearing complemented the Subcommittee's October 2002

⁷⁵*Id.* at 15-16 (transcript) (statement of Representative Christopher Cox).

⁷⁶*Id.* at 15-17 (transcript) (statement of Representative Christopher Cox).

⁷⁷*Id.* at 15-16 (transcript) (statement of Representative Christopher Cox).

⁷⁸Leonel Sanchez & Marisa Taylor, *450 Screened at S.D. Airport as Traveler-Tracking Process Starts: Foreign Visitors Have Mixed Views on Federal Plan*, SAN DIEGO UNION-TRIB., Jan. 6, 2004, at A3.

⁷⁹Hearing of Mar. 12, 2003 (S. Hrg. 108-148, Serial No. J-108-5).

hearing about how technology could be used to prevent terrorist entry into the United States.⁸⁰ The three primary purposes of the joint hearing were (i) to review the progress of the Administration, in particular the Department of Homeland Security, in implementing the technology systems that Congress had specifically mandated in the Enhanced Border Security and Visa Entry Reform Act of 2001; (ii) to examine the existing Customs Service infrastructure and technology policies and identify the additional infrastructure and technology needed at U.S. land ports of entry; and (iii) to examine the technology and other needs along the borders between ports of entry. In short, the hearing focused on the technology and infrastructure needed by the Department of Homeland Security to implement programs to better prevent terrorists from entering the United States. The Enhanced Border Security and Visa Reform Act mandated such terror prevention programs and infrastructures.

The Enhanced Border Security and Visa Reform Act

The Enhanced Border Security and Visa Reform Act was enacted in 2002 to prevent terrorists from exploiting our nation's visa processing and inspection system. Terrorists had been able to exploit the system in three ways: first, they could enter the United States with valid, or at least facially valid, visas issued by the Department of State; second, terrorists, smugglers, and illegal immigrants could use fraudulent documents to enter the country; and third, individuals could be smuggled into the country.⁸¹

The Enhanced Border Security and Visa Reform Act requires the implementation of a series of technology-related tools and infrastructure to address these weaknesses and prevent terrorists from entering the country. The act requires an automated Entry-Exit system (which would track entry and exit information on all individuals who hold travel documents); the creation of biometric travel documents; the implementation of biometric data readers and scanners at all points of entry; the implementation of the Chimera Interoperable Data System to integrate all INS databases of intelligence information relevant to making decisions on visa admissibility and removal of aliens; and the Mexican Laser Visa and Reader Program, which would require such visas to contain a biometric identifier.

Border Security Challenges

Among the witnesses at the March 12, 2003 Subcommittee hearing were Asa Hutchinson, Under Secretary for Border and Transportation Safety at the Department of Homeland Security; Nancy Kingsbury, Managing Director of Applied Research and Methods at the General Accounting Office; and Stephen Flynn, Jeanne J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations.

⁸⁰*The Role of Technology in Preventing the Entry of Terrorists into the United States: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 107th Cong., 1st Sess. (Oct. 12, 2001) (S. Hrg. 107-611, Serial No. J-107-43).

⁸¹Hearing of Mar. 12, 2003, at 2 (S. Hrg. 108-148, Serial No. J-108-5) (statement of Senator Jon Kyl).

Under Secretary Hutchinson testified about visa issuance and border security challenges that faced the Department of Homeland Security in the aftermath of September 11, as well as the Department's efforts to improve the visa-issuance program and comply with the congressionally mandated deadlines for implementation of homeland security technology. At the time of the hearing, the Department expected to meet the December 31, 2003 deadline for implementation of the Exit-Entry system, and had already begun registering aliens through the National Security Entry Exit Registration System (NSEERS).⁸² In fact, some 88,989 people had been registered and eight terror suspects had been arrested through NSEERS.⁸³ Other programs, such as the Biometric Verification System and the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), a system used at land ports of entry to identify and validate international travelers who regularly cross the border, were successful in identifying suspected terrorists who attempted to enter the United States.⁸⁴ Those programs were to be expanded, and additional Border Patrol agents were to be deployed to U.S. borders with FY 2003 DHS funding.⁸⁵

A highly effective way to verify the identity of individuals who seek to enter the United States, and thus prevent suspected terrorists from entering, is the use of a biometric identifier. Several biometric programs are being used to control the border, including the Automated Fingerprint Identification System (IDENT), which identifies aliens who repeatedly attempt to enter the United States.⁸⁶ The GAO's Ms. Kingsbury explained the feasibility, cost, and utility of biometric technology in border security.⁸⁷ While Ms. Kingsbury agreed that biometrics are an efficient way to identify and document individuals who attempt to enter the country, she also stressed that in order to have an effective biometrics program, an effective program to register those individuals must be instituted.⁸⁸

To prevent dangerous terror-related goods from entering the United States, the Department of Homeland Security implemented 112 non-intrusive cargo inspection systems at air, sea, and land ports of entry, and planned to deploy additional systems.⁸⁹ Trade data was also

⁸²*Id.* at 14, 21 (S. Hrg. 108-148, Serial No. J-108-5) (statement of Honorable Asa Hutchinson).

⁸³*Id.* at 57 (S. Hrg. 108-148, Serial No. J-108-5) (written statement of Honorable Asa Hutchinson).

⁸⁴*Id.* at 58 (S. Hrg. 108-148, Serial No. J-108-5) (written statement of Honorable Asa Hutchinson).

⁸⁵*Id.* at 58 (S. Hrg. 108-148, Serial No. J-108-5) (written statement of Honorable Asa Hutchinson).

⁸⁶*Id.* at 66 (S. Hrg. 108-148, Serial No. J-108-5) (written statement of Ms. Nancy Kingsbury).

⁸⁷*Id.* at 63 (S. Hrg. 108-148, Serial No. J-108-5) (written statement of Ms. Nancy Kingsbury, citing GAO, *Technology Assessment: Using Biometrics for Border Security*, GAO-03-174 (Nov. 15, 2002)).

⁸⁸*Id.* at 31-33, 37 (S. Hrg. 108-148, Serial No. J-108-5) (statement of Ms. Nancy Kingsbury).

⁸⁹*Id.* at 59 (S. Hrg. 108-148, Serial No. J-108-5) (written statement of Honorable Asa Hutchinson).

collected under the Automated Commercial Environment (ACE) to identify high risk cargo and target it for inspection without interrupting the flow of trade across U.S. borders.⁹⁰

Mr. Flynn of the Council on Foreign Relations testified that the United States remained open to, and unprepared to prevent or respond to, terrorists attacks, and that additional resources are essential to protect the United States against terrorism. Those resources include funding for staffing, training, infrastructure, and technology, among other things. As discussed earlier in this report, due to budget constraints, the best way to effectively fund homeland security is by analyzing the risks of terrorist-related activity to points of entry and allocating funds on the basis of need.⁹¹ Intelligence must be gathered so that priority can be given to high risk ports — whether they be land, sea, or air — to maximize our ability to prevent terrorists from entering the country.⁹²

Looking Ahead

Significant progress toward terrorism prevention has been made since March of 2003: The United States Visitor and Immigrant Status Indicator Technology (US-VISIT) was implemented on January 5, 2004 at 115 airports and 14 seaports.⁹³ The program collects fingerprints and photographs so that an individual's entry into, and eventually his exit from, the United States can be confirmed. The Department of Homeland Security and the Department of State signed a Memorandum of Understanding in September of 2003 giving the former the responsibility for establishing and administering visa issuance rules, as mandated in Section 428 of the Homeland Security Act, while allowing the State Department to retain the technical responsibility for issuing visas.

Legislation aimed at homeland security was also introduced. S.746, the Anti-Terrorism and Port Security Act of 2003, introduced by Senators Feinstein and Kyl, would focus inspection of cargo containers on high risk containers, require the Department of Homeland Security to inspect such cargo before it arrives in the United States, and create additional security requirements for seaports.

The Subcommittee's hearing helped to publicize what the government has done to ensure public safety, and the importance of continuing funding for terrorism-prevention programs and infrastructure. While numerous steps have been taken to protect the United States from terrorist activity in the aftermath of September 11, the nation still has a significant way to go toward

⁹⁰*Id.* at 60 (S. Hrg. 108-148, Serial No. J-108-5) (written statement of Honorable Asa Hutchinson).

⁹¹*Id.* at 46 (S. Hrg. 108-148, Serial No. J-108-5) (written statement of Mr. Stephen Flynn).

⁹²*Id.* at 35-36 (S. Hrg. 108-148, Serial No. J-108-5) (written statement of Mr. Stephen Flynn).

⁹³Press Release, U.S. Department of Homeland Security, *DHS Launches US-VISIT Program Nationwide to Enhance Security, Facilitate Travel* (Jan. 5, 2004).

preventing another terrorist tragedy. It is obvious that the implementation of immigrant tracking databases such as the US-VISIT and NSEERS are workable and successful; however, those programs alone will not ensure the safety of U.S. citizens in their homeland.

Narco-Terrorism

Cooperation Between International Terrorists and International Drug Traffickers

To examine the problem of narco-terrorism, Senators Hatch (R-UT) and Kyl collaborated in holding full Judiciary Committee hearings. One example was the full Committee hearing on May 20, 2003 to examine narco-terrorism and evaluate the effectiveness of current federal policies, practices, and laws.⁹⁴ The Committee's hearing, which Senator Kyl chaired, followed a hearing held by the Terrorism Subcommittee in 2002 about illegal drugs and their links to terrorism in two parts of the world, Afghanistan and Colombia.⁹⁵ The Subcommittee and Committee hearings revealed that a significant and growing connection exists between international drug traffickers and terrorists.

The Department of State has attested to the connections between Osama bin Laden and drug trafficking. The following was posted on its website:

Osama bin Laden and his organization finance many of their terrorist activities through the drug trade. In fact, on October 25, 2001, *The Herald* (Glasgow) reported, "Osama bin Laden financed the development of a highly-addictive liquid heroin which he named 'The tears of Allah' as part of his multi-pronged terrorist campaign to destabilize western society. . . . One source said yesterday: 'It should be called the Devil's Brew rather than Allah's tears. It is a one-way ticket to addiction and death.'" The United Nations has also weighed in on the Taliban and [A] Qaeda connection to the drug trade. According to a U.N. Committee of Experts report on Resolution 1333 (May 2001), "Funds raised from the production and trading of opium and heroin are used by the Taliban to buy arms and other war materiel, and to finance the training of terrorists and support the operations of extremists in neighboring countries and beyond."⁹⁶

⁹⁴*Narco-Terrorism: International Drug Trafficking and Terrorism — A Dangerous Mix, Hearing Before the Senate Comm. on the Judiciary, 108th Cong., 1st Sess. (May 20, 2003) (S. Hrg. 108-173, Serial No. J-108-12) [hereinafter "Hearing of May 20, 2003"].*

⁹⁵*Narco-Terror: The Worldwide Connection Between Drugs & Terror: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary, 107th Cong., 2nd Sess. (Mar. 13, 2002) (S. Hrg. 107-885, Serial No. J-107-66).*

⁹⁶U.S. State Department, *The Global War on Terrorism: The First Hundred Days*, at <http://www.state.gov/s/ct/rls/rpt/6947.htm> (last visited Jan. 15, 2004).

Several terrorist groups have been found to benefit, directly or indirectly, from drug-trafficking activities. The form of such relationships varies among groups and areas in the world. Some terrorist groups are directly involved in the trafficking of illegal drugs; some are indirectly involved in raising funds by providing security for, or taxing, traffickers who transport drugs through areas controlled by the terrorist groups; and some terrorist groups support the actual cultivation of illegal drugs, such as coca or opium. Examples abound:

- In Houston, Texas, in November 2002, four members of the United Self-Defense Groups of Colombia were caught trying to exchange \$25 million in cash and cocaine for weapons, including shoulder-fired anti-aircraft missiles, 53 million rounds of ammunition, 9,000 rifles, rocket-propelled grenade launchers, along with almost 300,000 grenades to be used by the group's operatives.⁹⁷
- In San Diego, California, in November 2002, two Pakistani nationals and a U.S. citizen were charged with attempting to exchange 6,000 kilograms of heroin and five metric tons of hashish for cash and four anti-aircraft missiles to supply to the Taliban and Al Qaeda associates.⁹⁸
- In April 2003, the FBI and DEA disrupted a major Afghanistan-Pakistan heroin-smuggling operation with the arrest of 16 individuals. This operation was shipping heroin to the United States, laundering profits from the sale of heroin through Afghan- and Pakistani-owned businesses in the United States, and then sending money back to Afghanistan and India to finance terrorists.⁹⁹
- In the Persian Gulf, during a two-week period in late December of 2003 and early January of 2004, U.S. naval forces intercepted three ships carrying over three tons of marijuana. At least three of the crewmen seized were identified as having ties to Al Qaeda.¹⁰⁰

⁹⁷Hearing of May 20, 2003, at 2-3 (S. Hrg. 108-173, Serial No. J-108-12) (statement of Senator Orrin Hatch).

⁹⁸*Id.* at 3 (S. Hrg. 108-173, Serial No. J-108-12) (statement of Senator Orrin Hatch).

⁹⁹*Id.* at 3 (S. Hrg. 108-173, Serial No. J-108-12) (statement of Senator Orrin Hatch).

¹⁰⁰Victoria Burnett and Mark Huband, *UK Trains Afghans in anti-Drugs Drive: Kabul and Its Allies Have Struggled to Formulate a Coherent Policy for Tackling Heroin Traffickers, Says Victoria Burnett*, FIN. TIMES (London), Jan. 10, 2004, at 8.

Global Phenomenon

Money is the primary link between terrorism and illegal narcotics.¹⁰¹ Before 1991, states aligned with the Soviet Union financed most international terrorism. Within three years of the Soviet Union's collapse, the number of Marxist-aligned terrorist groups fell by half. State sponsorship of terrorism has also come under increased scrutiny and greater international condemnation.¹⁰² Several terrorist groups have turned to drug trafficking as a substitute source of financing.¹⁰³

Narco-terrorism is a world-wide problem.¹⁰⁴ In South America, the State Department has officially designated the National Liberation Army (ELN), the Revolutionary Armed Forces of Colombia (FARC), and the United Self-Defense Groups of Colombia (AUC) as terrorist organizations.¹⁰⁵ Hezbollah and the Islamic Resistance Movement (known as Hamas) operate in the tri-border Area of Paraguay, Argentina, and Brazil. The Kurdish Workers Party (PKK) operates among violent separatist Kurds in Turkey.¹⁰⁶ The United Wa State Army is the largest heroin and methamphetamine-producing organization in Southeast Asia.¹⁰⁷ The Abu Sayyaf Group engages in kidnaping, drug smuggling, extortion, and other profitable criminal activity in support of its goal of establishing a separate Islamic state in the Philippines.¹⁰⁸ This far-flung group of terrorist organizations connected to narcotics and other illicit activities indicates the global scope of the narco-terror problem. An official of the DEA testified that "the nexus between drugs and terrorism is perilously evident."¹⁰⁹

Terrorists use several types of money-laundering schemes to conduct financial transactions without drawing government scrutiny. At the May 20, 2003 full Judiciary

¹⁰¹Hearing of May 20, 2003, at 76 (S. Hrg. 108-173, Serial No. J-108-12) (written statement of Mr. Larry Johnson).

¹⁰²*Id.* at 94 (S. Hrg. 108-173, Serial No. J-108-12) (written statement of Ms. Deborah McCarthy).

¹⁰³*Id.* at 94 (S. Hrg. 108-173, Serial No. J-108-12) (written statement of Ms. Deborah McCarthy).

¹⁰⁴In the United States, a number of agencies are involved in fighting narco-terrorism: the Bureau of Immigration and Customs Enforcement (BICE), the FBI, the Drug Enforcement Agency (DEA), the State Department Bureau of International Narcotics and Law Enforcement Affairs (INL), and the CIA.

¹⁰⁵Hearing of May 20, 2003, at 110 (S. Hrg. 108-173, Serial No. J-108-12) (written statement of Mr. Raphael Perl).

¹⁰⁶*Id.* at 2 (S. Hrg. 108-173, Serial No. J-108-12) (statement of Senator Orrin Hatch).

¹⁰⁷*Id.* at 9 (S. Hrg. 108-173, Serial No. J-108-12) (statement of Mr. Steven Casteel).

¹⁰⁸Uli Schmetzer, *Fighting Terror with Goodwill in Philippines: U.S. Provides Aid to Win Over Locals*, CHI. TRIB., Feb. 2, 2003, at 4.

¹⁰⁹Hearing of May 20, 2003, at 10 (S. Hrg. 108-173, Serial No. J-108-12) (statement of Mr. Steven Casteel).

Committee hearing, Deborah McCarthy, of the State Department's Bureau for International Narcotics and Law Enforcement Affairs, outlined several ways to combat money laundering: first, governments should ensure a firm legal foundation that criminalizes both money laundering and terrorist financing, and that provides investigators and prosecutors with the necessary tools to use against sophisticated organizations; second, they should assist legitimate financial institutions in preventing abuse by criminal elements and terrorist organizations; third, they should provide investigators with training in the conduct of financial investigations; and fourth, they should provide prosecutors and judges with instruction in the complexities of money laundering, terrorist financing, asset blocking, and forfeiture.¹¹⁰ These building blocks would establish a foundation for combating money laundering with tough, consistent law-enforcement operations.

Narco-Terror Problem Also an Opportunity

Terrorists have turned to drug trafficking for funding, and in so doing, have become more susceptible to law enforcement actions that target drug trafficking, money laundering, and smuggling.¹¹¹ The federal government should enhance the intelligence capabilities and training supporting these law enforcement activities. The Subcommittee will continue to periodically reexamine the progress against narco-terrorist activity, and the suitability of federal laws to the evolving narco-terrorist threat.

Database Security

Preventing Unauthorized Access

The Subcommittee also looked at ways to prevent terrorists and other criminals from hacking into databases to obtain Social Security numbers, driver's licenses, and financial information. On November 4, 2003, Chairman Kyl convened a hearing at which the Subcommittee heard testimony from three expert witnesses.¹¹²

David McIntyre, the President and CEO of TriWest Healthcare Alliance, testified about a December 2002 break-in at its Phoenix, Arizona offices. Thieves stole laptop computers and computer hard drives containing the names, addresses, telephone numbers, birth dates, and Social Security numbers of 562,000 military service members, dependents, and retirees.¹¹³ The thieves

¹¹⁰*Id.* at 99-100 (S. Hrg. 108-173, Serial No. J-108-12) (written statement of Ms. Deborah McCarthy).

¹¹¹*Id.* at 30 (S. Hrg. 108-173, Serial No. J-108-12) (statement of Mr. Raphael Perl).

¹¹²*Database Security: Finding Out When Your Information Has Been Compromised: Hearing Before the Subcomm. on Terrorism, Technology, and Homeland Security of the Senate Comm. on the Judiciary, 108th Cong., 1st Sess. (Nov. 4, 2003) [hereinafter "Hearing of Nov. 4, 2003"].*

¹¹³Hearing of Nov. 4, 2003, at 4 (written statement of Mr. David McIntyre).

also stole medical claims records for people on active duty in the Persian Gulf.¹¹⁴ The motivation behind the crime is unknown, because the thieves were never found.¹¹⁵ The potential harm to a group this large, particularly to those who wear the uniform of this country, was staggering. Due to TriWest's prompt and thorough response¹¹⁶, not a single individual has suffered identity theft as a result of this crime.¹¹⁷

Mark MacCarthy, Senior Vice President of Public Policy for the Visa USA credit card company, testified about the steps that Visa takes to avoid database security breaches and notify its customers of any security breach that does occur.¹¹⁸ Evan Hendricks, Editor of *Privacy Times*, also testified about the increasing number of database security breaches, the types of information stolen from databases, the failure to notify consumers of such breaches, and the value of notification.¹¹⁹

The witnesses' testimony confirmed that databases are tempting targets that must be safeguarded to protect valuable personal and financial data from compromise.

The Notification of Risk to Personal Data Act

Recognizing the gravity of the threat, the Subcommittee is reviewing S. 1350, the Notification of Risk to Personal Data Act, introduced by Senator Feinstein. S. 1350 would require businesses maintaining computerized databases that include customers' sensitive personal information to inform customers of hacking incidents that could compromise such data. The bill's notification requirements would be triggered if a hacker obtained access to a customer's Social Security number, driver's license number, or bank account, debit card, or credit card number. Notice would be provided to individuals in writing, by e-mail, or by

¹¹⁴*Id.* at 9 (transcript) (statement of Mr. David McIntyre).

¹¹⁵*Id.* at 4 (transcript) (written statement of Mr. David McIntyre).

¹¹⁶Upon discovering the theft, TriWest worked "around the clock" to contact the affected individuals and assist them in placing fraud flags on their credit files. *Id.* at 5 (written statement of Mr. David McIntyre). Within a few weeks, TriWest had contacted each of the affected individuals, created a web site and call center to answer questions about identity theft issues, and coordinated with the three credit bureaus to provide information on preventing identity theft and how to place fraud alerts in individual credit files. *Id.* at 5-6 (written statement of Mr. David McIntyre).

¹¹⁷*Id.* at 9 (written statement of Mr. David McIntyre).

¹¹⁸*Id.* at 3-4 (written statement of Mr. Mark McCarthy).

¹¹⁹*Id.* (written statement of Mr. Evan Hendricks).

substitute notice. Substitute notice can be used to avoid undue burdens on agencies or companies.¹²⁰

Document Security

Identity Theft: A “Key Catalyst” for Terrorist Groups

In addition to database security, the Subcommittee is concerned about document security. Since 1998, the Subcommittee has held numerous hearings on identity theft and fraud.¹²¹ During a Subcommittee hearing in July, 2002, Dennis Lormel, Chief of the FBI’s Terrorist Financial Review Group, testified that identity theft was a “key catalyst” for terrorist groups.¹²² He said that identity theft posed an “alarming” threat and that “terrorists have long utilized identity theft as well as Social Security Number fraud to enable them to obtain . . . cover employment and access to secure to locations.”¹²³

¹²⁰Substitute notice includes notice by e-mail, the posting of notice on the company or agency website, or the notification of major media. Substitute notice is allowed if (i) the company demonstrates that the cost of providing direct notice would exceed \$250,000; (ii) the number of subject persons to be notified exceeds 500,000; or (iii) the company does not have sufficient contact information to notify people whose information is at risk.

¹²¹*See Identity Theft Penalty Enhancement Act of 2002: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 107th Cong., 2nd Sess. (July 9, 2002) (S. Hrg. 107-900, Serial No. J-107-68) [hereinafter “Hearing of July 9, 2002”]; *Identity Theft: Restoring Your Good Name: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 107th Cong., 2nd Sess. (Mar. 20, 2002) (S. Hrg. 107-900, Serial No. J-107-68); *Privacy, Identity Theft, & the Protection of Your Personal Information in the 21st Century: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 107th Cong., 2nd Sess. (Feb. 14, 2002) (S. Hrg. 107-852, Serial No. J-107-60); *Biometric Identifiers & the Modern Face of Terror: New Technologies in the Global War on Terrorism: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 107th Cong., 1st Sess. (Nov. 14, 2001) (S. Hrg. 107-657, Serial No. J-107-46A); *Identity Theft: How to Protect and Restore Your Good Name: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 106th Cong., 2nd Sess. (July 12, 2000) (S. Hrg. 106-902, Serial No. J-106-97); *Identity Theft: When Bad Things Happen to Your Good Name: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 106th Cong., 2nd Sess. (Mar. 7, 2000) (S. Hrg. 106-885, Serial No. J-106-70); *The Identity Theft and Assumption Deterrence Act: S. 512: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 105th Cong., 2nd Sess. (May 20, 1998) (S. Hrg. 105-845, Serial No. J-105-104).

¹²²Hearing of July 9, 2002, at 89 (S. Hrg. 107-900, Serial No. J-107-68) (written statement of Mr. Dennis Lormel).

¹²³*Id.* at 89-90 (S. Hrg. 107-900, Serial No. J-107-68) (written statement of Mr. Dennis Lormel).

GAO Report

Confirming Mr. Lormel's testimony, the General Accounting Office (GAO) concluded an investigation in September 2003 and found significant security vulnerabilities in eight states. The GAO tested for the ease with which driver's licenses (the primary form of identification used by U.S. citizens for such things as boarding airplanes and opening bank accounts) could be obtained by terrorists and other criminals.¹²⁴ Separate investigations revealed that terrorists could easily use fraudulent documents to obtain Social Security numbers or enter federal buildings without challenge.¹²⁵

The GAO investigation reviewed the procedures of motor vehicle offices in eight states, including Arizona, between July, 2002 and May, 2003. Undercover agents attempted to apply for state driver's licenses using fictitious names, counterfeit documents, and counterfeit out-of-state driver's licenses. The agents did provide valid Social Security numbers. The GAO found that, in every case, motor vehicle employees failed to identify any of the documents as fraudulent. While some employees noted irregularities in the documents, all the false documents were eventually returned to the GAO agents and driver's licenses were granted.

The GAO also used fraudulent documents to obtain valid Social Security numbers by mail and by posing as parents of newborn children, using fraudulent birth certificates. Fraudulent documents were also used to infiltrate federal buildings in Atlanta and to enter the United States from Jamaica, Barbados, Mexico, and Canada. None of the tested officials recognized the fraudulent nature of the documents presented to them.

Key Methods for Terrorist Infiltration

It is clear from the GAO's report that terrorists and other dangerous criminals can pass as U.S. citizens or steal Americans' very identities with alarming ease. Robert Cramer, the Managing Director of the GAO, who oversaw the investigations, testified, "The weaknesses we found during these investigations clearly show that border inspectors, motor vehicle departments, and firearms dealers need to have the means to verify identity and to determine whether out-of-state driver's licenses presented to them are authentic."¹²⁶

Department of Homeland Security Under Secretary Asa Hutchinson and John Pistole, Acting Assistant Director of the FBI's Counterterrorism Division, have said that expertly forged

¹²⁴GAO Report, *Soc. Sec. Numbers: Improved SSN Verification & Exchange of States' Driver Records Would Enhance Identity Verification*, GAO-03-920, at 3 (Sept. 2003).

¹²⁵*Homeland Security and Terrorism Threat from Document Fraud, Identity Theft and Social Security Number Misuse: Hearing Before the Senate Comm. on Finance*, 108th Cong., 1st Sess. (Sept. 9, 2003) (written statement of Mr. John Pistole) [hereinafter "Hearing of Sept. 9, 2003"].

¹²⁶Hearing of Sept. 9, 2003 (written statement of Mr. Robert Cramer).

driver's licenses and the theft and misuse of Americans' Social Security numbers have become key methods for terrorist infiltration into the United States.¹²⁷

Chairman Kyl said that the GAO's investigation "shows a dangerous lapse in the ability of state and federal employees to detect and deter document fraud, which is often the first step terrorists must take to assimilate themselves in the United States and form sleeper cells."¹²⁸

Cyber Terrorism

A Frightening Possibility

To follow up on the Subcommittee's hearing on database security, and to complement the Subcommittee's previous hearings on cyber terrorism,¹²⁹ Chairman Kyl announced that the Subcommittee will hold a hearing in 2004 on cyber terrorism.¹³⁰ The Subcommittee intends to gain a better understanding of the existing cyber threat and how to deter cyber terrorists. In March 2003, computer hackers took advantage of a security flaw in Microsoft's Windows 2000 Server to break into a number of U.S. Army computers.¹³¹ In September 2003, the FBI apprehended a high-school senior who law-enforcement officials suspected of launching a

¹²⁷*Id.* (written statements of Honorable Asa Hutchinson and Mr. John Pistole).

¹²⁸Sergio Bustos, *Investigators Expose Lax Security at Driver's License Offices*, GANNETT NEWS SERVICE, Sept. 9, 2003, available at 2003 WL 5603090.

¹²⁹See *Improving Our Ability to Fight Cybercrime: Oversight of the National Infrastructure Protection Center: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 107th Cong., 1st Sess. (July 25, 2001) (S. Hrg. 107-366, Serial No. J-107-22); *Cyber Attack: Improving Prevention and Prosecution: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 106th Cong., 2nd Sess. (Apr. 21, 2000) (S. Hrg. 106-838, Serial No. J-106-79); *Cyber Attacks: Removing Roadblocks to Investigation and Information Sharing: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 106th Cong., 2nd Sess. (Mar. 28, 2000) (S. Hrg. 106-839, Serial No. J-106-72); *Cyber Attacks: The National Protection Plan and Its Privacy Implications: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 106th Cong., 2nd Sess. (Feb. 1, 2000) (S. Hrg. 106-889, Serial No. J-106-62). See also *Critical Infrastructure Protection: The Threat Is Real: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 106th Cong., 1st Sess. (Oct. 6, 1999) (S. Hrg. 106-858, Serial No. J-106-53); *Critical Infrastructure Protection: Toward a New Policy Directive: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 105th Cong., 2nd Sess. (Mar. 17, 1998) (S. Hrg. 105-763, Serial No. J-105-88); *The Nation at Risk: The Report of the President's Commission on Critical Infrastructure Protection: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 105th Cong., 1st Sess. (Nov. 5, 1997) (S. Hrg. 105-447, Serial No. J-105-68).

¹³⁰Hearing of Nov. 4, 2003, at 27 (transcript) (statement of Senator Jon Kyl).

¹³¹Robert MacMillan, *U.S. Heightens Cybersecurity Monitoring*, WASH. POST, Mar. 18, 2003, at Technology Section.

modified Internet virus that crippled computer systems worldwide.¹³² The Internet worm reportedly affected 7,000 computers.¹³³ Other worm and virus attacks in 2003 forced the Maryland Department of Motor Vehicles to shut down, caused delays in Air Canada's flights, and knocked signals offline for the CSX train network in 23 states.¹³⁴

Experts differ on the ease with which a terrorist group could launch a massive cyber attack, though no one doubts our vulnerability. Cyber attacks lack the drama and visible chaos inflicted by more conventional attacks, so they may not be as attractive to terrorists seeking to instill panic and fear in a population and demonstrate the extent of the damage they can wreak. The bigger fear is that terrorists might launch a cyber attack in conjunction with a more visible 9/11-style attack, in order to disable phone communications and emergency services in the wake of a terrorist strike. The Council on Foreign Relations reports that cyber attacks have increasingly become a component of warfare; computer networks have been attacked during recent conflicts in Kosovo, Kashmir, and the Middle East.¹³⁵

Government Actions to Improve Cyber Security

The federal government has been working to address our vulnerability to cyber terrorism. The Department of Homeland Security, for example, has conducted cyber attack simulations to improve response strategies in the event of a real attack. A 1997 Defense Department simulation found that attacks could cause significant disruptions in military communications and 9-1-1 networks, using widely available software on conventional computers.¹³⁶

Congress has approved \$878 million over the next five years for cyber security research.¹³⁷ It has passed legislation to fund research into new ways to combat cyber terror threats. The House Committee on Homeland Security created a cyber security subcommittee to specifically examine this issue.

The Department of Homeland Security has consolidated all of the federal government's computer-security efforts. It has worked with private companies to improve their cyber security,

¹³²Jon Swartz, *Cops Take a Bite, or Maybe a Nibble, Out of Cybercrime*, USA TODAY, Sep. 2, 2003, at 1B.

¹³³*Id.* at 1B.

¹³⁴Charles Duhigg, *Fight Against Viruses May Move to Servers*, WASH. POST, Aug. 28, 2003, at E01; *Homeland Security's Weak Link; U.S. Must Follow Through on Rhetoric*, SAN JOSE MERCURY NEWS, Aug. 24, 2003, at OP1.

¹³⁵Council on Foreign Relations, *Terrorism: Q & A: Cyberterrorism*, at <http://www.terrorismanswers.com/terrorism/cyberterrorism.html> (last visited Jan. 16, 2004).

¹³⁶David McLemore, *On the Cyberterror Front Lines; San Antonio Carving a Niche by Helping Protect Vital Systems*, DALLAS MORNING NEWS, Sept. 21, 2003, at 31A.

¹³⁷*See* Cyber Security Research and Development Act, Pub. L. No. 107-305 (2001).

and created a new division within the agency: the National Cyber Security Division (NCSD). The NCSD's mission is to identify, analyze, and reduce cyber threats and vulnerabilities; disseminate threat-warning information; coordinate incident response; and provide technical assistance in continuity of operations and recovery planning.

Though we are far from eliminating the cyber terror threat, the government is taking steps in the right direction — steps that hopefully will prevent a massive disruption of critical systems. The Subcommittee will assess the government's progress at a hearing in 2004.

“Lone Wolf” Fix to Foreign Intelligence Surveillance Act

Monitoring “Lone Wolf” Terrorists

The Subcommittee also explored ways to make it easier for the FBI to monitor suspected lone wolf terrorists. As a result of the Subcommittee's review, Chairman Kyl and Senator Schumer introduced S. 113 to update the Foreign Intelligence Surveillance Act of 1978 to permit surveillance of individual foreign visitors to the United States who appear to be involved in international terrorism, without regard to whether such persons are affiliated with a foreign government or terrorist group.

In a March 4, 2003 hearing before the full Committee, FBI Director Robert Mueller and Attorney General John Ashcroft both expressed their support for S. 113.¹³⁸ In response to questions from Senator Kyl, Director Mueller stated that terrorist groups like Al Qaeda are “very loosely organized,” and that the FBI has had difficulty obtaining sufficient information to permit surveillance of suspected individuals.¹³⁹ He testified that S. 113 would allow the FBI to “overcome” some of these hurdles to tracking terrorists.¹⁴⁰ He added: “We have in our threat analyses and our summary of threats facing the United States identified the lone wolf as an individual . . . we cannot dismiss and one that we would have to look out for, particularly when we know that Al Qaeda is a very loosely integrated organization, and quite often, you cannot, until sometime down the road, identify particular ties to that particular organization.”¹⁴¹ Attorney General Ashcroft testified, “It's a good bill. It's what ought to be done.”¹⁴²

¹³⁸Hearing of Mar. 4, 2003, at 19 (transcript) (statements of Honorable John Ashcroft and Honorable Robert Mueller).

¹³⁹Hearing of Mar. 4, 2003, at 19 (transcript) (statement of Honorable Robert Mueller).

¹⁴⁰*Id.* at 19 (transcript) (statement of Honorable Robert Mueller).

¹⁴¹*Id.* at 19 (transcript) (statement of Honorable Robert Mueller).

¹⁴²*Id.* at 19 (transcript) (statement of Honorable John Ashcroft).

Changed World Requires a Change in FISA

Several weeks prior to the September 11 attacks, federal agents had identified one of the participants in the conspiracy who they suspected was an international terrorist. These agents attempted to build a case for a FISA warrant, but were unable to meet one of the statute's requirements. The principal obstacle to issuance of such a warrant was FISA's requirement that the target be an agent of a foreign power; and in this particular case, there was insufficient evidence on that point.

Requiring that targets of a FISA warrant be specifically linked to a foreign government or international terrorist organization may have made sense when FISA was enacted in 1978; in that year, the typical FISA target was a Soviet spy or a member of one of the hierarchical, military-style terror groups of that era. Today, however, the United States faces a much different threat. We principally are confronted not by specific groups or governments, but by a movement of Islamist extremists. This movement does not maintain a fixed structure or membership list, and its adherents do not always advertise their affiliation with this cause.

Islamist Terrorist Threat

The origins and evolution of the Islamist terrorist threat, and the difficulties posed by FISA's current framework, were described in detail by Spike Bowman, the Deputy General Counsel of the FBI, at a Senate Select Committee on Intelligence hearing on an earlier version of S. 113. Thus, there is a need to reflect the current reality that a foreign person suspected of terrorist connections but not identified as an agent of a foreign power or organization, could still be the subject of a FISA warrant.

When FISA was enacted, terrorism was very different from what we see today. In the 1970s, terrorism more often targeted individuals, often carefully selected. This was the usual pattern of the Japanese Red Army, the Red Brigades and similar organizations listed by name in the legislative history of FISA. Today we see terrorism far more lethal and far more indiscriminate than could have been imagined in 1978. It takes only the events of September 11, 2001, to fully comprehend the difference of a couple of decades. But there is another difference as well. Where we once saw terrorism formed solely around organized groups, today we often see individuals willing to commit indiscriminate acts of terror. It may be that these individuals are affiliated with groups we do not see, but it may be that they are simply radicals who desire to bring about destruction. . . .

[W]e are increasingly seeing terrorist suspects who appear to operate at a distance from these [terrorists] organizations. In perhaps an oversimplification, but illustrative nevertheless, what we see today are (1) agents of foreign powers in the traditional sense who are associated with

some organization or discernible group (2) individuals who appear to have connections with multiple terrorist organizations but who do not appear to owe allegiance to any one of them, but rather owe allegiance to the International Jihad movement and (3) individuals who appear to be personally oriented toward terrorism but with whom there is no known connection to a foreign power.

This phenomenon, which we have seen . . . growing for the past two or three years, appears to stem from a social movement that began at some imprecise time, but certainly more than a decade ago. It is a global phenomenon which the FBI refers to as the International Jihad Movement. By way of background we believe we can see the contemporary development of this movement, and its focus on terrorism, rooted in the Soviet invasion of Afghanistan. . . .

The current FISA statute has served the nation well, but the International Jihad Movement demonstrates the need to consider whether a different formulation is needed to address the contemporary terrorist problem.¹⁴³

When FISA was enacted in 1978, the Soviet invasion of Afghanistan had not yet occurred and both Iran and Iraq were considered allies of the United States. The world has changed — and, as the Attorney General testified in response to a question from the Subcommittee chairman, “single, lone wolf terrorists act and can act in ways that are very, very damaging.”¹⁴⁴

Senate Passage

It is the responsibility of Congress to adapt our laws to these changes, and to ensure that U.S. intelligence agents have at their disposal all of the tools that they need to combat the terrorist threat currently facing the United States. It is the view of the Subcommittee that enactment of S. 113’s modification of FISA to facilitate surveillance of “lone wolf” terrorists would further Congress’s fulfillment of this responsibility. In 2003, the bill passed the Senate Judiciary Committee by a vote of 19 to 0 and then passed the full Senate by a vote of 90 to 4.¹⁴⁵ It is awaiting action by the House Judiciary Committee.

¹⁴³S. REP. NO. 108-40, at 4-5 (quoting statement of Mr. Spike Bowman, before a hearing of the Senate Select Comm. on Intelligence on the predecessor to S. 113) (2003).

¹⁴⁴Hearing of Mar. 4, 2003, at 19 (transcript) (statement of Honorable John Ashcroft).

¹⁴⁵Roll Call No. 146, 108th Cong., 1st Sess.

Pretrial Detention of Terrorists

Filling Gaps in the Law

As part of the Subcommittee's effort to fill gaps in the laws that our police and prosecutors use to protect our nation from terrorism, Chairman Kyl introduced the Pretrial Detention and Lifetime Supervision of Terrorists Act of 2003, S. 1606.¹⁴⁶ The bill came as a result of a 2002 Subcommittee hearing that reviewed the tools available to law enforcement to protect the United States from future terrorist attacks.¹⁴⁷

Under current federal law, defendants accused of certain crimes — such as drug crimes carrying a potential sentence of 10 years or more — are presumptively denied pretrial release. The Subcommittee was concerned that this provision of current law does not apply to terrorists. S. 1606 would fix this oversight, by amending the criminal code to presumptively deny pre-trial release to persons charged with terrorist activity. Extending the presumption in current law to terrorist offenses is justified by the unparalleled magnitude of the threat posed to our nation by acts of terrorism. Terrorists are at least as much of a threat as drug dealers — and should be subject to the same presumption of pre-trial detention.

The bill also would broaden the list of offenses that render a convicted terrorist eligible for lifetime supervision after his release from prison. Current law allows lifetime post-release supervision for terrorist offenses only if they result in or create a foreseeable risk of death or serious injury. This limitation could prevent the imposition of adequate supervision periods for persons convicted of non-violent terrorist offenses, such as a computer attack on the United States that results in tens of billions of dollars of economic damage. It could also limit supervision of persons who provide the essential financial or other material support for terrorist acts, but who do not themselves directly engage in violent terrorist acts.

The continuing danger posed to our nation's security by such persons may be no less than that posed by the direct perpetrators of terrorist violence. The courts should be afforded the same degree of discretion in prescribing post-release supervision for these terrorists as for others. For this reason, the bill eliminates the foreseeable-risk-of-injury requirement and allows lifetime supervision for those guilty of all offenses in the standard list of crimes likely to be committed by terrorists and their supporters. This reform reflects the continuing danger posed by convicted terrorists after their completion of a term of imprisonment. It recognizes that even those terrorists not directly involved in the use of violence may continue to harbor a commitment to terrorist goals and methods that will not dissipate within a few years of release.

The Subcommittee will continue to focus on this and similar issues.

¹⁴⁶149 CONG. REC. S11353 (daily ed. Sept. 10, 2003) (statement of Senator Jon Kyl).

¹⁴⁷*Tools Against Terror: How the Administration Is Implementing New Laws in the Fight to Protect Our Homeland: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary, 107th Cong., 2nd Sess. (Oct. 9, 2002).*

Appendix: Hearings During the 1st Session of the 108th Congress

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY, AND HOMELAND SECURITY

Border Technology: Keeping Terrorists out of the United States - 2003

(Joint Hearing with the Senate Judiciary Subcommittee on Border Security, Immigration, and Citizenship)

March 12, 2003

Witnesses:

The Honorable Asa Hutchinson
Undersecretary for Border and Transportation
Department of Homeland Security

Accompanied by:

Mr. Robert Moczny
Director of Entry-Exit Program, Bureau of Immigration and Customs Enforcement
and
Mr. Woody Hall
Assistant Commissioner
Office of Information & Technology, Bureau of Customs and Border Protection

Ms. Nancy Kingsbury
Managing Director of Applied Research and Methods
General Accounting Office

Accompanied by:

Mr. Richard Stana
Director
Homeland Security and Justice

Mr. Stephen E. Flynn
Jeane J. Kirkpatrick Senior Fellow in National Security Studies
Council on Foreign Relations

Narco-Terrorism: International Drug Trafficking and Terrorism—A Dangerous Mix
(Full Judiciary Committee Hearing)

May 20, 2003

Witnesses:

Mr. Steven W. Casteel
Assistant Administrator for Intelligence
Drug Enforcement Administration

Mr. Steve McCraw
Assistant Director
Office for Intelligence
Federal Bureau of Investigation

Ms. Deborah A. McCarthy
Deputy Assistant Secretary of State
Bureau of International Narcotics and Law Enforcement Affairs
Department of State

Mr. John P. Clark
Interim Director
Office of Investigations
Bureau of Immigration and Customs Enforcement
Department of Homeland Security

Mr. Raphael Perl
Specialist in International Affairs
Congressional Research Service
Library of Congress

Mr. Rensselaer W. Lee, III
President
Global Advisory Services

Mr. Larry Johnson
Managing Director
Berg Associates

Terrorism: Growing Wahhabi Influence in the United States

June 26, 2003

Witnesses:

Mr. David Aufhauser
General Counsel
Department of the Treasury

Mr. Larry A. Mefford
Assistant Director
Counterterrorism Division
Federal Bureau of Investigation

Dr. Alex Alexiev
Distinguished Fellow
Center for Security Policy

Mr. Stephen Schwartz
Senior Fellow
Foundation for Defense of Democracies

Terrorism: First Responders

September 3, 2003

Witnesses:

The Honorable Chris Cox (R-CA)
Chairman, House Select Committee on Homeland Security
U.S. House of Representatives

The Honorable Jim Turner (D-TX)
Ranking Member, House Select Committee on Homeland Security
U.S. House of Representatives

The Honorable Warren Rudman
Chair
Independent Task Force on Emergency Responders

Mr. Richard Clarke
Senior Adviser
Independent Task Force on Emergency Responders

Dr. Paul Posner
Managing Director of Strategic Issues
General Accounting Office

Terrorism: Two Years Afer 9/11, Connecting the Dots

September 10, 2003

Witnesses:

Mr. Simon Henderson
Founder
Saudi Strategies

Mr. Matthew Epstein
Attorney
Terrorism Analyst and Assistant Director of Research
The Investigative Project

Terrorism: Radical Islamic Influence of Chaplaincy of the U.S. Military and Prisons

October 14, 2003

Witnesses:

Mr. John Pistole
Assistant Director of Counterterrorism
Federal Bureau of Investigation

The Honorable Charles Abell
Principal Deputy Under Secretary for Personnel and Readiness
Department of Defense

The Honorable Harley Lappin
Director
Federal Bureau of Prisons

Dr. Michael Waller
Annenberg Professor of International Communication
The Institute of World Politics

Mr. Paul Rogers
President
American Correctional Chaplains Association

Mr. A. J. Sabree
Treasurer
American Correctional Chaplains Association

Database Security: Finding Out When Your Information Has Been Compromised
November 4, 2003

Witnesses:

Mr. David McIntyre
President and CEO
TriWest Healthcare Alliance

Mr. Mark MacCarthy
Senior Vice President of Public Policy
Visa U.S.A., Inc.

Mr. Evan Hendricks
Editor
Privacy Times