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Terrorism and Money Laundering: Illegal Purposes and Activities¹

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Jennifer I. Reynoso
Abbey Hazlett²

“The independent commission investigating the Sept. 11 attacks said the U.S. government hasn’t made much progress in figuring out how al Qaeda gets its financing. . . . Most. . . comes from wealthy individuals in the Persian Gulf and corrupt Islamic charities, the panel said”³

I. Introduction

A significant number of U.S. charitable organizations and donors generally seek to serve individuals and organizations situated beyond our borders. In the aftermath of September 11, 2001, however, regulators and the media have focused on the fact that overseas giving, like all cross-border transactions, may potentially be diverted for terrorism and money laundering. Executive and legislative actions taken after September 11 specifically prohibit providing support for terrorism or organizations and individuals associated with terrorism. In addition, in 2002, the U.S. Treasury Department issued “Anti-Terrorist Financing Guidelines: *Voluntary Best Practices for U.S.-Based Charities*,”⁴ which are intended to provide practices which may reduce the risks that a charity’s funds will be diverted to terrorist purposes.

1. Copyright © 2004 Victoria B. Bjorklund. This paper was first presented by Victoria B. Bjorklund on October 28, 2004 at a conference of the National Center on Philanthropy and the Law entitled “Diversions of Charitable Assets: Crimes and Punishments.” With the exception of a few minor citation changes, this paper has been adopted as first presented at the National Center on Philanthropy and the Law conference.

2. The authors are, respectively, Partner, Associate, and Summer Associate in the Exempt Organizations Group at Simpson Thacher & Bartlett LLP.

3. Glen R. Simpson, *Terror-Fund Countermeasures Ripped*, THE WALL ST. J., Aug. 23, 2004, at B2.

4. United States Department of the Treasury, U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities, available at <http://www.treas.gov/press/releases/docs/tocc.pdf> (last visited Apr. 12, 2005).

It is our perception that, if such diversions have been undertaken by U.S. donors or charities (rather than by donors or charities organized outside the U.S.), the activities have been hidden and not well known to the charitable sector. Of course, we agree that any diversion is anathema and to be avoided. But, since this activity is beyond the experience of almost all U.S. charities and donors, at least to their knowledge, we believe that a good starting point might be to examine where and how diversions have been alleged to have occurred. This paper, therefore, is our attempt to “connect the dots” on terrorism and money laundering involving U.S. charities, donors and their advisors and to determine whether there are any suspicious patterns of which charities, their directors, and donors should be made aware.

To inform ourselves, we reviewed charges brought by the U.S. federal government after September 11, 2001, against U.S. charities and charity-associated individuals. To do so, we reviewed dozens of news reports on allegations of terrorist links. We have also reviewed reports issued by the Financial Action Task Force on Money Laundering and by the independent commission investigating the Sept. 11 attacks (the “9/11 Commission”).

In closing, we reflect on what may be some of the “red flags” we consider most important in our anecdotal experience and how we think U.S. charities and donors can best protect the use to which their gifts are put.

II. Investigations and Charges

Between May 18 and August 2, 2004, we reviewed dozens of newspaper reports on U.S. charities, charity-related individuals, and non-U.S. charities and alleged terrorist links and diversion of funds. We sought to determine if and how any of those charities and individuals were alleged to be linked. We attach as Exhibit A a chart entitled “Summaries of Articles,” which includes articles and certain Department of Justice Press Releases and 9/11 Commission testimony, which were the basis for our Exhibits B and C. We attach as Exhibit B a chart entitled “Alleged Connections between Charitable Organizations and Terrorists as of August 2, 2004.” Finally, we attach as Exhibit C a chart entitled “Indictments Against Alleged Terrorists Allegedly Connected to Charitable Organizations.”

These materials suggest to us a point that we make repeatedly: ideologically-driven individuals will use any tools – including real or contrived charities – to advance their activities. But the variety of

alleged fundraising and money-laundering schemes involving charities do not appear to fall into patterns from which lessons might easily be drawn.

III. The Illinois Charities Case Study

After we completed our Exhibits A-C, we reviewed Chapter 6, “The Illinois Charities Case Study,” of the Terrorist Financings Staff Monograph released in late August 2004 by the 9/11 Commission Staff (attached as Exhibit D) (the “Case Study”). The Case Study analyzes the U.S. federal government’s pre- and post- 9/11 investigations of two Illinois-based charities, Global Relief Foundation (“GRF”) and Benevolence International Foundation (“BIF”).

We provide a summary of facts compiled from the Case Study, which we reviewed to determine whether any patterns or red flags were present that could or should have been visible to donors, directors, or others:

GRF was incorporated in Bridgeview, Illinois in 1992. GRF described itself as an organization that provided humanitarian relief to Muslims through overseas offices, primarily in strife-torn regions such as Bosnia, Kashmir, Afghanistan, Lebanon, and Chechya. GRF began operating with \$700,000 in cash. By 2000, it reported more than \$5 million in annual contributions. According to its filings with the Internal Revenue Service (the “IRS”), GRF sent 90 percent of its donations abroad between 1994 and 2000. GRF’s overseas offices received their own contributions in addition to what they received from the U.S. organization. According to the government, GRF’s founders had previously been affiliated with the Mektab al Khidmat (“MAK”), which was co-founded by Abdulla Azzam and Usama Bin Ladin in the 1980s to recruit and support mujahideen to fight against the Soviets in Afghanistan. MAK funneled money and fighters to the mujahideen and set up a network of recruiting offices around the world, including in the U.S. One offshoot of MAK in the U.S. was the Al Khifa Refugee Center in Brooklyn. A number of persons convicted in the first World Trade Center bombing were associated with the Refugee Center, including Sheikh Omar Abdel Rahman, who is currently serving a life sentence for his role in a plan to bomb New York City tunnels and landmarks. MAK/Al Khifa was designated a specially designated global terrorist (“SDGT”) on September 23, 2001. The FBI suspected the Executive Director of GRF of being a supporter of the Egyptian extremist group Al Gama’a Islamiyya (“AGAI”), which was affiliated with Sheikh Omar

Abdel Rahman, and of having connections to Usama Bin Ladin. The FBI also believed that GRF support to terrorists took the form of purchase and shipment of large quantities of sophisticated communications equipment, provision of humanitarian cover documentation to suspected terrorists, and fundraising for terrorist groups under the cover of humanitarian relief. Bank records revealed large transfers of funds to GRF overseas offices. The FBI believed GRF distributed the bulk of funds as humanitarian relief, but also supported armed militants in certain regions. In addition, two days before September 11, 2001, two of the hijackers dropped off bags containing fruit, clothing, flight logs, and other materials at a mosque in Maryland. The imam at the mosque worked part-time raising money for GRF. The FBI ultimately concluded that the imam had no role in supporting the 9/11 attacks, although it considered him to be a supporter of and fundraiser of the international jihadist movement. The FBI believed GRF had two types of donors: those who thought they were giving money for humanitarian relief and those who gave money to support jihad.

In October 2002, the Office of Foreign Assets Control ("OFAC") designated GRF a SDGT pursuant to Executive Order 13224. GRF failed in its efforts to challenge OFAC's initial asset blocking in court. GRF has continued to litigate the issue of whether sufficient evidence existed to justify its designation as a SDGT. As of August 2004, the litigation is pending in federal district court in Chicago. As of August 2004, the government had not filed criminal charges against GRF or its leadership and, according to the Case Study, such charges are "increasingly unlikely." A GRF fundraiser was deported to his native Lebanon in July 2003.

BIF was incorporated in Illinois in March 1992. BIF described itself as an organization devoted to relieving the suffering of Muslims around the world. According to its IRS filings, it received more than \$15 million in donations between 1995 and 2000. At the time it was founded, BIF's three directors were Sheikh Adel Abdul Jalil Batterjee and two other Saudis. The Shiekh was also a founder of Lajnat Al-Birr Al-Islami ("LBI") in Jeddah, which provided support to the mujahideen fighting the Soviets in Afghanistan, as well as humanitarian aid to refugees of that war. In March 1993, the original directors were replaced by three new directors, including Enaam Arnaout, who became the executive director. The U.S. government contended that the change was made after Batterjee came under scrutiny in Saudi Arabia for financially supporting jihad outside of approved channels. The government

contended that Arnaout was a longtime jihadist supporter, with personal ties to Usama Bin Ladin, and that he provided support to the mujahideen in the 1980s and 1990s as an employee of LBI and another Saudi charity. Arnaout married an American citizen, and he became a naturalized U.S. citizen in March 1994. According to news articles, Batterjee continued to oversee operations from behind the scenes, with Arnaout keeping him apprised of BIF's activities. In addition, news articles reported that Arnaout instructed BIF's employees not to offer outsiders information about Batterjee.

In March 2002, the FBI provided Bosnian officials with enough evidence to gain legal authority to conduct a criminal search of BIF's offices in Bosnia. The search yielded compelling evidence of links between BIF's leaders and Usama Bin Ladin and other al Qaeda leaders, and many documents on al Qaeda. In January 2003, Arnaout was charged with one count each of racketeering conspiracy under RICO, conspiracy to provide material support to terrorists, providing material support to terrorists, conspiracy to launder money and wire fraud, and two counts of mail fraud. The indictment itself contained almost no specific allegations that BIF funded al Qaeda. Instead, the charges focused primarily on BIF's diversion of charitable donations to fund Chechen and Bosnian fighters. The government contended that BIF fraudulently solicited and obtained donations by falsely representing that the funds would be used solely for humanitarian purposes. According to statements of Gary Bald, Assistant Director, FBI, before the Senate Judiciary Committee on May 5, 2004, Arnaout admitted that donors to BIF were misled into believing that their donations would support peaceful causes. These funds from unwitting donors were than commingled with funds from donors who were aware that BIF was providing support to militant groups, in order to avoid scrutiny.

In November 2002, OFAC designated BIF an SDGT pursuant to Executive Order 13224. BIF's challenge to the asset blocking was stayed until the criminal case was resolved and was eventually dismissed. BIF did not challenge its OFAC designation as an SDGT. In the criminal case, Arnaout pled guilty to one count of racketeering conspiracy for fraudulent diversion of charitable donations in the amount of \$315,624 to promote overseas combatants, including boots for fighters and uniforms for a provisional but unrecognized government in Chechnya, and boots, tents, and uniforms for soldiers in Bosnia-Herzegovina. The court sentenced Arnaout to more than 11 years in prison but rejected the government's request that it apply the sentencing

enhancement for crimes of terrorism.⁵

The case study presents important “Lessons,” including:

- “The agents and officials in these cases faced one of the most important and difficult issues in the fight against al Qaeda and jihadist fund-raising: there is a difference between troubling ‘links’ to terrorists and compelling evidence of supporting terrorists. . . . [H]ow much information does the government need before it can take action against a potential terrorist fund-raiser?”
- “Both of these organizations raised large amounts of money in the United States, which they sent overseas, often to or through people with jihadist connections. When the money went overseas, it became virtually untraceable, since it could be converted to cash and sent anywhere in the world.”
- “But there is another side to the story. Despite these troubling links, the investigation of BIF and GRF revealed little compelling evidence that either of these charities actually provided financial support to al Qaeda – at least after al Qaeda was designated a foreign terrorist organization in 1999.”
- “. . . [D]espite unprecedented access to the U.S. and foreign record of those organizations, one of the world’s most experienced and best terrorist prosecutors has not been able to make any criminal charges against GRF and resolved the case against BIF without a conviction for support of terrorism . . . [I]n BIF and GRF, the total political will, prosecutorial and investigative talent, and resources of the U.S. government have so far failed to secure a single terrorist-related conviction.”⁶

5. As recounted in the Case Study, counsel for BIF and GRF expressed great frustration with the OFAC process, including “the blocking of assets without any adversarial process adjudicating culpability, their view that the process lacked defined standards, their perception of OFAC’s unresponsiveness to attorney inquiries and licensing requests, the use of classified evidence unavailable to the defense, and OFAC’s reliance on evidence that would not be admissible in a judicial proceeding.” *Infra*, Exhibit D. OFAC stated in response that the courts have upheld the process and standards it uses in designations, as well as the use of classified information, news articles, and other hearsay in support of the designations. *Id.*

6. JOHN ROTH ET AL., NAT’L COMM’N ON TERRORIST ATTACKS UPON THE UNITED STATES: MONOGRAPH ON TERRORIST FINANCING 110-113 (2004), available at http://www.9-11commission.gov/staff_statements/911TerrFin_Monograph.pdf. A portion of this work is reproduced *infra* Exhibit D.

The Case Study does not suggest steps the charities, their boards, or their donors could or should have taken to prevent the diversion of funds. In both cases, it seems clear that high-ranking employees and boards members purposefully deceived donors and knowingly supplied funds for non-charitable activities. As the investigations of these charities were not disclosed until after September 11, 2001, the public at large had no way of knowing that these individuals were suspected of supporting terrorism or individuals associated with terrorism.

IV. Financial Action Task Force on Money Laundering

A. Background

The Financial Action Task Force on Money Laundering (“FATF”) was founded in 1989 at a G-7 Summit in response to increasing concern over international money laundering.⁷ FATF was charged with the task of studying money laundering trends, surveying national and international action with regard to the problem, and making recommendations on what further action should be taken. In 1990, FATF issued its first report, *Forty Recommendations*, which provided a framework for combating money laundering. *Forty Recommendations* was most recently updated in 2003.⁸

FATF currently has thirty-three members, including countries, territories and organizations.⁹ Most notably for the purposes of this paper, membership includes the United States and the Co-operation Council for the Arab States of the Gulf (GCC).¹⁰ The GCC is comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates. In addition, other international organizations have the status of “observer” of the FATF and several regional bodies exist which have parallel functions as the FATF. Membership in the FATF and the regional organizations often overlaps.

7. FATF, *About the FATF*, available at http://www.fatfgafi.org/document/63/0,2340,en_32250379_32236836_34432255_1_1_1_1,00.html (last visited Apr. 12, 2005).

8. *Id.*

9. FATF, *Members & Observers*, available at http://www.fatfgafi.org/pages/0,2966,en_32250379_32236869_1_1_1_1,00.html (last visited Apr. 12, 2005).

10. *Id.*

B. Response to Terrorism

Following the September 11, 2001 attacks, the FATF met in Washington D.C. in October 2001 to issue special recommendations to address terrorist funding. The Special Recommendations on Terrorist Financing include a recommendation on terrorists' abuse of charities. The recommendation states:

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Charities are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations posing as legitimate entities;
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.¹¹

In 2002 the FATF supplemented the recommendation regarding charities with a report entitled *Combating the Abuse of Non-Profit Organisations: International Best Practices*.¹² The report outlined three suggested areas where preventative measures should be focused: (1) Financial Transparency, (2) Programmatic Verification, and (3) Administration.

The "Financial Transparency" best practices emphasize "the importance of *risk and size-based proportionality* in setting the appropriate level of rules and oversight" in the area of financial transparency.¹³ With that caution in mind, the report suggests organizations maintain and be able to produce program budgets, conduct independent audits, maintain registered bank accounts where all funds are kept, and use formal financial institutions to transfer money.

With regard to "Programmatic Verification," the report recommends that charities should be in the position to "know and . . . verify that funds have been spent as advertised and planned." Specifically, the report

11. FATF, *FATF Annual Report 2001-2002*, available at <http://www.fatf-gafi.org/dataoecd/13/1/34328160.pdf> (June 21, 2002).

12. FATF, *Combating the Abuse of Non-Profit Organisations: International Best Practices*, available at <http://www.fatf-gafi.org/dataoecd/39/19/34033761.pdf> (Oct. 11, 2002).

13. *Id.* at 2-3.

recommends that charities should tell donors the purpose of their donation, gather information to help ensure funds reach the intended beneficiary, conduct field examinations considering “risk-based proportionality,” and coordinate oversight and encourage information exchange when dealing with beneficiaries outside of the charity’s home jurisdiction.¹⁴

Finally, under “Administration,” the FATF recommends that charities carefully document all staff and policies that affect oversee operations. In addition, the FATF places heavy emphasis on the importance of an active Board of Directors, particularly with respect to due diligence to guarantee the charity is operating ethically. The recommendations state that “[I]ack of knowledge or passive involvement in the charity’s affairs does not absolve a director. . . of responsibility.”¹⁵

C. FATF 2003-2004 Typologies¹⁶

In 2004, the FATF released its *Report on Money Laundering and Terrorist Financing Typologies*. The report identified typologies for money-laundering activities under the guise of charity. Within the typologies, there are three broad categories of charity abuse and additional subcategories within the broad categories.

1. Raising Funds Through Charities

The typologies identified two subcategories within the larger category of raising funds through charities. The first subcategory is the use of charities by terrorist organizations for broad-based formal fundraising. In this circumstance, the organization often follows the formal process of filing for and gaining tax-exempt status. Such organizations use aggressive fundraising tactics and solicit the public at large or specific religious and ethnic groups. The Report states that under UN Security Council Resolution 1373 (2001), a number of charities have had their assets frozen because terrorists have used the organizations for fundraising.

The second subcategory is the use of informal cash collections to

14. *Id.* at 3-4.

15. *Id.* at 4.

16. FATF, *Report on Money Laundering Typologies 2003-2004*, at 7-10, available at <http://www.fatf-gafi.org/dataoecd/19/11/33624379.PDF> (last visited Apr. 12, 2005). A typology is a study or systematic classification of types that have characteristics or traits in common.

raise money for terrorists. The cash donations can be collected and then redirected to terrorist groups. Solicitation is mainly targeted at particular religious or ethnic groups. Cash collections can also be used as a method of money laundering by integrating the proceeds of terrorist criminal activities into the “legal financial system.”

2. Transferring Funds Through Charities to Terrorists

The typologies also identified two subcategories within the larger category of transferring funds through charities to terrorists. First, in some cases, charities are organized in a legal form to avoid regulation and monitoring of money transfers. The typologies provided the example of cultural associations established by indigenous ethnic communities. Once the associations are organized, they collect money and transfer money across national borders, but this activity does not raise red flags because it is considered in the normal course of operations of the association.

A second example is the establishment of multiple *related* charities in different countries but within a particular ethnic community. Money can then be transferred between the charities using the organizations’ accounts to make payments. Again the money transfers are considered in the course of ordinary course of operations of the charity and, therefore, do not automatically raise red flags. In some cases, the FATF reported that diversion schemes were detected because the charities were handling much larger amounts of money than expected given their location in low-income areas. Additionally, other organizations were investigated because they were handling amounts of money that seemed in excess of their stated purpose and activities.

3. Charity is a Direct Cover of Terrorist Organization

Finally, the typologies identified the use of charities as direct covers for terrorist organizations. In these circumstances the charity provides a cover for the terrorist operation and supplies direct financial and logistical support to terrorists and terrorist organizations.

D. FATF 2003-2004 Red Flags

In addition to identifying terrorist financing typologies, the FATF’s

2004 report identified “red flag” behavior derived from the typologies.¹⁷ The “red flags” are behaviors that might serve as markers of potential illegal behavior. The report identifies the “red flags” as potentially helpful to financial institutions and supervisory or investigative authorities. Boards of Directors should also be aware of these “red flags.” However, it would be difficult for the average donor to be aware of such activity.

The “red flags” include specific financial characteristics that might indicate illicit behavior, including:

- (1) discrepancies between apparent sources of income and the amount of funds;
- (2) discrepancies between the size and pattern of financial activity and the stated purpose of the organization;
- (3) sudden upswings in the size and frequency of financial transactions, or funds are held in accounts for a prolonged period of time;
- (4) large, unexplained cash transactions; and
- (5) the absence of contributions to the charity from donors within the organization’s home jurisdiction.

The report also outlined other characteristics that should be considered “red flags,” including:

- (1) charities with foreign directors in combination with large money transactions to the home countries of the directors;
- (2) large numbers of charities that are inexplicably connected with common addresses, personnel, or “gatekeepers;”
- (3) charities with no clear purpose and sparse infrastructure; and
- (4) transactions with persons in “high-risk” jurisdictions.

V. Conclusion

A. Criminal Motivation

In analyzing this information, we concluded that the situations where terrorism funding and money laundering are most likely to occur are those where the actors are criminally motivated and intend to defraud donors. We understand from the FATF reports that there are instances of cooperating donors but we want to believe that most of those instances occurred outside the U.S. The information we reviewed showed that the

17. *Id.* at 10-11.

actors are ideologically driven men. This is not surprising as extremists of all sorts believe that the ends justify the means. Thus, whether the actor is Enaam Arnaout (who pled guilty to one count of racketeering conspiracy for fraudulent diversion of charitable donations to promote overseas combatants, largely sending anti-mine boots and tents to Bosnia and Chechnya) or Colonel Oliver North (who was convicted of using foundation grants to purchase arms in the Iran-Contra scandal and is now a right-wing media personality with many admirers), ideologically-driven individuals appear most likely to cross the line into criminal behavior using charities.

We are also aware that churches, temples, and mosques may make ideal covers for the criminally motivated because “churches” do not file Forms 1023 and 990 with the IRS and frequently receive cash donations. Nonetheless, to date, allegations have been made more often against charities than against houses of worship or religious denominations. Is that because activities of religious extremists are harder to track? Or is it because religious organizations are less susceptible than other kinds of charities? We have seen no study anywhere on this question, although we have seen the question asked by others.

B. Due Diligence

After reviewing all of the cases of alleged diversion for terrorist purposes, we are aware of none that involve a diversion of funds granted by a U.S. grantmaker to a foreign recipient organization (“FRO”), where the diversion would have been uncovered but for the lack of appropriate due diligence and oversight procedures. Reasonable belief that an FRO is engaged in illegal purposes or activities, in our experience, typically arises in the course of the questions that are part of the due diligence that U.S. public charities and private foundations have done for decades. In particular, we have personally seen several instances where the financial reports coming back to the U.S. charity did not appropriately account for the expenditure of some portion of granted funds. In each case, when challenged, the FRO could not provide satisfactory documentation or explanation of the funds’ use. In each such case which we worked on, the U.S. charity demanded and received restoration of the diverted funds. (In none of these cases were funds diverted to terrorism or money laundering by the FRO.) But these cases, in our experience, are also very small in number compared with the very large number of grants made each year. This experience suggests to us that the diligence procedures long used by U.S. funders and operating charities can be very effective.

This is especially true where the FROs want to receive future contributions. Other helpful ways to “get to know the FRO” include site visits by staff or a contractor and references from others who have worked with the FRO.

C. Summary

Our review showed us that there are more reports of alleged links to terrorism by U.S. individuals and organizations than we had anticipated. But, as the 9/11 Commission and its staff pointed out, “links” to terrorist-sympathizers fall far short of the evidence needed to convict individuals for supporting terrorists. In addition, few, if any, of these “links” alleged that U.S. charities were unwittingly being used to support terrorist activities. Therefore, we found and think that there will likely be few convictions of U.S.-based charities for terrorism. Instead, individual convictions will likely be based on something other than support of terrorism, such as tax or immigration fraud.

This leads us to ask, “Why haven’t we seen more allegations of diversion of charitable assets for money laundering and supporting terrorism in the U.S.?” We think that many factors contribute:

- A long history in the U.S. of defining what is and is not charitable activity;
- A system, even if imperfect, of federal, state, local, press, donor and watchdog efforts to criticize improper behavior by organization managers;
- Increased transparency through wire transfers, internet research, and information posting and reporting;
- The success of best-practices and due-diligence procedures, including
 - having a written grant-award agreement,
 - having references for a new grantee,
 - asking for reports back, and then reviewing them,
 - asking questions when reports are inadequate, and
 - demanding restoration of funds in appropriate cases, and
- Good use of common sense, in particular using a risk-based approach under which the highest-risk grants or gifts enjoy a higher level of pre- and post-grant scrutiny. In that connection, we commend attention to Exhibit E, the “Continuum of Risk Factors” chart submitted to the IRS on

July 14, 2003, by individual members of the ABA Tax Section Committee on Exempt Organizations.

In closing, we note that only law-enforcement authorities can punish criminally motivated individuals who misuse charities for money laundering or terrorism and only law-enforcement authorities have the tools to really root out bad actors. Enforcement will be the topic of a later panel at this meeting; therefore, we do not address enforcement solutions in this paper. That having been said, we believe that the rest of us can make diversions less likely by continuing to use and promote practical risk-based diligence procedures. In that connection, we continue to call attention to tools like the chart at Exhibit E as the kind of practical guide based on years of experience that, we believe, needs to become more widely known and used in the sector.

Exhibits

- A: Summaries of Articles
- B: Chart of Alleged Connections between Nonprofit Organizations and Terrorists as of August 2, 2004
- C: Indictments Against Alleged Terrorists Allegedly Connected to Charitable Organizations
- D: Chapter 6, Terrorist Financing Staff Monograph, "The Illinois Charities Case Study"
- E: Excerpt from Comments of Members of the ABA Tax Section Committee on Exempt Organizations, July 18, 2003, "Table 1: Continuum of Risk Factors."

Exhibit A
Summaries of Articles

Source	Al Farouq Mosque
<p>Washington Post, March 5, 2003, Christopher Lee, <i>U.S. Says Yemeni Cleric Aided al Qaeda; Man Boasted of Giving bin Laden \$20 Million Before Sept. 11, Officials Say</i>, at page A09</p>	<ul style="list-style-type: none"> • Mohammed Ali Hassan Moayad was arrested on January 10, 2003 in Germany with his assistant Mohammed Mohsen Yahya Zayed. • They were arrested after FBI informants lured them to a hotel with the promise of donating \$2 million to buy weapons and communication equipment and fund mujaheddin fighters' training. • Hassan Moayad had "bragged" about personally delivering \$20 million to bin Laden in the years before September 11th including money that was collected at Al Farouq Mosque in Brooklyn. • Sheik Omar Abdel Rahman, who was later convicted of the 1993 World Trade Center bombing used to gather supporters at Al Farouq Mosque.
<p>New York Times, May 12, 2004, William Glaberson, <i>Judge Vacates Guilty Plea in Yemeni Case</i>, at B01</p>	<ul style="list-style-type: none"> • Abad Elfgeeh, owner of Carnival French Ice Cream in Brooklyn, was arrested in connection with terrorist financing. • Elfgeeh was charged with <i>unlicensed money transmitting</i> and <i>conspiracy</i>, but NOT <i>terrorism</i> and pled guilty to the charges. • On May 11, 2004 Judge Sifton vacated the plea stating Elfgeeh did not understand the charges. • Charges against several people in Brooklyn have "skirted claims of direct ties to terrorism and instead have involved violations of financial laws or charges of making false statements". • Elfgeeh has acknowledged being a hawala for acquaintances and was recorded stating he transmitted money to Hassan Moayad: Prosecutors allege Elfgeeh sent \$21 million overseas from his accounts between 1997 and 2003. • Hassan Moayad was extradited from Germany to Brooklyn to stand trial • Ahmed Elfgeeh, Abad's brother, has also been tied to Hassan Moayad and Hassan Moayad described Ahmed as his "most committed fundraiser" in the U.S. There are no charges against Ahmed Elfgeeh and he moved to Yemen 3 years ago.

Source	Al Farouq Mosque
<p>The Record, July 10, 2004, <i>Bergen Man Gets 5 Years for Lying to FBI; Accused Helped Sheik Who Reportedly Raised Money for bin Laden</i>, at A06</p>	<ul style="list-style-type: none"> • Numan Maflahi was convicted & sentenced to 5 years in prison for <i>lying to FBI agents</i> about his relationship with Sheik Abdullah Satar (a Yemeni sheik) who prosecutors allege raised money for al Qaeda and Osama bin Laden. • Maflahi arranged speaking engagements for Satar at mosques in Brooklyn and Manhattan, drove him to the engagements and helped collect the money for the Charitable Society for Social Welfare (purported to be a charity for orphans). • Charitable Society for Social Welfare has not been designated as a terrorist organization. • The U.S. federal government stated the charity was a front for radical Muslim groups and was rerouted to bin Laden and al Qaeda. • Maflahi was first investigated because of the investigation into Mohamed al-Moayad—one of Al-Moayad's associates in Brooklyn, Abad Elfgeeh, told an informant that Satar (a prominent politician in Yemen) could take money easily out of the United States because he has a diplomatic passport. • Satar also met with one of al Qaeda's top officials in Italy in 1999.
<p>The Associated Press, July 9, 2004, Michael Weissenstein, <i>Stiff Sentence for Gas Station Owner Who Lied in Terrorism Probe</i></p>	<ul style="list-style-type: none"> • Same article as The Record, July 10, 2004
<p>Washington Post, January 23, 2004, John Mintz, <i>U.S., Saudi Arabia Fettering Charity Linked to Terrorism</i>, at page A17.</p>	<ul style="list-style-type: none"> • U.S. and Saudi governments announced joint effort to crack down on Al-Haramain branches in Pakistan, Indonesia, Kenya, and Tanzania—alleging that the branches funnel money, arms and personnel to al Qaeda and other terrorist organizations. Declassified document said the organization in the 4 countries: was a major financier of terrorists in Indonesia; a Tanzanian employee helped plan the 1998 bombings of U.S. embassies in Africa; and a Kenyan employee planned assassinations of U.S. officials. • U.S. and Saudi governments asked the U.N. to designate the branches as terrorist organizations. • The indictment of Sami Omar al-Hussayen alleged that he provided internet support to Al-Haramain's branches in Somalia and Bosnia. Those branches had previously been designated as terrorist organizations.

Source	Al Farouq Mosque
<p>Washington Post, February 20, 2004, John Mintz, <i>U.S. Freezes Accounts of Large Saudi Charity</i>, at page A02.</p>	<ul style="list-style-type: none"> • U.S. Treasury ordered the accounts of the Oregon and Missouri branches of Al-Haramain frozen. • Pete Seda (aka Pirouz Sedaghaty) founded the Oregon branch in 1997. He is now under investigation along with Soliman Albuthe, who helped run the organization. The investigation into Seda and Albuthe centers on the transfer of large traveler's checks across U.S. borders. • A mosque in Springfield, Missouri was established by Al-Haramain. Kamran Bokhari was one of the top leaders of the mosque and the U.S. representative to al-Mujahiroun, a radical London group that supports al Qaeda. • Al-Haramain's chief, Aqeel Al-Aqeel, was fired by Saudi officials because of suspicion about his role with the charity.
<p>New York Times, June 2, 2004, <i>Saudis Tighten Grip Over Charities</i>.</p>	<ul style="list-style-type: none"> • Saudi Arabia dissolved Al-Haramain, along with other Saudi charities, and is folding their financial assets into a national commission. • The U.S. and Saudi Arabia asked the U.N. to add the Netherlands, Albania, Afghanistan, Bangladesh and Ethiopia branches of Al-Haramain to the list of designated terrorist organizations. • The U.S. blocked the assets of the five above branches of Al-Haramain. • U.S. blocked Aqeel Abdulaziz Al-Aqil's assets.
<p>Associated Press Online, June 6, 2004, Matthew Rosenberg, <i>Al-Qaeda Continues to Siphon Charities</i>, at International News. **good source on the day to day activity of Al-Haramain, particularly in Africa**</p>	<ul style="list-style-type: none"> • Provides examples of al Qaeda siphoning charity money to fund operations. • Reports that Al-Haramain money was diverted to help fund the bombings in Kenya, Tanzania, and Indonesia; bombing of Israeli hotel in Kenya. • "U.S. officials have privately conceded that only a small percentage of the total" was diverted and that few of those who worked for Al-Haramain knew money was being funneled to Osama bin Laden's terrorist organization. • Saudis (under heavy pressure from the U.S.) moved to dissolve Al-Haramain on June 2, 2004. A commission was created to filter all money in Al-Haramain's coffers and direct it towards international charity. • U.S. believes that Al-Haramain offices are still operating in Kenya, but under new names after having moved funds to new bank accounts. A former employee of Al-Haramain stated that he knew of at least 2 Islamic preachers who are still receiving salaries from Al-Haramain. • In Somalia, Al-Haramain is running a school, an internet café, and a money transfer business. • "[A U.S. intelligence official] said many Islamic charities that have been ordered shut down [and] are being investigated for terrorist ties are reopening under new names or staying open in areas where there is no government crackdown. 'Al-Haramain is doing both.'"

Source	Al Farouq Mosque
	<ul style="list-style-type: none"> • U.S. Treasury official Juan Zarate stated "Certain individuals associated with Al-Haramain were using the charity itself to support terrorist groups from a logistical and philosophical standpoint. . .co-mingling funds and co-mingling activities that meld the good work with bad work." • In certain countries (e.g., Pakistan, Indonesia) donations to Al-Haramain were advertised as a form of jihad although it was not specifically stated that the money would be used to fund terrorism. In other countries, Funds were more surreptitiously raised
<p>Associated Press Worldstream, June 10, 2004, Bob Fick, <i>Saudi Graduate Student Cleared of Terrorism Charges</i> News; NY Times, June 11, 2004, <i>No Conviction for Student in Terror Case</i>, at page 14.</p>	<ul style="list-style-type: none"> • Sami Omar Al-Hussayen was acquitted on June 10, 2004 of 3 <i>terrorism counts</i>, one count of making a <i>false statement</i>, and two counts of <i>visa fraud</i>; the jury could not reach verdicts on three counts of <i>false statement</i> and five counts of <i>visa fraud</i>. • Accused of using computers to assist Al-Haramain and Islamic Assembly of North America (IANA). The websites he created/operated were allegedly used to recruit terrorists, raise money, and disseminate inflammatory rhetoric.
<p>Associated Press Worldstream, June 25, 2004, George Jahn, <i>U.S., European Intelligence Agencies Use Rewards, Informants in Covert Hunt for Terrorists in Bosnia</i></p>	<ul style="list-style-type: none"> • Bosnia shut down Al-Haramain, Al Furqan, Al Masjed Al-Aqsa Charity Foundation, and Taibah International in May 2004. There is no record where the money went that was collected ostensibly for Muslim poor. • More than a dozen such charities have been shut down since 2001. It is estimated that three such charities collected nearly \$20 million between 2001 and 2003 [in Bosnia?].
<p>The Oregonian, June 4, 2004, Beth Quinn, <i>Ashland Friends Defend Muslim</i>, at page A01</p>	<ul style="list-style-type: none"> • U.S. federal government announced it was moving to designate the Qur'an Foundation founded by Pete Seda as a supporter of terrorism. • Seda has not been charged with a crime. However he, along with his organization, were placed on an FBI "watch list" in 2002. • Seda now lives in Saudi Arabia. • Seda's supporters say he has been swept up in the allegations about Muslim charities following September 11th and the Patriot Act, causing him to lose his business, charity and home in America.
<p>The Associated Press, June 18, 2004, Bob Fick, <i>Feds Still Unsure About Retrial, Experts Say Clash Will Continue</i>.</p>	<ul style="list-style-type: none"> • Discusses the U.S. federal government's post-acquittal strategy with regard to Sami Omar Al-Hussayen and the impact going forward on other pending trials and investigations.
<p>The Boston Globe, June 28, 2004, Harvey A. Silvergate, <i>Free Speech in an Age of Terror</i>, at page A11</p>	<ul style="list-style-type: none"> • Discusses the interplay between the Patriot Act and the First Amendment in Sami Omar Al-Hussayen's trial.

Source	Al Farouq Mosque
The Associated Press, June 30, 2004, Bob Fick, <i>No Immigration Charges for Idaho Student</i> .	<ul style="list-style-type: none"> The U.S. federal government dropped remaining immigration charges against Sami Omar Al-Hussayen in exchange for him agreeing not to appeal his deportation.
Los Angeles Times, July 22, 2004, <i>Nation in Brief: Saudi Acquitted in Terror Case is Deported</i> , at page 14	<ul style="list-style-type: none"> Sami Omar Al-Hussayen was released from jail and deported to Saudi Arabia.

Source	Benevolence International Foundation
Chicago Tribune, February 22, 2004, Sam Roe, Laurie Cohen and Stephen Franklin, <i>How Saudi Wealth Fueled Holy War; Charity Leader Funded Fighters to Spread and Defend Islam</i> , at page 1	<ul style="list-style-type: none"> Benevolence International was started by Adel Batterjee with the assistance of Enaam Arnaout. Alleged to have originally aided war refugees in Afghanistan, but began to help train, house and transport Muslim fighters. Batterjee and other Saudi charities received charitable funds from King Saud, members of the royal family, Saudi millionaires, and average Saudis (most of whom donated for religious reasons). Batterjee opened a fundraising office for Benevolence in Chicago in 1992. In 1993 Batterjee stepped down as a director because he was under increasing scrutiny in Saudi Arabia, and Arnaout was placed in charge of the U.S. office. Benevolence's public literature stated it was a relief group, but an internal memo stated "from its first day [Benevolence] aimed to support jihad and mujahadeen". Another memo stated the mission was to "make Islam supreme on this Earth". Arnaout left the U.S. in November 2001 to go to Bosnia because a manager at Benevolence in Bosnia was concerned about investigations. About half of the charity's activities were not "on the books". Arnaout's home was raided by the FBI, and Benevolence's assets were frozen once he left. Arnaout returned to the U.S., and his home in Bosnia was raided by Bosnian officials. On April 30, 2002, Arnaout was arrested, and accused of funneling charity money to al Qaeda and other armed groups. Batterjee was named as an un-indicted co-conspirator. Mohammed Jamal Khalifa (linked to the 1993 World Trade Center bombing) was also linked to Benevolence because a call was made from the organization to a phone number "associated" with Khalifa. Judge in charge of the case indicated the evidence was not solid linking Benevolence to terrorism. The FBI made a deal with Arnaout. Arnaout pled guilty to <i>racketeering</i>, admitting that he defrauded donors of almost \$316,000 by diverting the money to Bosnian and Chechnyan fighters in return for the <i>terrorism</i> charge being dropped.

Source	Benevolence International Foundation
The Miami Herald, June 30, 2004, Jay Weaver, <i>Padilla could be charged in Miami</i> , at page 1.	<ul style="list-style-type: none"> • Adham Amin Hassoun, who helped launch Benevolence International Foundation, has been indicted in Miami on <i>gun possession, perjury, and obstruction of justice charges in an attempt to promote global jihad</i>. The article does not specify whether those charges are in any way related to Hassoun's activity with Benevolence International. • Hassoun is now being linked to Jose Padilla.

Source	Charity Without Borders
WFOR-CBS News, May 28, 2004, Ben Fox, available at www.cbs4.com	<ul style="list-style-type: none"> • Adam Gadahn, designated by the U.S. as a person of interest suspected of having connections to al Qaeda. Gadahn worked for Charity without Borders in 1997 in Garden Grove, California. • Terror suspect Khalil al-Deek also worked for Charity without Borders. Al-Deek is suspected of having ties to Usama bin Laden.
Email from Betsy Adler, dated May 28, 2004, citing Cal. Secretary of State website	<ul style="list-style-type: none"> • Charity Without Borders was suspended by the California Franchise Tax Board (FTB) on March 1, 2004.
OC Weekly, June 18, 2004, Nick Shou, <i>Hide & Go Deek</i> , at page 10.	<ul style="list-style-type: none"> • Charity without Borders was operated out of Khalil al-Deek's apartment in Anaheim, California. The stated purpose of the charity was to "educate, feed, clothe and shelter anyone in any country that is in need of our help." • Terrorism commentator, Steven Emerson, has implied that funds from the charity were used to fund terrorism.

Source	Global Relief Foundation
Copley News Service, June 25, 2004, Kelly Thornton Copley, <i>References stay in indictment</i>	<ul style="list-style-type: none"> • Omar Abdi Mohamed, president of the Western Somali Relief Agency is indicted for <i>immigration crimes and taking \$5,000 from Al-Haramain</i> (charge added in March)—Mohamed is NOT indicted for terrorism. • The indictment accuses Mohamed of taking \$351,000 from Global Relief Foundation and lying about it during a 2002 citizenship interview. • Judge Houston (S.D. Cal.) refused to remove references to "terrorism" from the indictment despite arguments that it would prejudice the jury.

Source	Help the Needy
<p>Department of Justice Press Release, February 26, 2003</p>	<ul style="list-style-type: none"> • Four men were indicted in connection with Help the Needy in Syracuse, New York: Rafil Dhafir, Maher Zagha, Ayman Jarwan, Osameh Al Wahaidy. • Charged with <i>conspiring to transfer funds to Iraq in violation of the International Emergency Economic Powers Act</i>, and Dhafir and Zagha are charged with <i>money laundering</i> and <i>conspiracy to commit money laundering.</i> • Indictment alleges: (1) between 1994 and the time of the indictment the men conspired to transfer funds and other economic resources to Iraq; (2) solicited funds from people in the United States using the name "Help the Needy", deposited the money in New York banks, and then laundered the money to Iraq, totaling \$2.7 million.
<p>The Associated Press, June 17, 2004, William Kates, <i>Lawyer: Isaho Aquittal Bodes Well for Jailed Muslim Doctor.</i></p>	<ul style="list-style-type: none"> • Prosecutors are alleging Help the Needy raised nearly \$5 million from 1994 to 2003, with at least \$160,000 ending up in Iraq. • Dhafir has not been charged with terrorism, but he is still being investigated for possible connections to terrorism. The indictment alleges twelve counts of <i>money laundering</i>, one count of <i>conspiracy to commit money laundering</i>, <i>defrauding Medicare of \$274,000</i>, and <i>evading federal income taxes by writing off the illegal charity donations</i> totaling \$400,000. • Dhafir was born in Iraq—has been denied bail four times and is being held pending trial. • Help the Needy sent checks totaling \$42,000 to Global Relief Foundation and to Benevolence International Foundation

Source	Holy Land Foundation
<p>Associated Press, June 10, 2004, David Koenig, <i>Men Accused of Hamas Ties to Go on Trial</i></p>	<ul style="list-style-type: none"> • Ghassan Elashi, Bayan Elashi, Basman Elashi, Hazim Elashi, and Ihsan Elashi (five brothers) stood trial in June on charges they shipped computers to countries that help terrorists. • The charges include: <i>illegal exports to Libya and Syria, making false statements on export declarations, and money laundering</i> and about activities of the brothers with their company InfoCom. • The trial is considered a warm up to a trial in Fall '04 on charges the brothers used their computer business to launder money (\$100,000) to the leader of Hamas. • Ghassan Elashi was the chairman of Holy Land Foundation: the charity allegedly gave money to the wives and children of Palestinian suicide bombers.

Source	Holy Land Foundation
<p>The Washington Times, June 12, 2004, High Aynesworth, <i>Trial begins for five Palestinians; Brothers accused of exporting contraband to terror-linked nations</i>, at page A02</p>	<ul style="list-style-type: none"> • The brothers were the executives of InfoCom and were accused of knowing they violated export rules and made false statements on export documents. • There were no terrorism charges at issue in the trial, but during a second trial later in 2004, the 5 brothers will face charges that they funneled money to Hamas that was used to benefit the families of known terrorists.
<p>Los Angeles Times, July 2, 2004, Scott Gold, <i>Quiet End to Mislim Brothers' Trial; Once accused of being 'terrorist money-men,' the five await a verdict in an export case. Critics call it an overzealous prosecution</i>, at page A15</p>	<ul style="list-style-type: none"> • "[T]he three-week-long trial [of the Elashi brothers] is wrapping up with considerably less fanfare than the case began with, leading to renewed accusations that President Bush's war on terror often targets domestic politics as much as international terrorism." • Terrorism charges that were dropped from this first trial and are now scheduled for the trial in the Fall. • The brothers have been linked to Mousa Abu Marzook, a leader of Hamas; Marzook allegedly gave money to the Holy Land Foundation. • No charges have ever been filed against the brothers in connection with the Holy Land Foundation although the charity was shut down in 2001 and alleged to be a front for terrorism.
<p>Associated Press, July 7, 2004, David Koenig, <i>Verdict reached in export case</i></p>	<ul style="list-style-type: none"> • The Elashi brothers were convicted by a federal jury, but not all brothers were convicted of all charges.
<p>The Dallas Morning News, July 8, 2004, <i>Holy Land and InfoCom's History</i>, at page 18A</p>	<ul style="list-style-type: none"> • Contains a time line of Holy Land Foundation from the founding of Holy Land Foundation in California in 1989 to the conviction of the Elashi brothers.
<p>The New York Sun, July 28, 2004, Eli Lake, <i>A Muslim Fund Sent Millions to Terrorists</i> at page 1</p>	<ul style="list-style-type: none"> • Officers with the Holy Land Foundation were indicted on charges that they funneled \$12.4 million to Hamas between 1995 and 2001. • "Mr. Ashcroft said the indictments were made possible by new powers granted the federal government by the USA Patriot Act."—BUT the actual indictments were brought under the 1995 International Emergency Economic Powers Act and the 1996 Anti-Terrorism & Effective Death Penalty provisions. • Indictments were against: (1) Shukri Abu Baker—founder of the organization; (2) Ghassan Elashi—founder of the organization; (3) Mohammed El-Mezain—founder of the organization (4) Haitham Maghawri—official; (5) Akram Mishal—official; (6) Mufid Abdulqater—official; (7) Abdulraham Odeh—official. • Charges included <i>money laundering, providing material support to terrorists, making financial transactions that threatened national security, and filing fake tax returns.</i>

Source	Holy Land Foundation
	<ul style="list-style-type: none"> • Indictment charges that Holy Land Foundation paid for Islamic fundamentalists to travel to America. • At an October 1993 meeting, Baker and Elashi discussed hiding fundraising activities for Hamas by “masquerading” as a charity and giving “token” amounts to non-Islamic charities. Baker is quoted in the indictment as saying “We can give \$100,000 to the Islamists and \$5,000 to the others.”
<p>The New York Times, July 28, 2004, Eric Lichtblau, <i>Arrests Tie Charity Group to Palestinian Terrorists</i> at page 10.</p>	<ul style="list-style-type: none"> • Shukri Abu Baker—former president and chief executive of Holy Land • Ghassan Elashi—former board chairman and treasurer • Mufid Abdulqader—top fundraiser • Mohammed El-Mezain—former chairman of the board • Abdulrahman Odeh—Holy Land’s representative in New Jersey • Haitham Maghawri—former official • Akram Mishal—former official • Maghawri and Mishal were able to leave the country before they were arrested, but they were indicted.
<p>The Houston Chronicle, July 28, 2004, Thomas Korosec, <i>Texas Charity Helped Terrorists</i>, at page 1.</p>	<ul style="list-style-type: none"> • Holy Land was once the nation’s largest Muslim charity. The charity was closed by executive order in December 2001.
<p>Statement of the Attorney General re: Indictments, February 20, 2003</p>	<ul style="list-style-type: none"> • Sami Amin Al-Arian and 7 co-conspirators were indicted on February 20, 2003—4 of those indicted were in the United States (Sameeh Hammoudeh, Hatim Naji Fariz, and Ghassan Zayed Ballut). • Charges include: <i>racketeering, conspiring to provide material support for terrorism, conspiracy within the U.S. to kill and main people abroad, conspiring to violate emergency economic sanctions, extortion, perjury, obstruction, immigration fraud.</i> • Al-Arian was the American leader of Palestinian Islamic Jihad. • Al-Arian was born in Kuwait, but lived in the U.S. since he came here for college (over 25 years ago); was a professor at the University of South Florida’s College of Engineering.
<p>CBS News.com, January 13, 2004, <i>Cleveland Islamic Leader Indicted</i>, available at www.cbsnews.com</p>	<ul style="list-style-type: none"> • Fawaz Mohammed Damrah (aka Fawaz Damra) was indicted on December 10, 2003 and arrested on January 13, 2004. • Charges include: <i>unlawfully obtaining U.S. citizenship by providing false or fraudulent information</i>—Damrah allegedly concealed connections to groups that committed terrorist acts against Jews when he applied for U.S. citizenship (he became a U.S. citizen in 1994).

Source	Holy Land Foundation
	<ul style="list-style-type: none"> • Terrorist groups Damrah is allegedly connected to: Islamic Center of Cleveland (the city's largest mosque), Palestinian Islamic Jihad, Afghan Refugees Services, Inc (aka Al-Kifah Refugee Center), Islamic Committee for Palestine (aka Islamic Concern Project). • After September 11th, Damrah represented the Muslim community at interfaith gatherings, then a news station broadcast a video of Damrah in 1991 making anti-Jewish comments at a Chicago gathering: "he called for rifles to be directed at Jewish people and referred] to them as 'the sons of monkeys and pigs'".
<p>Testimony before the House Financial Services Subcommittee on Oversight & Investigations, March 11, 2003, Testimony by Steven Emerson, Director of the Investigative Project **detail discussing the connections between Al-Arian and terrorism**</p>	<ul style="list-style-type: none"> • Al-Arian (leading his 7 co-conspirators) financed, coordinated and assisted acts of terror by "secretly establish[ing] cells or sections of the PIJ in different countries, and in the United States [by utilizing] the structure, facilities and academic environment of the University of South Florida to conceal the activities of the PIJ". • Al-Arian established the Islamic Committee for Palestine in Tampa, Florida—the described mission of the group was as a humanitarian group that provided aid to Palestinians. • The government alleges the Islamic Committee for Palestine was a front for Palestine Islamic Jihad. • An Islamic Committee for Palestine-sponsored event in 1990 in Chicago had one speaker who described terrorist attacks cared out by Islamic Jihad in Palestine and then solicited money stating: "We are giving you a list of 16 martyrs. Some of these died in amphibious operations. Some died in assault operations. The families need your assistance. Each martyr needs \$1000 dollars. Is there someone here to sponsor ten martyrs?" • Annual conventions and conferences were organized in various other U.S. cities by ICP—according to the government the meetings: (1) brought into the U.S. leaders of militant Islamic terrorist groups, (2) raised money for jihad charities and other front organizations and tax exempt foundations, (3) provided a platform for overt and covert calls and plans to commit terrorist attacks. • Islamic Committee also published and distributed a newsletter "Islam and Palestine" that carried "Islamic Jihad communiqués" and interviews with jihad leaders. • Al-Arian also was the administrative director of World and Islam Studies Enterprise ("WISE"), which was affiliated with the University of South Florida—the described purpose of the group was to serve as a "think tank on Islamic thought and politics". • The government alleges WISE was a front for Palestine Islamic Jihad

Source	Holy Land Foundation
	<ul style="list-style-type: none"> • WISE and the University of South Florida had a full working relationship: the university co-hosted forums with WISE, trained WISE-sponsored graduate students, shared the university's resources and libraries.
<p>The Associated Press, June 15, 2004, Joe Milicia, <i>Prosecutors say Islamic Cleric Raised Money for Terrorist Groups as Citizenship Trial Begins.</i></p>	<ul style="list-style-type: none"> • Fawaz Damra trial in progress. • Damra was the former imam of Al-Farouq Mosque in Brooklyn. Al-Farouq was located in the same building as Afghan Refugee Services. • Afghan Refugee Services and Islamic Committee are classified as terrorist organizations by the U.S. federal government.
<p>Plain Dealer, June 16, 2004, John Caniglia, <i>Terror-Link Trial Begins for Local Islamic Cleric</i>, at page B4</p>	<ul style="list-style-type: none"> • Fawaz Damra is accused of raising between \$10,000 and \$15,000 at a 1991 fund-raiser in Cleveland which went to the Palestinian Islamic Jihad through Sami Al-Arian.
<p>Akron Beacon Journal, June 18, 2004, Stephen Dyer, <i>Cleric's Conviction Called Win vs. Terror; Cleveland-Area Muslim Leader Could Get Prison. Jury in Akron Decides He Lied to Become Citizen</i>, at page A01</p>	<ul style="list-style-type: none"> • Fawaz Damrah was convicted by a jury on June 17, 2004. He will be sentenced on September 9, 2004 and could lose his citizenship and be sentenced to a maximum of five years in jail. • Government presented video of Damrah "spewing hatred toward Israel and Jews" and fundraising for the Islamic Committee for Palestine; also argued he was the "closer" for an "economic jihad" conducted by Islamic Terrorists; a document was also produced listing Damrah as the director of Afghan Refugees Service.
<p>Associated Press, June 19, 2004, <i>Court papers accuse imam of wanting to launder money for violent Islamic group</i></p>	<ul style="list-style-type: none"> • Documents filed in court on June 18, 2004 stated Fawaz Damrah was a fundraiser for Sami Al-Arian and plotted to launder money to Islamic Committee for Palestine. • In a recorded conversation between Damrah and Al-Arian, Damrah talks about raising \$35,000 in Chicago and the two talk about a tax scheme to raise more money—Al-Arian would give money from Chicago to Damrah, Damrah would then give the money to wealthy people in the Cleveland Mosque, who would then donate it back to Islamic Committee for Palestine; the wealthy people could then use the donation as a tax write off and donate the savings to Islamic Committee for Palestine. The scheme was never carried out.
<p>Associated Press, June 28, 2004, Vickie Chachere, <i>Group criticizes Castor's handling of Al-Arian case</i></p>	<ul style="list-style-type: none"> • Ramadah Abdullah Shallah was also a University of South Florida professor, but left in late 1995 to head Palestinian Islamic Jihad. • Allegations against Sami Al-Arian first started in 1994. No internal university investigation was started until Shallah left.

Source	Holy Land Foundation
	<ul style="list-style-type: none"> • Betty Castor, former president of University of South Florida and current U.S. Senate candidate in Florida, tried to find out about the alleged terrorist connection between Al-Arian, Shallah and the university from the FBI but was not given any information about the investigation. Therefore she did not take action against the professor. • Al-Arian was placed on leave after a FBI search warrant was made public in 1996, but was allowed to return to the school in 1998.
<p>The Miami Herald, June 29, 2004, Marc Caputo, <i>Castor Grilled About Professor; Candidate Betty Castor is under fire for allegedly misrepresenting what she knew about an accused terrorist while she was University of South Florida president at page B1</i></p>	<ul style="list-style-type: none"> • Al-Arian was fired from the university by Castors' successor as president of the university after he was indicted for supporting Islamic Jihad on February 26, 2003. • Castor received two FBI affidavits about Al-Arian during her tenure as university president about Al-Arian's activities. They described phone calls from al-Arian's home to numbers associated with the World Trade Center bombing and alleged that he used two groups as a front to help international terrorists get around immigration laws and enter the country to raise money for anti-Israeli causes. • The faculty at the University of South Florida protested Al-Arian's paid suspension in 1996.
<p>Associated Press, July 2, 2004, Vickie Chachere, <i>Senate Hopeful Castor faces questions on terror financing case</i></p>	<ul style="list-style-type: none"> • Betty Castor became president of the University of South Florida in 1994. • Allegations soon began regarding terrorist associations, leading to the nickname "Jihad University". • The University attempted to expand its understanding of the Middle East, but apparently was corrupted in the process. • Soon after Castor took office a documentary, "Jihad in America" and a series of articles in the Tampa Tribune discussed Al-Arian's activities. • In mid-1995, Ramadan Abdullah Shallah suddenly left the university to become the head of Islamic Jihad in Syria. Shallah was brought to the University by Al-Arian. • Al-Arian established an Islamic think tank (World and Islam Studies Enterprises (WISE)) and an affiliated charity which were allegedly connected to terrorism. • The indictment against Al-Arian alleges that he used the think tank and charity as a way to bring terrorists into the U.S. for conferences. The conferences were used as a way to raise money for terrorist attacks in Israel. • Again discusses the difficulty Castor faced trying to find out about any possible link to terrorism because of the secrecy of the investigation. • Al-Arian's phones had been tapped since 1993.
<p>The Miami Herald, July 6, 2004, <i>Al-Arian timeline</i>, at page B5</p>	<ul style="list-style-type: none"> • Time line of activities discussed above.

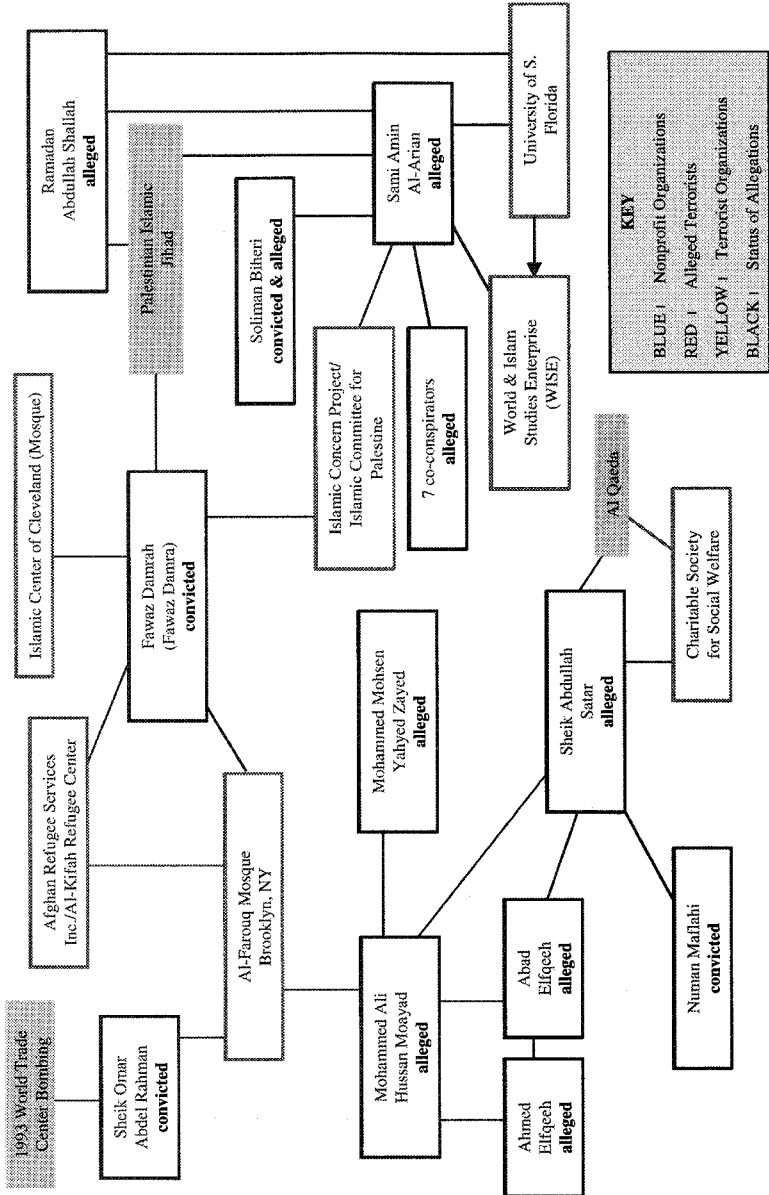
Source	Holy Land Foundation
<p>The Chicago Sun-Times, July 8, 2004, Natasha Korecki, <i>New Charges in terror-funding case</i>, at page 27</p>	<ul style="list-style-type: none"> • An associate of Sami Al-Arian, Hatem Fariz who is awaiting trial in Florida on terrorism charges, was arrested in Chicago for charges unrelated to terrorism fundraising: stealing money from an electronic food stamp program. • Fariz is one of the 7 associates charged along with Al-Arian.

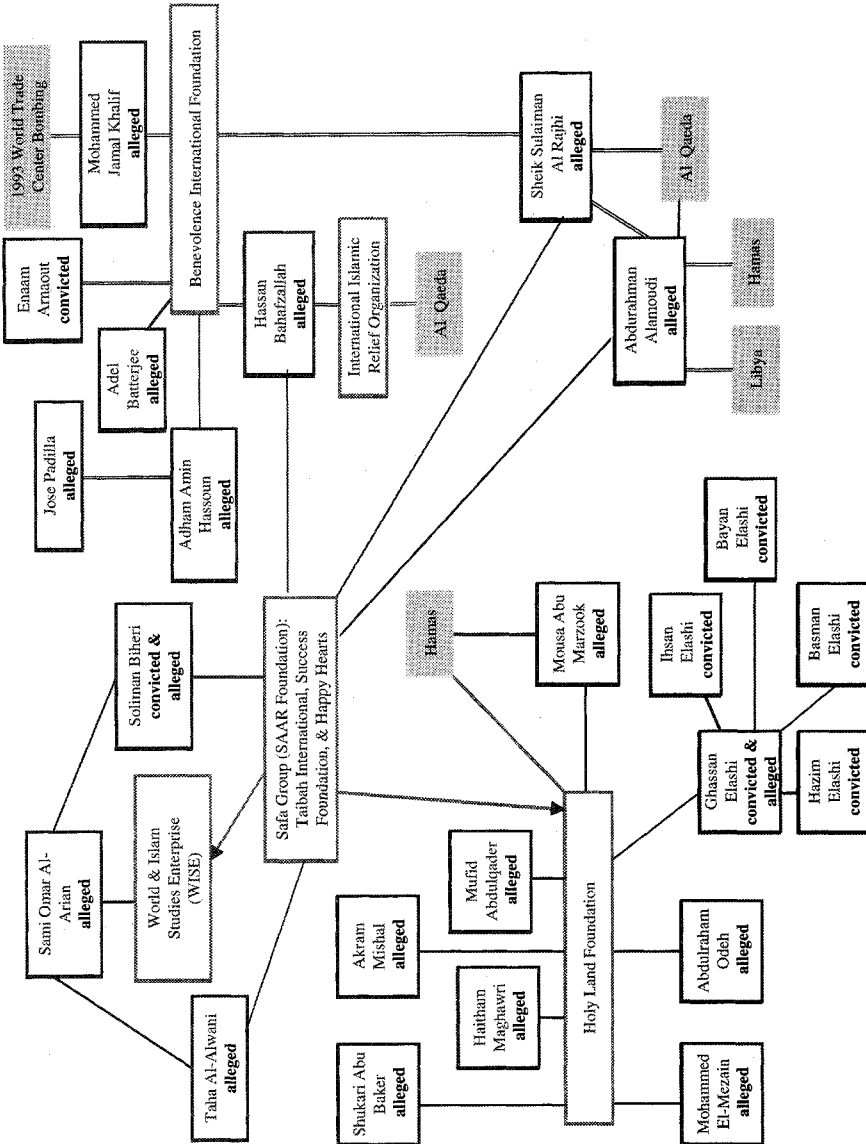
Source	Safa Group
<p>Facts on File World News Digest, October 30, 2003, <i>Terrorist Attack Aftermath: Alamoudi Charged in Charity Probe: Other Developments</i>, at page 892B3.</p>	<ul style="list-style-type: none"> • The Safa Group is the name given to the umbrella group, centered around northern Virginia, which is alleged to have “maintained a financial and ideological relationship with Hamas and the Palestinian Islamic Jihad”. An affidavit in support of raids of the Safa Group in 2002 did not present direct evidence of terrorist financing, but instead was based on tax discrepancies. • Abdurahman Alamoudi was charged with <i>laundering money, false statements & conducting illegal transactions with Libya</i>. An affidavit stated he “funneled money to terrorist organizations “including al Qaeda and Hamas”, but he does not face any terrorism charges. • Alamoudi was founder of the American Muslim Foundation and the American Muslim Council and was designer of the U.S. military’s Muslim chaplain program. • Alamoudi was first detained in London on August 16, 2003 because he had \$340,000 in undeclared money in his suitcase. At the time, he was traveling from Syria. • The government alleges Alamoudi financed various terrorist organizations by using charitable organizations as fronts, including: Taibah Aid Association, Success, Foundation, & Happy Hearts Trust (based in Isle of Man).
<p>Cox News Service, November 13, 2003, Rebecca Carr & Eunice Moscoso, <i>Safa Group Charities Scrutinized for Alleged Terror Ties</i></p>	<ul style="list-style-type: none"> • The Safa Group is comprised of more than 100 charities, educational organizations and companies. • Alleged that Safa Group has been using charities to “transmit money internationally for the purpose of promoting offenses against foreign nations involving murder or the destruction of property by means of explosives, fire, kidnapping or extortion”. • 72% of the donations to charities in the Safa Group came from other Safa Group members. • Large money transfers allegedly have been taking place from the Safa Group to terrorist front organizations since the early 1990s. There is probable cause to believe some of the money was sent to Holy Land Foundation and to Sami Omar Al-Arian. • Taha Al-Alwani has been investigated. He runs an Islamic graduate school that helps select people for the military Muslim chaplain program.

Source	Safa Group
	<ul style="list-style-type: none"> • Al-Alwani is connected to Sami Omar Al-Arian. Safa Group allegedly gave WISE \$50,000. • Abdurahman M. Alamoudi was indicted for <i>laundering money, violating immigration and customs laws by accepting money from Libya</i>. • Alamoudi is connected to the Safa Group through other charities he runs • Soliman Biheri was convicted in October 2003 of immigration charges. He has been connected to Al-Arian and to members of the Safa Group.
<p>Associated Press Online, June 17, 2004, Matthew Barakat, <i>New Charges for Man Tied to hamas Leader</i>.</p>	<ul style="list-style-type: none"> • Soliman Biheri was convicted of immigration fraud in 2003, but new charges were brought against him days before his scheduled release from jail • The charges include: (1) <i>making false statements to federal investigators by denying a business relationship with Mousa Abu Marzook (political leader of Hamas); (2) falsely denying business relationship with Sami Al-Arian; and (3) fraudulently obtained a passport.</i>
<p>The Washington Post, June 22, 2004, Kerry Markon, <i>Egyptian Man to Remain Jailed; Suspect Held in Connection with Va. Islamic Charity Probe</i>, at page A02</p>	<ul style="list-style-type: none"> • Soliman Biheri was ordered to stay in jail after U.S. government officials stated that they may file additional charges. • Biheri founded BMI Inc, an investment firm in New Jersey based on Islamic Principles—Islamic charities based in N. Virginia & sponsored by the Saudi government invested nearly \$4 million in BMI. • U.S. federal government alleges Biheri came to the U.S. to finance and support terrorist groups.
<p>Cox News Service, June 29, 2004, Rebecca Carr & Bill Torpy, <i>Documents Unsealed in Terror Finance Probe</i>.</p>	<ul style="list-style-type: none"> • U.S. federal government documents allege \$12.6 million went from a foundation connected to a Gainesville, Georgia chicken plant to a secret bank account held by Sheik Sulaiman A. Al Rajhi, a financial supporter of Osama bin Laden. • Charities and businesses in northern Virginia (the government has named them the Safa Group) have been connected with the chicken plant. • No arrests or indictments have yet resulted from the numerous raids that have been conducted on the Safa Group. • One affidavit in support of a raid alleged the group had been using charities and businesses to “transmit money internationally for the purpose of promoting offenses against foreign nations involving murder or the destruction of property by means of explosives, fire, kidnapping or extortion”. • The Safa Group was linked to Al-Qaeda by Benevolence International Foundation (headed by Hassan Bahafzallah (also a member of the advisory council for International Islamic Relief Organization “which is widely reputed to have been used to support al Qaeda)) because Al Rajhi was connected with Benevolence.

Source	Safa Group
<p>The Atlanta-Journal Constitution, June 30, 2004, Rebecca Carr & Bill Torpy, <i>Terror Money Trail Pursued; Government sheds new light on bid to link Georgia plant to bin Laden backer</i></p>	<ul style="list-style-type: none"> • Same content as the Cox article on June 29th.
<p>The New York Times, July 30, 2004 Eric Lichtblau, <i>Islamic Leader to Plead Guilty to Libya Plot</i>, at page 14</p>	<ul style="list-style-type: none"> • Abdurahman Alamoudi agreed to plead guilty to having illegal business dealings with Libya and acknowledged his role in plotting with Muammar el-Qaddafi to kill Crown Prince Abdullah. • Alamoudi is president of the American Muslim Foundation. • Alamoudi in the past had raised substantial amounts of money in the Middle East for American Muslim charitable causes.

Exhibit B
Alleged Connections between Nonprofit Organizations and Terrorists as of August 2, 2004





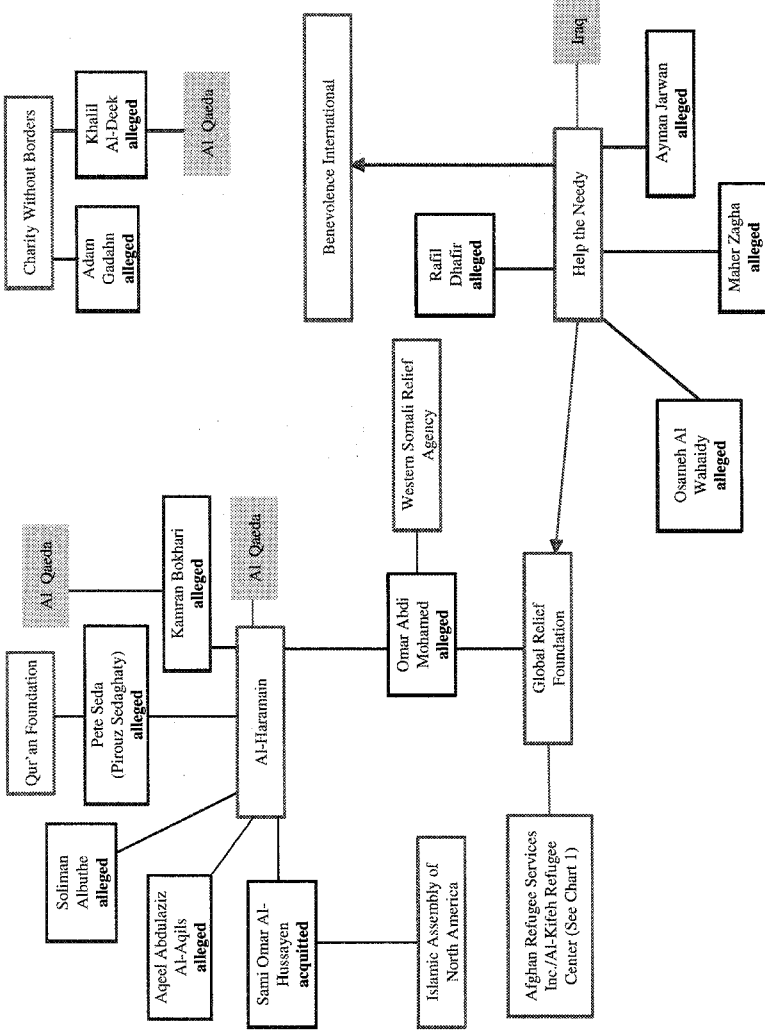


Exhibit C
Indictments Against Alleged Terrorists Connected to Charitable Organizations
Current as of August 2, 2004

Name	Organization	Indictment								Status			
		Terrorism	False Statement	Visa Fraud	Racketeering	Conspiracy	Money Transfers	Money Laundering	Tax		Exports	Misc.	
Sami Omar Al-Hussayen	Al-Haramain & Islamic Assembly of North America	✓	✓	✓									Acquitted of all but 3 counts of false statement & 5 counts of visa fraud—the jury could not reach a verdict on those charges. The remaining charges were dropped in exchange for Al-Hussayen not appealing his deportation.
Enaam Arnaout	Benevolence International Foundation	✓			✓								Pled guilty to the racketeering charge in return for the terrorism charge being dropped.
Adham Amin Hassoun	Benevolence International Foundation	✓										✓	Not clear whether the charges are related to his work with Benevolence OR the status for the charges.
Mohammed Ali Hassan Moayad	Al-Farouq Mosque												Charges unclear.
Mohammed Mohsen Yahya Zayed	Al-Farouq Mosque												Charges unclear.
Abad Elfgeeh	Al-Farouq Mosque					✓						✓	Elfgeeh initially pled guilty. Plea was vacated because Elfgeeh was found not to have understood the charges against him.

Indictments Against Alleged Terrorists Allegedly Connected to Charitable Organizations
Current as of August 2, 2004 — continued

Name	Organization	Indictment							Status					
		Terrorism	False Statement	Visa Fraud	Racketeering	Conspiracy	Money Transfers	Money Laundering		Tax	Exports	Misc.		
Numan Maflahi	Brooklyn & Manhattan mosques, and Charitable Society for Social Welfare		✓											In June 2004, convicted and sentenced to 5 years for lying to FBI agents.
Rafli Dhafir	Help the Needy					✓			✓				✓	Status unclear
Maher Zagha	Help the Needy								✓					Status unclear
Ayman Jarwan	Help the Needy								✓					Status unclear
Osaneh Al Wahaidy	Help the Needy								✓					Status unclear
Sami Amin Al-Arian	Islamic Concern & WISE	✓		✓									✓	Status unclear
Fawaz Mohammed Damrah	Islamic Concern, Al-Kifah & Islamic Center of Cleveland			✓										Convicted by jury on June 17, 2004—to be sentenced Sept. 20, 2004.

Indictments Against Alleged Terrorists Allegedly Connected to Charitable Organizations
Current as of August 2, 2004 — continued

Name	Organization	Indictment								Status			
		Terrorism	False Statement	Visa Fraud	Racketeering	Conspiracy	Money Transfers	Money Laundering	Tax		Exports	Misc.	
Soliman Biheri	Safa Group		✓	✓									Convicted of immigration fraud in 2003; Charges alleging connection with Al-Arian brought before his release.
Taha Al-Alwani	Safa Group												Status unclear.
Abdurahman Alamoudi	Safa Group		✓						✓				Pled guilty to having illegal business dealings with Libya and involvement in plot to assassinate Crown Prince Abdullah of Saudi Arabia.
Omar Abdi Mohammed	Global Relief Foundation, Western Somali Relief Agency			✓									Status unclear.
Hazim Elashi	Holy Land Foundation									✓			Convicted by jury on some counts. Second trial to come in Fall 2004 on terrorism charges.
Ihsan Elashi	Holy Land Foundation									✓			Convicted by jury on some counts of all charges. Second trial to come in Fall 2004 on terrorism charges.

**Indictments Against Alleged Terrorists Allegedly Connected to Charitable Organizations
Current as of August 2, 2004 — continued**

Name	Organization	Indictment								Status		
		Terrorism	False Statement	Visa Fraud	Racketeering	Conspiracy	Money Transfers	Money Laundering	Tax		Exports	Misc.
Ghassan Elashi	Holy Land Foundation	✓				✓	✓		✓			Convicted by jury on some counts. Second trial to come in Fall 2004 that should include terrorism charges. Named in new indictment on July 27, 2004.
Bayan Elashi	Holy Land Foundation						✓				✓	Convicted by jury on some counts. Second trial to come in Fall 2004 on terrorism charges.
Basman Elashi	Holy Land Foundation								✓			Convicted by jury on some counts. Second trial to come in Fall 2004 on terrorism charges.
Shukri Abu-Baker	Holy Land Foundation	✓							✓			Indicted on July 27, 2004.
Haitham Maghawri	Holy Land Foundation	✓							✓			Indicted on July 27, 2004.
Mohammed El-Mezain	Holy Land Foundation	✓							✓			Indicted on July 27, 2004.
Akram Mishal	Holy Land Foundation	✓							✓			Indicted on July 27, 2004.
Abdulrahem Odeh	Holy Land Foundation	✓							✓			Indicted on July 27, 2004.
Mufid Abdulqader	Holy Land Foundation	✓							✓			Indicted on July 27, 2004.

Exhibit D

Terrorist Financing Staff Monograph Chapter 6: The Illinois Charities Case Study

Two Illinois-based charities, the Global Relief Foundation (GRF) and the Benevolence International Foundation (BIF), were publicly accused by the federal government shortly after 9/11 of providing financial support to al Qaeda and international terrorism. The FBI had already been investigating both GRF and BIF for several years, but only after 9/11 did the government move to shut down these organizations and stop their flow of funds overseas.¹⁸

Introduction

GRF, a charitable organization ostensibly devoted to providing humanitarian aid to the needy, with operations in 25 countries around the world, raised millions of dollars in the United States in support of its mission. U.S. investigators have long believed that GRF was devoting a significant percentage of the funds it raised to support Islamic extremist causes and jihadists with substantial links to international terrorist groups, including al Qaeda, and the FBI had a very active investigation under way by the time of 9/11. BIF, a charitable organization with offices in at least 10 countries around the world, raised millions of dollars in the United States, much of which it distributed throughout the world for purposes of humanitarian aid. As in the case of GRF, the U.S. government believed BIF had substantial connections to terrorist groups, including al Qaeda, and was sending a substantial percentage of its funds to support the international jihadist movement. BIF was also the subject of an active investigation by 9/11.

After 9/11, OFAC froze both charities' assets, effectively putting them out of business. The FBI opened a criminal investigation of both charities, ultimately resulting in the conviction of the leader of BIF for non-terrorism-related charges. The Immigration and Naturalization Service detained and ultimately deported a major GRF fund-raiser. No

18. This chapter is based on interviews with many participants, including FBI agents and supervisors, OFAC personnel, representatives of BIF and GRF, as well as other witnesses, extensive review of contemporaneous documents, both classified and unclassified, from a variety of agencies, and the court filings and judicial opinions from litigation concerning BIF and GRF.

criminal charges have been filed against GRF or its personnel, as of this writing.

The cases of BIF and GRF illustrate the U.S. government's approach to terrorist fund-raising in the United States before 9/11 and how that approach dramatically changed after the terrorist attacks, moving from a strategy of merely investigating and monitoring terrorist financing to one of active disruption through criminal prosecution and the use of its powers under the International Emergency Economic Powers Act (IEEPA) to block the assets of suspect entities in the United States. Although effective in shutting down its targets, this aggressive approach raises potential civil liberties concerns. The BIF and GRF investigations also highlight two fundamental issues that span all aspects of the government's efforts to combat al Qaeda financing: the difference between seeing "links" to terrorists and proving the funding of terrorists, and the problem of defining the threshold of information necessary to take disruptive action.

FBI Investigations of BIF and GRF before 9/11

Contrary to a common misconception, the FBI did not ignore terrorist financing before 9/11. The intelligence side of the FBI gathered extensive information on terrorist fund-raising in the United States, although the Bureau lacked any strategy for disrupting the activity. In various field offices around the country, street agents actively investigated groups and individuals, including GRF and BIF, suspected of raising funds for al Qaeda or other extremist groups. Working in the face of many obstacles, including what agents believed to be a dysfunctional FISA (Foreign Intelligence Surveillance Act) process, these agents aggressively gathered information and tried to coordinate with other field offices, the intelligence community, and even foreign governments. The FBI lacked a headquarters unit that focused on terrorist financing before 9/11, however, and also lacked a coherent national approach to tackling the problem. As Assistant Director, Counterterrorism John Pistole testified, "there did not exist within the FBI a mechanism to ensure appropriate focus on terrorist finance issues and provide the necessary expertise and overall coordination to comprehensively address these matters."¹⁹

19. Terrorism Financing: Origination, Organization, and Prevention: Hearing before the Sen. Comm. on Homeland Security and Governmental Affairs, 108th Cong. (2003) (testimony of John Pistole, Exec. Ass't Dir. for Counterterrorism and Counter-

Origins of GRF

GRF was incorporated in Bridgeview, Illinois, in 1992. According to the U.S. government, GRF's founders had previously been affiliated with the Mektab al Khidmat (MAK) or "Human Services Office," cofounded by Abdullah Azzam and Usama Bin Ladin in the 1980s to recruit and support mujahideen to fight against the Soviets in Afghanistan. MAK funneled money and fighters to the mujahideen and set up a network of recruiting offices around the world, including in the United States. The U.S. government has called MAK the "precursor organization to al Qaeda."²⁰ One offshoot of MAK in the United States, the Al Khifa Refugee Center in Brooklyn, facilitated the movement of jihadist fighters in and out of Afghanistan. After the defeat of the Soviets, MAK and Al Kifah continued the mission of supporting jihadist fighters throughout the world. According to the U.S. government, a number of the persons convicted in the first World Trade Center bombing were associated with the Al Khifa Refugee Center, as was Sheikh Omar Abdel Rahman, the "Blind Sheikh," who is now serving a life sentence for his role in the foiled plan to bomb New York City tunnels and landmarks. President George W. Bush designated MAK/Al Khifa a specially designated global terrorist in the original annex to Executive Order 13224 on September 23, 2001.

GRF described itself as a nongovernmental organization (NGO) that provided humanitarian relief aid to Muslims through overseas offices around the world, especially in strife-torn regions such as Bosnia, Kashmir, Afghanistan, Lebanon, and Chechnya. GRF began operating with \$700,000 in cash. By 2000, it reported more than \$5 million in annual contributions. According to its Internal Revenue Service (IRS) filings, GRF sent 90 percent of its donations abroad between 1994 and 2000.²¹ GRF's numerous offices overseas received their own contributions in addition to what they received from the U.S. operation.

intelligence, Federal Bureau of Investigations, *available at* <http://www.senate.gov/~gov/affairs/index.cfm?useaction=Hearings.Detail&HearingID=106> (last visited Apr. 12, 2005).

20. Treasury Department Statement Regarding the Designation of the Global Relief Foundation, Oct. 18, 2002, *available at* <http://www.treas.gov/press/releases/po3553.htm> (last visited Apr. 12, 2005).

21. For example, GRF sent \$3.2 million overseas in 1999; and \$3.7 million overseas in 2000.

The FBI investigation of GRF before 9/11

GRF came to the attention of the FBI's Chicago Division in the mid-1990s, because of GRF's affiliation with Al Khifa and other unsubstantiated allegations about GRF's potential involvement in terrorist activity. After lying dormant for some time, the GRF investigation was assigned to two agents, who began to discover evidence of what they viewed as suspicious conduct. The Chicago office opened a formal full field investigation (FFI)²² in late 1997, largely on the strength of a series of telephone calls between GRF personnel and others with terrorist affiliations, as well as information from the intelligence community that GRF personnel had undertaken suspicious travel to Afghanistan and Pakistan. The Chicago agents stepped up the investigation of GRF, including physical surveillance, review of GRF's trash, and attempts to get telephone records through a legal request known as a National Security Letter (NSL). Among other things, the trash revealed copies of GRF's newsletter, "Al-Thilal" ("The Shadow"), which openly advocated a militant interpretation of Islam and armed jihad.

The NSLs yielded very useful information, but the process for their internal approval frustrated the Chicago agents, who said that the tremendous delays in getting NSLs authorized by FBI headquarters was the biggest obstacle they had to overcome in their pre-9/11 investigation of GRF. It routinely took six months to a year to get NSLs approved for routine documents, such as telephone or bank records. The Chicago agents believed their contact at the FBI headquarters in the Radical Fundamentalist Unit was very good at his job, but was overwhelmed with work, which caused a major bottleneck in getting the NSLs.

The Chicago agents received substantial information about GRF from foreign government agencies. They worked directly through the relevant FBI legal attaché, or Legat (an FBI agent posted overseas who acts as a liaison with foreign officials), to get foreign information. The process could be very slow and somewhat uncertain, but it often yielded helpful information. One European country where GRF had a substantial office provided the most useful information in the early stages of the investigation.

22. Approval to open an FFI requires some predication that the investigation is being conducted for legitimate intelligence purposes. Agents, using limited investigative techniques can open a preliminary investigation (PI) for a limited time to gather evidence to determine whether a FFI is warranted.

By mid-1998, the Chicago agents had evidence that led them to conclude that GRF was doing much more than providing humanitarian aid. The Chicago office summarized its views in an August 3, 1998, memorandum: "The FBI believes that GRF, through its Bridgeview headquarters and satellite offices around the globe, is actively involved in supplying and raising funds for international terrorism and Islamic militant movements overseas." At the time, the FBI suspected the executive director of being a supporter or member of the Egyptian extremist group Al Gama'a Al Islamiyya (AGAI), which was affiliated with the Blind Sheikh.

The Chicago office submitted a FISA application for GRF in mid-1998; it was not approved until mid-1999. According to the Chicago agents, the application posed no significant problems, although it appeared that the fact that domestic charities were involved may have slowed the process. In any event, it took a year for the application to be approved and authorized. After receiving FISA approval, the agents initiated electronic surveillance, which allowed them to expand the investigation.

By late 1999, the Chicago case agents were comfortable in their conclusion that GRF was a jihadist organization and that its executive director had connections to both AGIA and what they called the "Islamic Army organization of international terrorist financier Usama Bin Ladin."²³ They believed that multiple sources of evidence supported these conclusions. In the agents' view, the phone records they had obtained proved a compelling, although indirect, link between GRF's executive director and Usama Bin Ladin. In reviewing intelligence information and the executive director's phone records, they concluded that the executive director called a phone used by a mujahideen leader who was a close associate of Usama Bin Ladin. Phone records also connected GRF, through its office in Brussels, Belgium, with Bin Ladin's former personal secretary, Wadi al Hage, who is now serving a life sentence in the United States for his role in the 1998 embassy bombings.

The Chicago FBI agents were able to get critical information about the persons associated with international phone numbers because they had a working relationship with the CIA before 9/11. The Chicago agents said the quality of this relationship varied depending on the CIA representatives, who tended to be replaced frequently. Although the

23. January 20, 1999, FBI Document (on file with author).

relationship was not always smooth, it did succeed in providing important information.

The Chicago agents also conducted “trash covers,” virtually every week for years, which provided key intelligence on GRF. In this technique, the agents secretly entered GRF’s dumpster late at night and took out its trash for review. Among other things, GRF threw away pictures of communication gear it had shipped overseas, including sophisticated military-style handheld radios that the agents believed were far beyond what relief workers would ever need, but valuable to set up a military communications network. After 9/11, they learned this communication gear was shipped to Chechnya. They also found in GRF’s trash pro jihad books and literature, including the writings of Abdullah Azzam.

The Chicago agents summarized their view of GRF to a foreign government service in a January 6, 2000, memorandum:

Although the majority of GRF funding goes toward legitimate relief operations, a significant percentage is diverted to fund extremist causes. Among the terrorist groups known to have links to the GRF are the Algerian Armed Islamic Group, the Egyptian Islamic Jihad, Gama’at Al Islamiya, and the Kashmiri Harakat Al-Jihad El-Islam, as well as the al Qaeda organization of Usama Bin Laden. . . . In the past, GRF support to terrorists and other transnational mujahideen fighters has taken the form of purchase and shipment of large quantities of sophisticated communications equipment, provision of humanitarian cover documentation to suspected terrorists, and fund-raising for terrorist groups under the cover of humanitarian relief.²⁴

By 9/11, the Chicago agents believed that they had uncovered enough information to conclude that GRF was raising substantial funds in the United States to support international jihad. Bank records obtained through NSLs revealed large transfers of funds to the GRF overseas offices. The agents believed GRF distributed the bulk of funds as humanitarian relief, but also supported armed militants in the strife-torn regions where it was active.

On January 10, 2001, the Chicago agents wrote that “GRF is a highly organized fundraising machine, which raises millions of dollars annually” and that GRF’s “operations have extended all over the globe.”²⁵ The executive director, in his capacity as head of the organization, “has been and continues to be a supporter of worldwide Islamic extremist activity” and he “has past and present links and associations with a wide variety of international Muslim extremists,”

24. January 6, 2000 FBI Document (on file with author).

25. January 10, 2001 FBI Document (on file with author).

including al Qaeda and Usama Bin Ladin. The agents did not believe GRF was part of the formal al Qaeda network. Instead, they believed it “free-lanced” to support jihadists around the world, including in Europe, Bangladesh, India, and Pakistan. They also knew GRF was underwriting substantial humanitarian aid, which they thought was critical to its pro-jihad mission.²⁶

The Chicago agents believed GRF had two types of donors during this period. People not in the know thought they were giving money for humanitarian relief. Others clearly knew the purpose of their donations: When the agents later obtained donors’ checks, they saw that some donors had actually written pro-jihad statements on their memo lines.

The money trail generally stopped at the U.S. border, and the agents could never trace it directly to jihadists or terrorists. Before 9/11, they had no means to get foreign bank records. A formal request for records, called a mutual legal assistance treaty (MLAT) request, was impossible because the FBI did not have an open criminal investigation—the GRF inquiry was an intelligence investigation. The agents did ask one European country for help, but were told that that country’s restrictive laws prohibited electronic surveillance and obtaining bank records. The Chicago agents wanted to travel to Europe to meet with officials who had investigated GRF, but the Chicago FBI office denied permission because of budgetary constraints.

The Chicago investigation of GRF in turn led to an investigation by the Detroit FBI agents of GRF subjects within its jurisdiction. In early 2000, Chicago informed Detroit that GRF’s executive director had been calling two Michigan residents. One of these subjects was considered GRF’s spiritual leader and the other, Rabih Haddad, was a major GRF fund-raiser. A Detroit agent went to Chicago and reviewed the extensive investigative file. Upon his return, the agent prepared a request to open FFIs on the two subjects; it was approved in late March 2000. The evidence gathered in Chicago made clear to the Detroit agent that the GRF investigation was potentially “pretty big.”²⁷

The Detroit agents, however, believed themselves to be stymied by the inability to get FISA coverage. At the same time that the case agent opened the FFIs, he sought FISA coverage of those two subjects. None of these FISA applications was approved until after 9/11, some 18 months later. The Detroit agent was never given even an ostensible

26. January 10, 2001 FBI Document (on file with author).

27. Commission Staff Interview.

reason for the holdup. On the contrary, FBI headquarters told the agent that the applications looked good. These applications were being actively reviewed by both OIPR and FBI headquarters. Still, nothing ever happened. When he called FBI headquarters to check on the status of his applications, the Detroit agent was told only “we’re [the FBI] working on it.” The Detroit agent was very frustrated and upset by the delay, which he believes caused him to miss a great opportunity to gather critical intelligence and substantially limited the Detroit investigation of GRF before 9/11.

Resource limitations also limited Detroit’s role before 9/11. Though many counterterrorism investigations might have been undertaken, Detroit had only 12 agents on these cases; and because each agent was working multiple cases, no case could receive the attention it needed. Because of the lack of FISA coverage, resource limitations, and the apparent focus GRF’s activities in Chicago, the Detroit investigation was largely a satellite to the Chicago investigation before 9/11.

The Chicago agents thought that FBI headquarters provided support for their GRF investigation before 9/11, approving the FISA application, for example, and providing analytical support. In addition, one of the analysts at headquarters saw relevant material in a case file from another field office and very helpfully brought it to Chicago’s attention. From the Detroit perspective, however, headquarters was interested in the GRF investigation but was swamped with work and itself understaffed.

No realistic opportunities for disruption before 9/11

The Chicago agents saw no way to make a criminal case against GRF before 9/11, even though the agents thought they had considerable evidence that GRF was a major fund-raising operation for international jihad. The two lead agents thought about and even discussed the possibility of mounting a criminal case, but dismissed it. They had much smoke but no real fire—they had no direct evidence of serious criminal activity. They could not trace the millions of dollars GRF sent overseas to any specific jihadist or terrorist organization, although they had their suspicions. Even the electronic surveillance coverage yielded no evidence that would conclusively prove a criminal offense.

The Chicago agents worked with the INS to pick up several GRF employees on immigration overstay, with the goal of seeing if they would cooperate with the FBI against their employer. This effort proved fruitless, however. They considered doing the same with Rabih Haddad, the Detroit subject and major GRF fund-raiser, but decided it made more

sense to continue investigating him; the Detroit agents agreed.²⁸ The Chicago agents thought that the executive director himself was also technically out of status—he had requested a certain status adjustment from the INS but not yet received it—though an arrest in such a situation would be unusual. In any event, they did not ask the INS to arrest him, preferring to continue to monitor him.

The very concept of a criminal international terrorism case was foreign to the Chicago agents, and they did not think that the U.S. Attorney's Office had sufficient expertise in such cases. In addition, the agents believed that the rules regarding "the wall" between intelligence and criminal cases prevented the case agents from even discussing intelligence information with the U.S. Attorney's Office. Other than in New York, there were few criminal international terrorist (IT) investigations or cases in process. The Chicago office was undertaking only two criminal IT investigations, neither of which focused on al Qaeda suspects. According to the agent who supervised the GRF and BIF cases before 9/11, the case agents had always wanted to open a criminal case, despite the wall; but they thought that doing so would have hurt their ability to get and maintain FISA coverage because of their perception of the Department of Justice's restrictive interpretations of the wall restrictions, which they understood had impaired the Chicago office's ability to get FISA warrants approved in the past. As result, Chicago agents were cautious about pursuing criminal matters pertaining to ongoing intelligence investigations.

The lead Detroit investigator also saw no prospect of a criminal case before 9/11. He said that while working the case as an intelligence investigation he always kept in the back of his mind that possibility, but he knew that he had nowhere near the type of evidence required for criminal prosecution; he had his own concerns about the wall as well. In any event, neither Detroit nor Chicago, which had the lead in formulating an overall strategy, had sufficient evidence to move forward with criminal charges.

The Chicago investigation of GRF suffered a major blow in late spring or early summer 2001 when the FISA warrants were not extended. The Chicago agents were now in the same position as those in Detroit—deprived of electronic surveillance, their most potent intelligence-gathering tool.

28. The Chicago and Detroit agents each attributed to the other the decision to refrain from detaining Haddad, but both agree they concurred with the decision made by the other, without objection.

GRF's status on 9/11

The FBI's investigation over the several years before 9/11 led the investigating agents to believe GRF was an organization dedicated to supporting international jihad and was raising substantial funds in the United States toward that goal. The FBI agents developed what they thought was a good understanding of GRF's activities, despite significant obstacles imposed by a dysfunctional process for obtaining NSLs and FISA warrants. Although the FBI did the bulk of the work investigating GRF, the investigation benefited from contributions by the intelligence community and by foreign law enforcement sources, both of which substantially aided the FBI's understanding of the GRF's overseas activities. Despite the considerable body of knowledge they had, the FBI agents believed they lacked the evidence necessary to bring a criminal prosecution against GRF or its principals. In any event, the perceived restrictions imposed by the wall made such a prosecution extremely difficult, at best, and initiating a criminal investigation could have put the FISA warrants at risk. As a result, the FBI was left with nothing to do but continue to gather intelligence on GRF's activities in the United States. This task was made far more difficult by the inability to renew the FISA warrants in Chicago or obtain FISA coverage in Detroit. The agents did not have any plan to disrupt what they believed to be a major jihadist fund-raising operation, or any endgame for their investigation.

The origin of BIF

BIF was incorporated in Illinois in March 1992 and received tax-exempt status in March 1993. Its origins can be traced to Saudi Arabia, where in 1987 Sheikh Adel Abdul Jalil Batterjee founded Lajnat Al-Bin Al-Islami (LBI), a Jeddah-based NGO. LBI provided support to the mujahideen fighting the Soviets in Afghanistan, as well as humanitarian aid to refugees of the war in Afghanistan. Batterjee, from a merchant family in Saudi Arabia, was affiliated with a group of wealthy donors from the Persian Gulf region known as the "Golden Chain," which provided support to mujahideen, including mujahideen under the leadership of Usama Bin Ladin. The U.S. government has alleged that BIF was incorporated in the United States to attract more donations and deflect scrutiny from LBI.

At BIF's founding in 1992, its three directors were Batterjee and two other Saudis. In March 1993, Batterjee and the two other Saudis were replaced by three new directors, including Enaam Arnaout, who

became BIF's executive director, managing its day-to-day operations and reporting to Batterjee. The U.S. government contends the change was made after Batterjee came under scrutiny in Saudi Arabia for financially supporting jihad outside of approved channels. Despite his formal removal, Batterjee continued to play a major role in running BIF and was in frequent contact with Arnaout from his home in Saudi Arabia. The government contends that Arnaout was a longtime jihadist supporter, with personal ties to Usama Bin Ladin dating back to the 1980s. He allegedly provided military and logistical support to the mujahideen in the late 1980s and early 1990s, as an employee of LBI and another Saudi NGO, the Muslim World League. In doing so, he allegedly worked closely with Usama Bin Ladin and other mujahideen who later became significant members or supporters of al Qaeda. According to INS data compiled by the FBI, Arnaout, a native Syrian, lived in Hama, Syria, from his birth in 1962 until 1981, when he went to study in Saudi Arabia. In 1989, Arnaout married an American citizen he met in Peshawar, and he became a naturalized U.S. citizen in March 1994.

BIF publicly described itself as an "organization devoted to relieving the suffering of Muslims around the world." According to its IRS filings, it received more than \$15 million in donations between 1995 and 2000.

The FBI investigation of BIF

The FBI started its investigation of BIF in 1998 as a result of a conference that a Chicago agent attended in Washington, D.C., where he learned of foreign intelligence reports indicating that Arnaout was involved in providing logistical support for jihadists. The FBI in Chicago opened an FFI in February 1999, focusing on Arnaout as the key player. The GRF case agents also served as the lead case agents on BIF investigation. Much like the early GRF investigation, BIF investigation featured surveillance and digging through garbage. The FBI also sought to develop sources. The trash covers were fruitful, as BIF "threw out everything"—including telephone bills and detailed and elaborate reports on its activities, which Arnaout demanded from his subordinates on a daily basis. The FBI began to run down some of the names and numbers appearing in the trash. In addition, on April 21, 1999, the agents recovered from BIF's trash a newspaper article on bioterrorism, in which someone had highlighted sections relating to the United States' lack of preparedness for a biological attack.

When it opened the FFI, the FBI in Chicago knew of Adel Batterjee

but had little understanding of who he was. They later obtained records showing Batterjee was contributing funds to BIF. In the summer of 1999, they sent what the Bureau calls a lead-relaying information and requesting action-to Saudi Arabia, through the Legat, for information on Batterjee. As of 9/11 they still had received no response.

Chicago submitted a FISA request in April 2000, but it was not approved until after 9/11. Notwithstanding evidence that BIF had significant links to Usama Bin Ladin and was sending significant amounts of money overseas, the Chicago agents could not get an inside look at the organization that a FISA could provide. As we will later show, after 9/11 it was simply too late.

After opening the FFI, FBI Chicago obtained NSLs for phone and bank records. The bank records gave a good indication of the scope of BIF's fund-raising activities. According to contemporaneous documents, the FBI believed based on its yet to be completed investigation that BIF was receiving approximately forty to sixty thousand dollars a week, and that between 1997 and 1998, BIF sent more than \$2.5 million to its overseas offices in Bosnia, Azerbaijan, Pakistan, and Tajikistan.

FBI Chicago had cultivated a good human source who provided useful information on BIF, though never any smoking guns. The Chicago agents had a much closer relationship with the CIA on BIF than they did on GRF, because they cooperated on certain international matters in the BIF investigation. They regularly met with the CIA concerning BIF, received some useful information, and shared much of their information. For example, the Chicago agents learned from the CIA important information about BIF's founding and the sources of its funding. Still, the CIA and the FBI did not have a perfect relationship, and the CIA held back some information. The Chicago agents believed the CIA wanted to shield certain information from the FBI because of fears of revealing sources and methods in any potential criminal litigation in the United States.

The Chicago agents obtained all the bank account numbers for the BIF's overseas offices, which BIF had typed up and later thrown out in the trash. They provided this information to the intelligence community, which they hoped could trace the money overseas. They never heard anything back about such a trace, however.

The BIF investigation revealed the difficulties in securing foreign cooperation in terrorism investigations. FBI Chicago submitted a lead to a European ally, through the Legat, for information about European intelligence reports concerning a BIF official's purported involvement in

the kidnapping of Americans in Kashmir. The U.S. ally never even acknowledged the request, let alone replied. The FBI did not submit MLAT requests for foreign records because, again, it had no criminal case.

The FBI's New York Field Office, which ran the primary FBI investigation of Bin Ladin, was a key source of information for Chicago. But the New York agents were overwhelmed with work, and did not always coordinate well with their Chicago counterparts. Although the New York agents were aware of the BIF/GRF investigations, they sent out their own leads relevant to these investigations, annoying the Chicago agents. The agents in New York did not have time to share information proactively, although those in Chicago were welcome to look through New York's files for relevant information—which they did, gaining helpful information.²⁹

GRF's bank filed a money-laundering Suspicious Activity Report with the Treasury Department's Financial Crimes Enforcement Network (FinCEN) regarding BIF's large transfers of money to the Republic of Georgia. It was apparently concerned that BIF was involved with Russian organized crime. The Chicago agents said they did not make any requests of FinCEN before 9/11, explaining that FinCEN would not have been useful to them because it could not help them trace the money once it got overseas. They knew that BIF was sending big money overseas, and even knew the account numbers and office directors of the BIF overseas offices that were receiving the money. Their problem was tracing the money once it got there, and they believed FinCEN could provide no help in this regard because, like the FBI agents, it had no access to the relevant foreign records.

Inability to bring a criminal case to disrupt BIF

Overall, BIF investigation was in the same position as the GRF investigation on 9/11: the agents believed BIF had substantial ties to al Qaeda, was supporting jihad, and was sending a great deal of money overseas, but they could not trace the money directly to its ultimate destination overseas. Although they had access to considerable information, the agents believed they still could not come close to proving a criminal case against Arnaout or BIF. The BIF investigation

29. According to the BIF's attorney, the bank actually closed the BIF's accounts just before 9/11, forcing BIF to find another bank in the Chicago area, which it was able to do.

was actually in worse shape because, unlike in the GRF investigation, the agents could not get approval for electronic surveillance. The agents tried to understand what was going on overseas, and a European agency had invited the Chicago agents to a meeting to share information. The agents tried to go but, as had happened with the GRF investigation, the Chicago FBI could not afford to send them. The misunderstanding of the wall also created the same problems in the BIF investigation as it did in that of the GRF. For all of these reasons, the FBI could not take any action against BIF, despite what the agents considered extensive knowledge of BIF's malfeasance.

Like the GRF investigation, the BIF investigation lacked an endgame. Believing themselves unable to initiate a criminal investigation and lacking any other means to disrupt what they thought to be a major jihadist fund-raising operation with substantial links to Bin Ladin and al Qaeda, the Chicago agents saw no options other than continued monitoring of BIF's activities. In this respect, the BIF and GRF investigations typified the FBI's pre-9/11 approach to terrorist financing. The FBI had numerous terrorist-financing investigations under way, but the vast majority of them were pursued as intelligence-gathering exercises by FBI intelligence agents, with little or no thought of disrupting the fund-raising through criminal prosecution or otherwise.

Post-9/11 Developments

FBI investigations of BIF and GRF after 9/11

Everything changed almost immediately after 9/11 with respect to the BIF and GRF investigations. Major obstacles to the investigation dropped away, more resources became available, and the issue of terrorist financing gained new prominence among national policymakers in Washington.

As a result, the course of the BIF and GRF investigations dramatically changed and led to a series of events unimaginable on 9/10: the long-delayed FISA warrants were instantaneously approved; the FBI opened a major criminal investigation of GRF and BIF; FBI agents raided the Illinois headquarters of both organizations in an unprecedented overt FISA search; OFAC—an entity entirely unknown to the FBI case agents before 9/11—froze the assets of GRF and BIF; NATO troops kicked in doors of the charities' overseas offices and carted away all their contents; and Bosnian criminal investigators raided

BIF's office in Bosnia, seizing a treasure trove of documents directly concerning BIF's relationship with Bin Ladin that dated to the origins of al Qaeda.

In the immediate wake of 9/11, the Chicago FISA warrant for GRF was reinstated, and that for BIF was finally approved. The previously moribund FISA applications from Detroit for GRF were approved as well, as the agent was informed by an emergency call from FBI headquarters.

But after the events of 9/11, electronic surveillance was not very useful, even though the FBI assigned a significant number of translators to the cases. The agents believed that the GRF subjects feared electronic monitoring in the wake of the attacks; they were extremely cautious about their communications. The GRF FISA warrants proved unproductive. On the other hand, electronic surveillance of BIF yielded some useful information, including the fact that Arnaout was passing messages to Batterjee. In addition to electronic surveillance, the agents continued other investigative techniques, including trash covers and physical surveillance.

Coincidentally, the U.S. Attorney for Chicago, Patrick Fitzgerald, on the job for only a couple of weeks, had extensive experience as a terrorism prosecutor and immediately became involved in the investigation of BIF and GRF.³⁰ Fitzgerald was very interested in prosecuting the cases criminally and, at his urging, the FBI opened a criminal investigation of BIF and GRF in October 2001. The intelligence cases continued as well, and the electronic surveillance continued. Because the wall between criminal and intelligence matters still existed, they decided to have separate case agents for the criminal and intelligence investigations. The lead intelligence case agents moved to the criminal case, and two new agents were assigned to the intelligence cases. The new intelligence agents were responsible for passing information over the wall to the criminal agents.

Fitzgerald immersed himself in the case and took a major role. He directed the FBI to interview al Qaeda cooperators from the New York cases, who provided considerable information on BIF and some on GRF as well. One cooperator, an admitted former al Qaeda member and Bin

30. Fitzgerald took office pursuant to an interim appointment on September 1, 2001; he was formally appointed and confirmed by the Senate in October. Fitzgerald had extensive experience prosecuting terrorism cases as an Assistant U.S. Attorney in New York, where he prosecuted the Landmarks and Embassy Bombings cases and served nearly six years as co-chief of the Organized Crime and Terrorism Section.

Ladin associate, said that BIF engaged in financial transactions for al Qaeda in the early 1990s. He also described how al Qaeda would take cash from charitable NGOs, which would then cover the transactions with false paperwork. After opening the criminal case, the agents also were able to issue grand jury subpoenas for additional phone and bank records.

OFAC involvement and the shutdown of BIF and GRF

While the Chicago agents and prosecutors were starting to think about bringing criminal cases against BIF and GRF, policymakers in Washington were thinking about disrupting al Qaeda financing using whatever tools they had. BIF and GRF came to the attention of OFAC, which began to consider them for possible designation as a supporter of al Qaeda. To this end, OFAC dispatched two analysts to Chicago in early December 2001 to review the FBI files and begin putting together the evidentiary packages that would support designations.

These plans were dramatically accelerated when CIA analysts, drawing on intelligence gathered in an unrelated FBI investigation, expressed concerns that GRF could be involved in a plot to attack the United States with weapons of mass destruction (WMD). Neither the Chicago agents nor the FBI headquarters analysts, who had extensive knowledge of GRF, were consulted on this analysis, which a Chicago FBI supervisor characterized as baseless. The WMD fears led to a plan to enter and search the overseas offices of GRF and BIF to obtain swabbings and other evidence related to possible WMD deployment. BIF was included because the two charities were thought to be related. Although the WMD allegations were never corroborated, the events of 9/11 led to an understandably cautious approach in dealing with potential threats of mass casualties.

At the same time, OFAC received word from the General Counsel of Treasury, who was coordinating the interagency effort against terrorist financing, that it needed to designate BIF and GRF immediately. OFAC had not yet developed the evidence necessary for a designation under IEEPA. As a result, OFAC relied on a provision of IEEPA clarified by the Patriot Act, which provides that OFAC could freeze the assets belonging to a suspected terrorist supporter "during the pendency of an investigation." Only a single piece of paper, signed by the director of OFAC, was required.³¹ OFAC announced this action on December 14,

31. According to OFAC, in practice, an interagency group discusses and agrees to

2001, thereby effectively shutting down both charities in the United States while gaining additional time to develop the evidentiary packages necessary for permanent designations. This extraordinary power enabled the government to stop the charities' operations without any formal determination of wrongdoing.

The raids on a number of overseas offices also occurred on December 14, 2001, conducted, in various locations, by NATO troops and U.S. government personnel. NATO troops raided two GRF offices, and NATO publicly stated that GRF "is allegedly involved in planning attacks against targets in the U.S.A. and Europe."³² At the same time, Albanian National Police, accompanied by an FBI agent, raided the GRF office in Tirana and the home of a GRF employee, seizing \$20,000 and taking swabbings for residue of WMD.

The original plan did not call for searches or takedowns of the GRF and BIF offices in Illinois. Rather, the FBI was to use its FISA warrants to monitor the charities' reaction to the overseas searches. This plan went awry when word of the impending action apparently leaked to GRF. FBI personnel learned that some of the targets of the investigations may be destroying documents.³³ As a result, the FBI decided to do an unprecedented "overt" FISA search of both GRF and BIF offices, which was hastily assembled and conducted. Following a chaotic process, the government agents searched both BIF and GRF offices in Illinois on December 14, 2001, carting away substantial evidence. The agents also searched the residence of GRF executive director and Arnaut.

On December 14, 2001, the INS detained GRF fund-raiser Rabih Haddad, one of the subjects of the Detroit investigation, on the basis that he was out of his allowed immigration status, having overstayed a student visa issued in 1998. Following bond hearings that were closed to the press, public, and Haddad's family, an immigration judge denied bail and ordered Haddad detained.³⁴

any designation.

32. Philip Shenon, *A Nation Challenged: The Money Trail U.S.-Based Muslim Charity Raided by NATO in Kosovo*, N.Y. TIMES, Dec. 18, 2001, at B5.

33. Press leaks plagued almost every OFAC blocking action that took place in the United States. The process had extremely poor operational security. In a number of instances, agents arrived at locations to execute blocking orders and seize businesses only to find television news camera crews waiting for them.

34. See *Detroit Free Press v. Ashcroft*, 303 F.3d 681 (6th Cir. 2002) (setting out background). The hearing was closed pursuant to a September 21 directive from the chief immigration judge that immigration judges close immigration proceedings in

While officials and investigators around the world moved to eliminate the perceived WMD threat and shut down the operations of BIF and GRF, investigators working on the 9/11 attacks sought to understand a curious connection between hijackers Nawaf al Hazmi and Khalid al Mihdhar and a GRF fund-raiser. On 9/11, the FBI learned that two days before, hijackers Hazmi and Mihdhar had dropped off bags at an Islamic prayer center in Maryland. The bags, to which the hijackers had affixed a note stating “[a] gift for the brothers,” contained fruit, clothing, flight logs, and various other materials. The FBI launched an investigation to determine if the imam of the prayer center played any roles in the attacks. The investigators quickly determined in addition to his other responsibilities, the imam worked part-time raising money for GRF, at the direction of its executive director in Illinois. The FBI investigated his involvement with 9/11 for one and a half years. It ultimately concluded that he had no role in supporting the 9/11 attacks, although the investigating agents considered him to be a supporter of and fund-raiser for the international jihadist movement.

BIF and GRF challenge the government’s actions

The charities aggressively denied any connection to terrorism and condemned the raids and assets freeze. GRF’s lawyer immediately called the government’s action “a terrible, terrible, terrible tragic mistake,” and stated, “If they’re investigating terrorism, they’re not going to find anything here.” Another GRF spokesman said the government seized resources that GRF used to “prevent the slow starvation and gruesome death in parts of the Muslim world that rely on such badly needed aid.”³⁵

On January 28, 2002, GRF sued the Secretaries of Treasury and State, the Attorney General, and the Directors of OFAC and the FBI in federal court in Chicago. GRF requested that the government “unfreeze” its assets and return the items it seized during the December 14 searches. Two weeks later, GRF filed a motion for a preliminary injunction, contending that the government’s blocking of its assets and records violated the law and Constitution.³⁶ BIF filed a similar suit on January

certain “special interest” cases defined by the chief judge.

35. Deanna Bellandi, *Two Chicago-area Muslim Charity Groups Raided by Federal Agents; Assets Frozen*, ASSOC. PRESS, Dec. 15, 2001.

36. See *Global Relief Foundation, Inc. v. O’Neill*, 207 F. Supp. 2d 779 at 787 (N.D. Ill. 2002), *affirmed* 315 F.3d 748 (7th Cir. 2002) (quoting complaint).

30, 2002, and a similar motion on March 26, 2002. BIF's complaint proclaimed its activities "entirely lawful," and contended that since its founding in 1992 it "has provided tens of millions of dollars worth of humanitarian aid in a dozen countries around the world, as well in the United States."³⁷

Upon filing the complaint, BIF's lawyer said, "The government's actions threaten to destroy our essential constitutional liberties. If we no longer live in a society where we are secure from unreasonable searches and from the taking of liberty and property without any form of due process, then the terrorists will have succeeded in an even greater degree of destruction than the devastation of Sept. 11."³⁸ Despite the blocking of its assets, BIF and GRF could retain counsel because OFAC granted them "licenses" to do so. A license is written authorization from OFAC to spend money in ways otherwise prohibited by the blocking order, such as the release of blocked funds to pay for legal services.

BIF also sought a license to dispense the bulk of the funds blocked by the government, which totaled \$700,000-800,000, to fund its overseas charitable causes, including a tuberculosis hospital for children in Tajikistan and the Charity Women's Hospital in Makhachkala, Daghestan. BIF supported its request with evidence of its charitable work, including affidavits from nurses in the hospital attesting to the importance of BIF's donations. According to BIF's counsel, the organization wanted to give away \$500,000 of the blocked funds rather than let legal bills consume the money, and it even offered to have FBI agents accompany the funds overseas to their charitable destination. OFAC did not grant the license due to concerns that even funds sent to seemingly legitimate charities can be at least partially diverted to terrorist activities and OFAC's extremely limited ability to monitor the use of funds overseas. OFAC did license BIF and GRF to sustain some operations—retaining some employees and paying utilities, taxes and U.S. creditors—but most of the employees had to be let go, and the charities could neither raise new funds nor distribute existing funds overseas.³⁹

37. *Benevolence International Foundation Inc. v. Ashcroft*, (N.D. III.), Complaint.

38. Laurie Cohen, *2nd Muslim Charity Sues U.S. Officials on Terrorism*, CHICAGO TRIB., Jan. 31, 2002, at 1.

39. Ultimately, the charities' legal bills consumed most of the frozen money, which angered donors who had intended their donations be used for humanitarian relief. *See, e.g., Gregory Vistica, Frozen Assets Going to Legal Bills*, WASH. POST, Nov. 1, 2003, at A6. According to OFAC, when BIF exhausted the pool of blocked BIF funds, OFAC also issued licenses authorizing BIF to establish and maintain a legal defense fund in

Supporters of GRF fund-raiser Rabih Haddad, who was detained on immigration violations, rallied to his defense. Pointing out that Haddad had condemned the 9/11 attacks and contending he was a moderate and respected religious leader in the Detroit community, they considered his detention in solitary confinement on what appeared to be a minor visa violation as a prime example of discrimination against Muslims and an overzealous government response to 9/11, in violation of basic civil rights. For example, a sympathetic story in a London paper quoted U.S. Representative John Conyers: "The treatment of Rabih Haddad by the Immigration and Naturalization Service over the past several weeks has highlighted everything that is abusive and unconstitutional about our government's scapegoating of immigrants in the wake of the September 11 terrorist attack."⁴⁰

Efforts to develop criminal cases against BIF and GRF

After the preliminary designations and searches of December 14, 2001, the FBI and U.S. Attorney's Office in Chicago focused their attention on developing a criminal case. To do so, they initially faced major logistical challenges. The Illinois searches yielded an enormous amount of information, including hundreds of tapes and videos that had to be translated and reviewed, and many computer hard drives. According to the legal requirements imposed by FISA, all of this information had to be reviewed for "minimization." Since the evidence was seized under intelligence authorities, the Justice Department could use only that evidence relevant to an intelligence investigation or a crime such as terrorism. The logistical difficulties were compounded by the charities' civil litigation, the blocking order and OFAC's continued need for access to the materials so that it could build a case for permanent designations. The latter issue caused considerable frustration and confusion, as there were no rules about exactly what information in the FBI files OFAC could lawfully see. In addition, the lead case agents, who had been intelligence agents, lacked any significant federal criminal investigative experience, let alone experience in preparing a complex, document-intensive financial investigation for prosecution.

The criminal investigation of BIF received a huge boost in March 2002. The Chicago agents, who had been working with Bosnian officials on the case, provided the Bosnians with enough evidence to gain legal

which to accept donations to offset its legal expenses.

40. Andrew Gumbel, *The Disappeared*, THE INDEPENDENT, Feb. 26, 2002.

authority to conduct a criminal search of BIF's offices there. An FBI agent accompanied the Bosnians on the search to ensure a proper chain of custody necessary for the admission of anything found into a U.S. criminal proceeding. This search yielded compelling evidence of links between BIF's leaders, including Arnaout, and Usama Bin Ladin and other al Qaeda leaders, going back to the 1980s. The material seized included many documents never before seen by U.S. officials, such as the actual minutes of al Qaeda meetings, the al Qaeda oath, al Qaeda organizational charts, and the "Golden Chain" list of wealthy donors to the Afghan mujahideen, as well as letters between Arnaout and Bin Ladin, dating to the late 1980s. It was an enormous break.

The Bosnian documents helped kick BIF investigation into high gear. Meanwhile, the GRF investigation temporarily took a back seat. On April 30, 2002, Arnaout and BIF were charged with two counts of perjury; the charge was based on a declaration that Arnaout had filed in the civil case against OFAC, in which he asserted that BIF never supported persons engaged in violence or military operations. Arnaout was taken into custody and denied bail. In September, the court dismissed the charges because established Supreme Court precedent held that the particular criminal statute under which he was charged did not apply to the out-of-court statements in Arnaout's declaration.⁴¹ The government filed a criminal obstruction of justice case against Arnaout that same day, on the basis of the same false declaration. BIF was not charged again.

The government came back with a more substantive indictment of Arnaout in October 2002, directly alleging that BIF supported al Qaeda.⁴² The indictment alleged that Arnaout operated BIF as a criminal enterprise that for decades used charitable contributions to support al Qaeda, the Chechen mujahideen, and armed violence in Bosnia. The government modified the allegations against Arnaout in a superseding and then a second superseding indictment, the latter of which was filed on January 22, 2003. It charged Arnaout with one count each of racketeering conspiracy under RICO (the Racketeer Influenced and Corrupt Organization Act), conspiracy to provide material support to terrorists, providing material support to terrorists, conspiracy to launder money, and wire fraud and two counts of mail fraud.

41. *United States v. Benevolence International*, 02 CR 414, 2002 U.S. Dist. Lexis 17223 (Sept. 13, 2002) (court opinion and order).

42. *United States v. Arnaout*, Second Superseding Indictment at ¶ 3 (same language in initial indictment).

Attorney General John Ashcroft personally came to Chicago to announce the filing of the October indictment in a high-profile press conference. His public statements emphasized BIF's alleged support for al Qaeda and recounted much of the historic evidence linking Arnaout to Bin Ladin, including a recitation of the most significant al Qaeda documents seized at the BIF's office in Bosnia. Condemning BIF and Arnaout, the Attorney General declared, "There is no moral distinction between those who carry out terrorist attacks and those who knowingly finance those attacks."⁴³ BIF's lawyer believed that the Attorney General's inflammatory comments about al Qaeda and Bin Ladin compromised Arnaout's right to a fair trial before an impartial jury and characterized the press conference as "astounding" and "egregious." The trial judge also took notice, later referring to the extensive publicity the case received "in the wake of the Attorney General's remarkable press conference announcing this indictment."⁴⁴

The indictment itself contained almost no specific allegations that BIF funded al Qaeda.⁴⁵ Instead, the charges focused primarily on BIF's diversion of charitable donations to fund Chechen and Bosnian fighters. At the same time, the indictment highlighted Arnaout's historical relationship with Bin Ladin and BIF's links to certain al Qaeda leaders, including BIF's origins with LBI, the Saudi entity Batterjee created in 1987 in large part to support mujahideen then fighting the Soviets in Afghanistan, and the handoff of nominal control of BIF from Batterjee to Arnaout. The indictment described Arnaout's history of supporting armed jihad, including Arnaout's having worked in the 1980s for the Mektab al Khidmat⁴⁶ and LBI to support various mujahideen-among them, those under the command of Usama Bin Ladin.⁴⁷

43. Attorney General John Ashcroft, Remarks, Chicago, Ill. (Oct. 9, 2004) *available at* www.usdog.gov/ag/speeches/2002/100902agremarksbifindictment.html (last visited Apr. 1, 2004).

44. *United States v. Arnaout*, 02 CR 892 (Jan. 28, 2003) (unpublished court order) (on file with author).

45. The government did not charge BIF with providing material support to a designated foreign terrorist organization (FTO) in violation of 18 USC 2339, which would seem like a logical charge had the government been able to prove that the BIF funded al Qaeda after it was designated an FTO in 1999.

46. As discussed above, the Mekhtab al Khidemat was an organization primarily operated by Sheik Abdullah Azzam and Usama Bin Ladin to provide logistical support to the mujahideen in Afghanistan.

47. Of course, Arnaout's defenders point out that supporting bin Ladin in the 1980s when he was fighting in a cause supported by the United States is hardly evidence of supporting terrorism.

The indictment charged Arnaout with racketeering conspiracy under RICO, alleging that Arnaout, Batterjee, and others operated BIF as a criminal enterprise and used the cover of a legitimate Islamic charity to support armed jihadist combatants. The government contended that BIF fraudulently solicited and obtained donations by falsely representing that the funds would be used solely for humanitarian purposes, while concealing that some of the donated funds were used to support armed fighters engaged in violence overseas. Through these illicit diversions, the indictment alleged, BIF provided a variety of military supplies, including boots, uniforms, and communications equipment, as well as an X-ray machine to fighters in Bosnia-Herzegovina and Chechnya. The indictment alleged that the conspirators engaged in various acts to conceal their support of armed militants and BIF's relationship to al Qaeda and other extremists.

The indictment also alleged that Arnaout and others provided material support to "persons, groups and organizations engaged in violent activities—including al Qaeda[.]"⁴⁸ The charge contains no specific claims about providing funds to al Qaeda, although it alleges that in 1998 Arnaout facilitated the travel of a key al Qaeda member into Bosnia-Herzegovina and that a leading al Qaeda member served as a BIF official in Chechnya.⁴⁹ An additional count in the indictment charged Arnaout with providing material support to persons engaged in violent activity by supplying 2,900 pairs of steel-reinforced anti-mine boots to Chechen fighters. The remaining counts charged Arnaout with money laundering and fraud in connection with BIF's activities.

The government indictment drew heavily on the documents seized from the BIF office in Bosnia that directly linked BIF and Arnaout to the formative period of al Qaeda. These links included (1) notes summarizing meetings during which al Qaeda was founded in Afghanistan in August 1988, and which specify the attendance of Usama Bin Ladin at the original oath of allegiance (*bayat*) that prospective members made to al Qaeda; (2) a list of wealthy mujahideen sponsors from Saudi Arabia, including references to Bin Ladin and Batterjee; (3) various documents showing Arnaout's substantial role in procuring weapons for the mujahideen in the 1980s or early 1990s; and (4) a 1988 newspaper article showing a picture of Arnaout and Bin Ladin.⁵⁰

48. Second Superseding Indictment, count 2 (on file with author).

49. See discussion later in this chapter regarding OFAC designation of the BIF for more detail on the key al Qaeda operative whose travel the BIF allegedly facilitated.

50. The government later put together this evidence and much more in an

Arnaout initially pled not guilty to all charges and mounted a vigorous legal defense. OFAC refused to license BIF to use its blocked assets to pay for Arnaout's criminal defense on the grounds that BIF's funds could not be used by Arnaout in his individual capacity. Although Arnaout personally was not designated and could use whatever funds he had to defend himself, the OFAC refusal impaired Arnaout's ability to pay his counsel and caused considerable bitterness among his supporters.

OFAC Designations

Following its blocking of BIF's and GRF's assets pending investigation, OFAC continued to try to develop the evidentiary case it believed necessary to make permanent designations. Meanwhile, the charities' finances were effectively frozen, with the exception of the licenses discussed above. At least one senior Treasury official was concerned about the potential length of a temporary blocking order. On April 12, 2002, roughly four months after the blocking order was issued, the Treasury General Counsel wrote to other senior Treasury officials that "common fairness and principles of equity counsel that we impose a reasonable end date on the duration of such orders."⁵¹ On October 18, 2002, OFAC designated GRF a specially designated global terrorist (SDGT) pursuant to Executive Order 13224, thereby freezing its assets and blocking transactions with it. As a result, four days later, the United Nations listed GRF as an organization belonging to or associated with al Qaeda. BIF met the same fate, as a result of OFAC action on November 19 and UN action on November 21.

The OFAC designations of BIF and GRF relied on the material gathered by the FBI during its pre-9/11 investigations and, in the case of the former, on the materials obtained in the March 2002 search of BIF's

evidentiary proffer it submitted to the court in advance of trial.

51. Treasury Memorandum, April 12, 2002 (on file with author). The memo proposed a six-month limit for discussion purposes, and offered a "clear recommendation" that temporary blocking orders be pursued with "due diligence and an anticipated end date." In May and June 2002, OFAC provided GRF and BIF, respectively, with notice of its intent to designate them and provided them with time to respond. The lengthy duration of the temporary designations resulted in part from extensions of time requested by BIF and GRF. These requests were necessary, at least in part, because OFAC continually added additional documents to the administrative record, and BIF and GRF wanted time to review and respond to them before any permanent designation was issued. In addition, BIF and GRF were only slowly getting access to their own records, which the government had seized, and they wanted additional time to use these records in their defense.

Bosnian offices. In its official Statement of the Case that provides support for the designation, OFAC traced BIF's founding by Batterjee and "the close relationship between Arnaout and Usama bin Ladin, dating from the mid-1980s and continuing at least until the early 1990s."⁵² OFAC drew links between BIF and Bin Ladin by noting (1) in 1998, BIF provided direct logistical support for an al Qaeda member and Bin Ladin lieutenant, Mamdouh Mahmud Salim, to travel to Bosnia-Herzegovina;⁵³ (2) telephone records linked BIF to Mohammed Loay Bayazid, who had been implicated in al Qaeda's effort to obtain enriched uranium; (3) in the early 1990s, BIF produced videotapes that eulogized dead fighters, including two al Qaeda members; and (4) in the late 1990s, a member of al Qaeda's Shura Council served as an officer in BIF's Chechnya office. OFAC cited a number of ways in which BIF's activities differed from its ostensible purpose (e.g., it altered its books to make support for an injured Bosnian fighter appear as aid to an orphan), the purchase of equipment for Chechen fighters, and the newspaper article the FBI agents had found in the trash, in which someone had highlighted the weaknesses in the U.S. defenses against bioterrorism.

As for GRF, OFAC's internal documents supporting the designation spelled out its ties to al Qaeda leaders, including (1) evidence that GRF provided \$20,000 to a suspected al Qaeda fund-raiser in November 2001; (2) the phone contacts between GRF's executive director and the mujahideen leader associated with al Qaeda leadership; (3) the phone contacts linking GRF to Wadi al Hage, UBL's personal secretary, who was convicted in the United States for his role in the 1998 embassy bombings; and (4) funds that GRF received from Mohammed Galeb Kalaje Zouaydi, a suspected al Qaeda financier in Europe who was arrested in Spain in 2002.

OFAC's unclassified Statement of the Case laid out the extensive evidence indicating GRF's role in supporting jihad. This evidence included the pictures of sophisticated communications equipment the FBI had found in the trash, photographs of jihadists both alive and dead, and documents establishing GRF's enthusiastic support for armed jihad. For example, a GRF pamphlet from 1995 stated, "God equated martyrdom through JIHAD with supplying funds for the JIHAD effort.

52. OFAC BIF Statement of the Case (on file with author).

53. Salim was later indicted for conspiracy to kill U.S. nationals, an overt act that included the 1998 embassy bombings. While in custody, he assaulted a corrections officer, inflicting grievous and permanent injury. Testimony in the 2001 embassy bombing trial also implicated Salim in al Qaeda's efforts to develop WMD.

All contributions should be mailed to: GRF.” Another GRF publication stated that charitable funds “are disbursed for equipping the raiders, for the purchase of ammunition and food, and for [the mujahideen’s] transportation so that they can raise God the Almighty’s word[;] . . . it is likely the most important . . . disbursement of Zakat in our times is on the jihad for God’s cause[.]”⁵⁴

OFAC’s assertions and the resulting UN actions publicly designated BIF and GRF as supporters of al Qaeda and effectively shut down these operations around the world.

BIF and GRF Challenges to OFAC’s Actions

GRF failed in its efforts to challenge OFAC’s initial asset blocking in court. On June 11, 2002, the court denied GRF’s claim for an injunction requiring the government to “unfreeze” its assets and return its property. The court held that GRF was not entitled to an injunction because it had failed to establish a reasonable likelihood of success on its claims that the U.S. government had violated its constitutional rights or the laws of the United States.⁵⁵ GRF’s appeal was denied, and the U.S. Supreme Court refused to consider the case.⁵⁶ Although its legal challenge to the preliminary designation failed, GRF has continued to litigate the issue of whether sufficient evidence existed to justify its designation as an SDGT. As of this writing, that litigation is pending in federal district court in Chicago.

BIF’s challenge to having its assets blocked pending investigation was stayed until the criminal case was resolved, and eventually it was dismissed. BIF elected not to challenge OFAC’s designation of it as an SDGT. By that time, BIF was focused on the criminal issues, and, in any event, it was clear that BIF was dead as an organization.

Counsel for BIF and GRF expressed great frustration with the OFAC process, including the blocking of assets without any adversarial process adjudicating culpability, their view that the process lacked defined standards, their perception of OFAC’s unresponsiveness to attorney inquiries and licensing requests, the use of classified evidence unavailable to the defense, and OFAC’s reliance on evidence that would not be admissible in a judicial proceeding. For example, BIF’s counsel

54. OFAC GRF Statement of the Case (on file with author).

55. *Global Relief Foundation v. O’Neill*, 207 F. Supp. 2d 779, 809 (N.D. Ill. 2002).

56. *Global Relief Foundation v. O’Neill*, 315 F.3d 748 (7th Cir. 2002), *cert denied*, 124 S. Ct. 531 (2003).

was stunned to see that the administrative record supporting BIF's designation included newspaper articles and other rank hearsay. To BIF and GRF's counsel, experienced lawyers steeped in the federal courts' rules of evidence and due process, the OFAC designation process seemed manifestly unfair. In response, OFAC points out that the courts have upheld the process and standards it uses in designations, as well as the use of classified information, news articles and other hearsay in support of the designations. OFAC further maintains that its administrative record fully supports the designations of BIF and GRF.

Vigorous Defense in the Criminal Case

Before his plea, Arnaout vigorously litigated the criminal charges against him. As the case moved closer to trial, the government submitted a lengthy statement of facts setting forth the historical evidence tying Arnaout to Bin Ladin and al Qaeda. This proffer, which included multiple voluminous appendixes, drew heavily on the documents seized in Bosnia. The government did not provide specific evidence that BIF funded al Qaeda.

Rather, it relied heavily on evidence that predated both BIF's creation and Bin Ladin's having become an avowed enemy of the United States.

Through his counsel, Arnaout asked the court to exclude all evidence related to al Qaeda, Bin Ladin, or other terrorist groups. To Arnaout, the government's case essentially boiled down to diverting charitable funds to support Chechen and Bosnian fighters, and had nothing to do with bin Ladin, terrorism, or al Qaeda. The proffer demonstrated, he contended, that "the United States intends to try Enaam Arnaout not for acts he committed in violation of United States laws, but rather for associations he had over a decade ago, before he relocated to this country, with people who were at the time America's allies but who are now its enemies."⁵⁷ The court reserved ruling on the evidence until trial, but in a ruling ominous to the government held that Arnaout "persuasively argues that a significant amount of the government's . . . proffer contains materials that are not relevant to him nor probative of the charges in the indictment(s), but rather are highly prejudicial matters suggesting guilt by association."⁵⁸

57. Defendant's Motion *in Limine* to Exclude Evidence of Historical Events (January 13, 2003) (on file with author).

58. Order, Jan. 30, 2003. Separately, the court rejected the government's proffer

Conviction and Sentence

On the morning that trial was to commence, Arnaout pled guilty to one count of racketeering conspiracy for fraudulent diversion of charitable donations to promote overseas combatants. He admitted that BIF solicited donations by representing the money would be used to provide humanitarian relief to needy civilians, while concealing “from donors, potential donors, and federal and state governments in the United States that a material portion of the donations received by BIF based on BIF’s misleading representations was being used to support fighters overseas.”⁵⁹ The supplies Arnaout admitted that he and others agreed to provide included boots for fighters in Chechnya, boots, tents, uniforms for soldiers in Bosnia-Herzegovina, and uniforms for a provisional but unrecognized government in Chechnya. The court later determined that the amount of funds diverted from humanitarian relief to support these fighters totaled \$315,624.⁶⁰ Arnaout never admitted to supporting al Qaeda or any other terrorist group. To the contrary, as the presiding federal district court judge pointed out, “In its written plea agreement, the government agreed to dismiss sensational and highly publicized charges of providing material support to terrorists and terrorist organizations.”⁶¹

The court sentenced Arnaout to more than 11 years in prison, but flatly rejected the government’s request that it apply the sentencing enhancement for crimes of terrorism, which would have mandated a 20-year prison sentence. The court said plainly, “Arnaout does not stand convicted of a terrorism offense. Nor does the record reflect that he attempted, participated in, or conspired to commit any act of terrorism.”⁶² Moreover, the court held that the offense to which Arnaout pled guilty, racketeering conspiracy, was not a crime of terrorism as defined by law. The court further held that applying the enhancement would be improper because the “government has not established that the Bosnian and Chechen recipients of BIF aid were engaged in a federal crime of terrorism, nor that Arnaout intended the donated boots, uniforms, blankets, tents, x-ray machine, ambulances, nylon and walkie-talkies to

as insufficient to satisfy the hearsay exception for co-conspirator statements. *U.S. v. Arnaout*, No. 02 CR 892, 2003 U.S. Dist. Lexis 1635 at *1 (Feb. 4, 2003). This order made it more difficult and riskier for the government to offer such statements at trial.

59. Plea Agreement at 4 (on file with author).

60. *United States v. Arnaout*, 282 F. Supp. 2d 838, 840 (N.D. III. 2003).

61. *Id.* at 843.

62. *Id.*

be used to promote a federal crime of terrorism.”⁶³ The court did increase Arnaout’s prison time on the grounds that he diverted humanitarian aid from the destitute population BIF was aiding to armed fighters. Both the government and Arnaout appealed the sentence. Arnaout challenged the court’s enhancement of his sentence for diverting funds from needy civilians, and the government challenged the refusal to apply the terrorism enhancement. A decision is pending.

Although Arnaout pled guilty to a serious felony and received a long prison sentence, many people in the Islamic and Arab communities concluded that Arnaout had been vindicated of any charge of supporting terrorism. They interpreted the judge’s refusal to apply the terrorism sentencing enhancement as a major defeat for the government. As Al Jazeera told its online readers, “The U.S. government had hoped for a high profile ‘terrorism’ conviction, but the judge said the case had not been made.”⁶⁴ The charge Arnaout pled to, although undeniably serious, fell far short of what the judge derisively called “sensational and highly publicized” charges of supporting terrorists, which the Attorney General himself had announced with great fanfare. A BIF lawyer believes that Arnaout’s case, along with the shutdown of BIF, hurt and angered the Muslim community in the Chicago area. She fears that the bad feelings left by the case substantially reduce the likelihood of cooperation with law enforcement in the future.

Senior FBI agents in the Chicago office, who devote substantial effort to community outreach, agreed that the plea and the court’s refusal to sentence Arnaout as a terrorism offender led many in Chicago’s large Islamic community to see him as vindicated and to believe the government unjustly targeted him for prosecution—“picking on a poor guy” who is standing up for Muslims, as one agent described it.⁶⁵ These agents, as well as the case agents, agree that accepting a plea to a serious RICO (Racketeer Influenced and Corrupt Organization Act) charge was the right decision, but believe a trial would have allowed the government to lay out all its evidence against Arnaout in open court. They believe the community then would have seen what the agents saw—that Arnaout and BIF were supporting terrorism.

63. *Id.* at 845.

64. Available at <http://english.aljazeera.net> (last visited Dec. 31, 2003).

65. Commission Staff Interview.

Status of the GRF Criminal Case

The government's criminal investigation of GRF included the review of the voluminous documents and computer records seized from the GRF office and interviews with GRF personnel. Despite this effort, the government has to date filed no criminal charges against GRF or its leadership, and any such charges appear increasingly unlikely. GRF steadfastly denies any wrongdoing and its supporters view the government's failure to follow the OFAC blocking with a criminal indictment as a vindication of the organization. GRF's counsel contends that GRF never provided a single dollar to fund terrorism and that the government's evidence of suspicious links with terrorists all have innocuous explanations. He asserts GRF is an entirely innocent victim of the government's attempt to take some actions to respond to public panic caused by 9/11.

The government never proved a criminal case against GRF fundraiser Haddad. Instead, Haddad was deported to his native Lebanon in July 2003 after an immigration judge found him ineligible for asylum because he was a security danger to the United States, a decision which was affirmed by the Board of Immigration Appeals. The decision to deport him rather than continue the criminal investigation was made in Washington, without consultation with the Detroit case agent who had investigated Haddad. Despite the findings of the immigration judge, Haddad's deportation generated considerable sympathy for him and condemnation of an alleged violation of his civil rights by the U.S. government. The government contends that ample evidence demonstrated that Haddad had significant terrorist ties and was a substantial threat to the United States.⁶⁶

Lessons of BIF/GRF

The agents and officials in these cases faced one of the most important and difficult issues in the fight against al Qaeda and jihadist fund-raising: there is a difference between troubling "links" to terrorists and compelling evidence of supporting terrorists. This gives rise to a further issue: how much information does the government need before it can take action against a potential terrorist fund-raiser?

66. It is not our purpose to assess Haddad's culpability, but we recognize the decision not to criminally prosecute him does not amount to an exoneration. A decision about whether to prosecute an individual can turn on a number of factors other than his guilt, including whether unclassified evidence is available to use in court against him.

Law enforcement officials had concluded that both BIF and GRF had substantial and very troubling links to al Qaeda and the international jihadist movement. Government agents had little doubt that the leadership of these organizations endorsed the ideology of armed jihad and, in many cases, supported an extremist and jihadist ideology. Both of these organizations raised large amounts of money in the United States, which they sent overseas, often to or through people with jihadist connections. When the money went overseas, it became virtually untraceable, since it could be converted to cash and sent anywhere in the world. Moreover, BIF, at least, was plainly funding armed jihadist fighters.

But there is another side to the story. Despite these troubling links, the investigation of BIF and GRF revealed little compelling evidence that either of these charities actually provided financial support to al Qaeda—at least after al Qaeda was designated a foreign terrorist organization in 1999. Indeed, despite unprecedented access to the U.S. and foreign records of these organizations, one of the world's most experienced and best terrorist prosecutors has not been able to make any criminal case against GRF and resolved the investigation of BIF without a conviction for support of terrorism. Although the OFAC action shut down BIF and GRF, that victory came at considerable cost of negative public opinion in the Muslim and Arab communities, who contend that the government's destruction of these charities reflects bias and injustice with no measurable gain to national security.

The cases of BIF and GRF reveal how fundamentally 9/11 changed law enforcement and the approach of the U.S. government to those suspected of financing terrorists. In the past, suspicions of terrorist connections often resulted in further investigation but not action. The FBI watched jihadist sympathizers send millions of dollars overseas because they did not have a sense of urgency about disrupting the fund-raising and, in any event, had no practical way to do so. The 9/11 attacks changed everything. Suddenly, letting money potentially earmarked for al Qaeda leave the United States became another potential mass casualty attack. The government after 9/11 had both the will and the tools to stop the money flow. Thus, the government targeted and destroyed BIF and GRF in a way that was inconceivable on September 10.

But the question remains, was the destruction of BIF and GRF a success? Did it enhance the security of the United States or was it a feckless act that violated civil rights with no real gain in security? A senior government official who led the government's efforts against

terrorist financing from 9/11 until late 2003 believed the efforts against the charities were less than a full success and, in fact, were a disappointment because neither charity was publicly proved to support terrorism. The former head of the FBI's Terrorist Financing Operations Section believes that strong intelligence indicated GRF and BIF were funding terrorism and, although the evidence for a strong criminal terrorism case may have been lacking, the government succeeded in disrupting terrorist fund-raising mechanisms. At the same time, he believes the cases have not been successful from a public relations perspective because there have been no terrorism-related convictions.

BIF and GRF still contend they never supported terrorism, and decry the government's conduct as counterproductive and abusive. A BIF lawyer said she understands the government's desire to take decisive action after 9/11 but thinks in moving against BIF the government overreached, lost sight of what the evidence showed, sought to graft irrelevant, dated al Qaeda allegations onto a simple fraud case, and ignored the rules of fairness and procedural safeguards that make our system the best in the world. In her view, the U.S. government "needs to be better than that," especially in times of crisis when our values are put to the test.

Our purpose is not to try to resolve the question of whether BIF or GRF actually provided funds to terrorists. We can, however, come to some understanding about whether the government action against them was justified. Reviewing the materials, classified and unclassified, available to the government makes it clear that their concerns about BIF and GRF were not baseless. There may not have been a smoking gun proving that these entities funded terrorism, but the evidence of their links to terrorists and jihadists is significant. Despite the charities' humanitarian work, responsible U.S. officials understandably were concerned about these organizations sending millions of dollars overseas, given their demonstrable jihadist and terrorist ties. Moreover, Arnaout has admitted to fraudulent conduct, which in and of itself constitutes a serious felony, even though it does not prove he funded al Qaeda.

At the same time, the government's treatment of BIF and GRF raises substantial civil liberty concerns. IEEPA's provision allowing blocking "during the pendency of an investigation" is a powerful weapon with potentially dangerous applications when applied to domestic institutions. This provision lets the government shut down an organization without any formal determination of wrongdoing. It requires a single piece of paper, signed by a midlevel government

official. Although in practice a number of agencies typically review and agree to the action, there is no formal administrative process, let alone any adjudication of guilt. Although this provision is necessary in rare emergencies when the government must shut down a terrorist financier before OFAC can marshal evidence to support a formal designation, serious consideration should be given to placing a strict and short limit on the duration of such a temporary blocking. A “temporary” designation lasting 10 or 11 months, as in the BIF and GRF cases, becomes hard to justify.

Using IEEPA at all against U.S. citizens and their organizations raises potentially troubling civil liberties issues, although to date the courts have rejected the constitutional challenges to IEEPA in this context.⁶⁷ As the Illinois charities cases demonstrate, IEEPA allows the freezing of an organization’s assets and its designation as an SDGT before any adjudication of culpability by a court. The administrative record needed to justify a designation can include newspaper articles and other hearsay normally deemed too unreliable for a court of law. A designated entity can challenge the designation in court, but its chances of success are limited. The legal standard for overturning the designation is favorable to the government, and the government can rely on classified evidence that it shows to the judge but not defense counsel, depriving the designated entity of the usual right to confront the evidence against it. Still, because of the difficulties of prosecuting complex terrorist-financing cases the government may at times face the very difficult choice of designating a U.S. person or doing nothing while dollars flow overseas to potential terrorists.⁶⁸

Finally, we need to keep BIF and GRF in mind as we evaluate the efforts (or lack of efforts) of our allies as they respond to intelligence

67. As noted above, the GRF challenge to IEEPA’s constitutionality failed in court. See also *Holy Land Found. For Relief and Dev. v. Ashcroft*, 219 F. Supp. 2d 57 (D.D.C. 2002) (upholding use of IEEPA against purported charity accused of funding terrorism).

68. The IEEPA process gives the designated person fewer rights than in the somewhat analogous circumstance of civil forfeiture, in which the government seeks to take (as opposed to freeze) property that it claims was derived from or used to commit specific crimes or unlawful acts. In seeking forfeiture where no crime is charged, the government must file a civil lawsuit and bear the burden of proof by a preponderance of the evidence (the standard used in most civil cases) that the property in question is forfeitable. The defendant gets the same type of discovery of the evidence available to any other litigant, such as taking sworn depositions and obtaining documents. Moreover, the defendant has the right to avoid forfeiture by demonstrating that he is an innocent owner, that is, he obtained or possessed the property in question without knowing its illegal character or nature.

concerning persons allegedly financing terrorism. Several former government officials have criticized the Saudi government for its failure to prosecute individuals for financing terrorism. As one put it, Saudi Arabia needs a “Martha Stewart”—a high-profile donor whose prosecution can serve as deterrent to others. Much of the frustration with the Saudis results from their apparent lack of will to prosecute criminally those persons who U.S. intelligence indicates are raising money for al Qaeda. Although willing to take other actions based on the intelligence—such as removing someone from a sensitive position or shutting down a charity—the Saudis have failed to impose criminal punishment on any high-profile donor. BIF and GRF should remind us that terrorist links and evidence of terrorist funding are far different things. Saudi Arabia and other countries certainly have at times been recalcitrant in seeking to hold known terrorist fund-raisers accountable for their actions. But in criticizing them, we should remember that in BIF and GRF, the total political will, prosecutorial and investigative talent, and resources of the U.S. government have so far failed to secure a single terrorist-related conviction.

Exhibit E

Comments In Response To Internal Revenue Service Announcement 2003-29, 2003-20 I.R.B. 928 Regarding International Grant -Making And International Activities By Domestic 501(C)(3) Organizations

In Announcement 2003-29, 2003-20 I.R.B. 928 (May 19, 2003), the Internal Revenue Service requested public comment on how it might clarify the existing requirements that section 501(c)(3) organizations must meet with respect to international grant-making and other international activities.

The following comments are the individual views of the members of the Section of Taxation who prepared them and do not represent the position of the American Bar Association or the Section of Taxation.

These comments were prepared by individual members of the Committee on Exempt Organizations of the Section of Taxation. Principal responsibility was exercised by Betsy Buchalter Adler and Victoria Bjorklund. Substantive contributions were made by Boyd Black, David Chernoff, Deirdre Dessingue, Gina Fields, Lisa Johnsen, and Erich Kennedy. The Comments were reviewed by Carolyn Osteen of the Section's Committee on Government Submissions, who also serves as the Council Director for the Committee on Exempt Organizations.

Although many of the members of the Section of Taxation who participated in preparing these Comments have clients who would be affected by the federal tax principles addressed by these Comments or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these comments.

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Date: July 18, 2003

Table 1
Continuum of Risk Factors

LESS RISK	SOME RISK	MORE RISK
The FR has an existing relationship with the U.S. organization.	The FR has an existing relationship with other U.S. organizations but not with this U.S. organization.	The FR has no prior history with U.S. organizations.
The FR can provide references from trusted sources.	The FR's references are from sources with which the U.S. organization is unfamiliar.	The FR has no references.
The FR has a history of legitimate charitable accomplishments.	The FR is newly or recently formed but its leadership has a history of legitimate charitable accomplishments.	The FR has little or no history of legitimate charitable accomplishments.
The FR has specific charitable objectives and is transparent as to fund use.	The FR has general charitable purposes and is transparent as to fund use.	The FR has general purposes and is not transparent as to fund use.
The FR has strong leadership and control mechanisms, including an on-site professional staff and record-keeping systems.	The FR has strong leadership and control mechanisms and relies primarily on trained volunteers rather than professional staff.	The FR has weak leadership and control mechanisms.
The U.S. organization and the FR create appropriate records on the identities of recipients and timely account for the use of funds. The types of records that are appropriate will vary with the circumstances of the grant.	The FR needs technical assistance in order to develop systems capable of creating and maintaining appropriate records of recipients and the use of funds but agrees to work with the U.S. organization to improve its systems.	The domestic organization and/or the FR do not create appropriate records on the identities of recipients or timely account for use of funds.
The parties have a written grant agreement which states how payments are to be used.	The parties have a written grant agreement with insufficient protective provisions.	The parties do not have a written grant agreement.
The grant agreement prohibits fund use for non-charitable purposes, including the promotion of violence or terrorist activities.	The grant agreement prohibits non-charitable uses but does not specifically ban the promotion of violence or terrorist activities.	The grant agreement does not prohibit fund use for non-charitable purposes, including the promotion of violence or terrorist activities.

Table 1 — continued

LESS RISK	SOME RISK	MORE RISK
<p>The U.S. organization disburses funds in smaller increments as needed for specific projects or expenditures.</p>	<p>The U.S. organization authorizes grantee discretion within specified limits.</p>	<p>The U.S. organization disburses funds in one large payment to be invested and spent over time or for unspecified projects selected by the FR.</p>
<p>More formal financial systems and registered channels for transferring funds are available and used by the FR, thereby subjecting it to the safeguards of banking regulatory systems consistent with international standards.</p>	<p>Formal financial systems exist but are unreliable or corrupt and the U.S. charity and the FR agree on alternative methods that they reasonably believe to be reliable, trustworthy, and not susceptible to diversion to violent, terrorist, or other non-charitable ends.</p>	<p>Reliable and non-corrupt formal financial systems or registered channels for transferring funds are not available or used by the FR, thereby offering little or no safeguard of banking regulatory systems consistent with international standards.</p>
<p>The FR is located in a country that is not now, and has not recently been, identified by the U.S. government or other appropriate agency as supporting or housing known terrorist organizations and activities, or maintaining links to terrorist financing.</p>	<p>The U.S. government or other appropriate agency has recently determined that the country where the FR is located is no longer supporting or housing known terrorist organizations and activities or maintaining links to terrorist financing.</p>	<p>The FR is located in a country that has been identified by the U.S. government or other appropriate agency as supporting or housing known terrorist organizations and activities or maintaining links to terrorist financing.</p>
<p>The U.S. organization determines that the FR does not appear on any U.S. government agency list of known or suspected terrorists or terrorist organizations, e.g., Office of Foreign Asset Control lists at <i>www.ustras.u/ offices/enforcement/ofac</i></p>	<p>The U.S. organization identifies a partial match to a person or organization named on such a list and ascertains to its satisfaction that the FR or related person is not the person identified on the list.</p>	<p>The U.S. organization makes no effort to determine whether the FR is named on any U.S. government list.</p>
<p>Payments are not disbursed to individuals.</p>	<p>Payments are disbursed to individuals and records are kept.</p>	<p>Payments are disbursed to individuals and no records are kept.</p>
<p>Payments are remitted by wire transfer to a known account in a reputable financial institution.</p>	<p>Payments are remitted by check and deposited to a known account in a reputable financial institution.</p>	<p>Payments are remitted in cash.</p>