

# Counterterrorism White Paper



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# COUNTERTERRORISM WHITE PAPER

## I. Executive Summary

This paper outlines the impressive success of the Department of Justice in the war on terrorism. Although the Department's counterterrorism efforts span the period from the 1980s to the present, this paper focuses primarily on the investigations, prosecutions, policy and legislative efforts that post-date September 11, 2001, the defining moment which transformed our approach from reactive to proactive, from response to prevention. In this paper, we spotlight many criminal prosecution successes; these cases extend from coast to coast and represent every region of the country. Case examples cited in sections III through X of this paper are resolved cases unless otherwise noted; those referenced in section XI are pending. We do not attempt to list every case or initiative, nor to discuss in depth every case mentioned in this document, nor every pending case that will be addressed in the months and years ahead. But the overview provided here encompasses the scope and breadth of these cases and documents how the criminal justice system operates effectively as an element of national power.

These examples of the Department's success in the war on terrorism are presented against the backdrop of the Department's new mission and the reorganization of the Department to accomplish this mission. Some of the tools which enabled us to achieve these successes – significant new legislation and expanded information sharing – are discussed in terms of their contribution to our criminal enforcement program. We continue to seek to expand these tools and to train and guide prosecutors nationwide to use them effectively.

Our international terrorism and terrorism-related cases draw on the full range of criminal charges available in the federal criminal code, according to the facts and circumstances of each case. The material support statutes have been a cornerstone of our success in terrorism financing cases as well as in a wide range of other cases addressing all types of support to terrorism. Our effective use of these statutes has allowed us to intervene at the early stages of terrorist planning, before a terrorist act occurs. We also have effectively used other terrorism and weapons of mass destruction statutes, and have drawn on more general statutes, such as immigration fraud and false statement offenses, where they apply in terrorism investigations. These statutes of more general application have been so important to our disruption efforts that U.S. Attorneys' Offices around the country have undertaken numerous initiatives to expand their use of these statutes to further our prevention strategy.

Our successful prosecutions have produced cooperating defendants who have, in turn, provided intelligence information to investigators, prosecutors and national security officials, leading to further investigation, disruption and prosecution. This is one of a number of classic criminal enforcement approaches discussed below. Cooperation with our foreign partners has led to counterterrorism successes in foreign courts as well as in our own, and we discuss some of these cases in which such cooperation has been critical to success.

These are difficult cases with unique issues. Investigators and prosecutors assess a large volume of criminal investigative and intelligence information and determine whether criminal prosecution or alternative approaches are appropriate. Criminal cases which utilize classified intelligence information are a challenge, but the Classified Information Procedures Act, combined with strategic charging decisions, enable us to appropriately handle this intelligence in criminal cases while protecting both the classified information and defendants' due process rights. A number of cases have presented unique questions, such as how to deal with evidence purportedly available from detainees abroad, how to balance enemy combatant status with our ability to bring criminal charges, and how to authenticate evidence collected by a foreign intelligence service without disclosing that service's sensitive sources and methods. We have been criticized for our use of material witness warrants in terrorism cases, and we respond by examining the extensive use of this tool in non-terrorism cases and emphasizing the procedural practices that the statute provides, including the probable cause standard, judicial review, and representation by counsel. We also acknowledge that not all our cases have been complete successes, and we address some of the isolated problematic cases in which we have not prevailed at trial.

In bringing these challenging cases, we have not lost sight of the freedoms we seek to protect. We aggressively investigate and prosecute in order to protect our national security, protect our cherished rights, and vindicate the rights of victims of terrorist activity and terrorist acts. At the same time, we seek to ensure that we make full use of the panoply of tools provided to us, that decisions are made after considering the full range of available options, and that discernable gaps that may exist in policy and legislation are identified and solutions proposed.

As we continue to prosecute the war on terrorism, we face additional challenges here at home, where disaffected Americans, inspired by terrorist dogma, are radicalized, trained and organized, often without any direction or control from international terrorists. We discuss some of these challenges ahead and preview some of our pending cases.

## **II. Background**

The Department's counterterrorism efforts can be traced to numerous terrorism investigations, prosecutions, policy and legislative efforts stretching back at least to the 1980s. Prior to the Millennium, major terrorist incidents included numerous airplane hijackings and hostage takings, many of which involved serious injuries and death; the first World Trade Center bombing; the bombing of Khobar Towers and the USS Cole abroad; the bombing of the Murrah Federal Building in Oklahoma City; and the simultaneous bombings of U.S. Embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania. Merely listing these critical incidents does not capture the full nature and extent of the dedication and commitment undertaken by a small group of true pioneers in national security efforts, who investigated and prosecuted terrorists and terrorist organizations before the national and international community focused upon these threats to our collective security.

However, the events of September 11, 2001, led us to conclude that in order to fully address the terrorist threat, we needed to harness the Department's full resources within our borders and around the globe and direct these resources at prevention. Now, nearly five years after the watershed events of 9/11, we are taking a hard look at the successes we have achieved, the difficulties we have encountered, and the challenges ahead. The complexity of national security law encompasses various legal disciplines: international, military, civil, immigration, administrative and criminal law. Our focus in this paper is on the criminal justice system and how we have used the criminal law process to seek justice and keep America safe.

#### **A. 9/11 – Defining moment**

September 11, 2001, will be remembered as a tragic day in the history of the United States and the world. It was followed by other such defining moments in the war on terrorism as the 2002 Bali bombings; the March 11, 2004 Madrid bombings; and the July 7, 2005 London bombings. September 11 will also be remembered, as former Attorney General John Ashcroft stated, as a “day in which the heroic spirit of America awed the world” because so many in New York, Virginia, Pennsylvania and elsewhere “sacrificed their lives in order to preserve the lives of others.” The events of September 11 transformed the mission of the Department of Justice. The Department revised its Strategic Plan to emphasize the prevention and disruption of terrorism. Indeed, the protection of our national security and the prevention of terrorist acts are our number one goal. On every level, we are now committed to a new strategy of prevention. This includes the design, implementation and support of policies and strategies, including the investigation and prosecution of terrorism and terrorism-related cases and the pursuit of legislative initiatives, which will prevent, disrupt and defeat domestic and international terrorist operations before they occur.

#### **B. The Mission**

The Department's Strategic Plan is fully consistent with the February 2003 National Strategy for Combating Terrorism, which recognizes the changing nature of terrorism and the need for the U.S. and its allies to update our tools to fight terrorism and put an end to the terrorist groups and individuals who seek to exploit disadvantaged communities and destroy free nations. The National Strategy for Combating Terrorism provides that:

- The United States and its partners will *defeat* terrorist organizations of global reach by attacking their sanctuaries; leadership; command, control, and communications; material support; and finances.
- We will *deny* further sponsorship, support, and sanctuary to terrorists by ensuring other states accept their responsibilities to take action against these international threats.
- We will *diminish* the underlying conditions that terrorist seek to exploit by enlisting

the international community to focus its efforts and resources on the areas most at risk.

- We will *defend* the United States, our citizens, and our interests at home and abroad by both proactively protecting our homeland and extending our defenses to ensure we identify and neutralize the threat as early as possible.

The National Strategy for Combating Terrorism seeks to harness all elements of national power toward these ends.

### **C. Reorganization of Critical Components**

Over the past five years, we at the Department of Justice have expanded our efforts so that they are truly local, regional, national and international in scope. In order to support these expanded efforts, we have reorganized critical components; pursued targeted recruitment of essential resources, such as intelligence analysts, investigators, and linguists; incorporated advances in technology into our daily practices; and developed and implemented comprehensive training programs. The Federal Bureau of Investigation (FBI) mounted a significant reorganization plan, not only in terms of its structure but also in terms of its approach, dedication of resources, and information sharing with law enforcement and intelligence partners at all levels of government within the United States and with our partners abroad. The FBI established a Counterterrorism Division and a National Security Branch to increase its focus on counterterrorism investigations and on national security information sharing. The FBI improved its use of the interagency task force model of operations and greatly increased the number of Joint Terrorism Task Forces (JTTFs) around the country. The FBI also established the National Joint Terrorism Task Force (NJTTF) to provide greater focus at FBI headquarters on coordination of the interagency investigative efforts encompassed by the JTTF program. The Department continues to reorganize, providing further focus and direction to its counterterrorism efforts through the establishment of the National Security Division at Main Justice, which will concentrate the key national security components at headquarters within a new Division of the Department.

In order to maintain a coordinated and consistent national program while at the same time empowering U.S. Attorneys' Offices across the country to pursue terrorism investigations and prosecutions, the Department established the Anti-Terrorism Advisory Council program (ATACs). Through the ATAC program, a senior prosecutor in each of the 94 U.S. Attorneys' Offices around the country was designated the ATAC Coordinator to spearhead counterterrorism efforts in their districts. The numerous responsibilities of the ATAC Coordinator include: convening a council comprised of federal, state, local, and tribal authorities, as well as pertinent members of the private sector and academic and professional communities, to coordinate counterterrorism efforts in their communities; coordinating specific anti-terrorism initiatives; supporting the investigative efforts of the FBI's JTTFs, as appropriate; initiating training programs; and facilitating information sharing among the

ATAC membership and between field and headquarters components of the Department. Membership of each ATAC varies from district to district, but all include a wide cross-section of federal, state, and local law enforcement, first responders, and private sector security personnel who have worked together since 9/11 to share information, train, discuss initiatives, and establish important relationships and contacts.

Through the Department's Counterterrorism Section, which has the lead for managing the ATAC Program, a National ATAC Coordinator and six Regional Coordinators work individually and collectively to coordinate and communicate with the ATAC Coordinators across the country to provide, receive and exchange terrorism-related information in regard to threats, litigation, criminal enforcement, intelligence and training. The ATAC Coordinator is a key member of the counterterrorism investigation and prosecution team in each U.S. Attorney's Office; indeed, in many districts, the ATAC Coordinator is the chief prosecutor in these complex cases, which involve matters of national significance, require international coordination, have precedent-setting implications, involve cross-jurisdictional investigations, and require substantial resources due to the magnitude and demands of the cases. To further address these needs, many USAOs across the country are standing up National Security Sections or Anti-Terrorism Units to develop a more cohesive group of personnel who focus on proactive counterterrorism initiatives and national security matters in addition to their counterterrorism prosecutions and ATAC program activities.

#### **D. Significant Legislation**

Against the backdrop of the 12 international counterterrorism treaties to which the United States is a party, including the International Convention for the Suppression of Terrorist Bombing and the International Convention for the Suppression of Terrorist Financing, which both became fully effective on July 26, 2002, the U.S. enacted significant additional legislation which increased our tools in the war against terrorism. Prior to September 11, 2001, the enactment of 18 U.S.C. §§ 2339A in 1994 (providing material support to terrorists) and 2339B as part of the Antiterrorism and Effective Death Penalty Act in 1996 (providing material support or resources to designated foreign terrorist organizations) gave us two of our key terrorism statutes, which enabled us to prosecute those who provided material support to terrorists and to foreign terrorist organizations designated in accordance with statute.

Post September 11, 2001, the USA PATRIOT Act updated our investigative tools to keep pace with recent technological advances, increased penalties for certain terrorism crimes, facilitated information sharing among investigators and prosecutors involved in intelligence and criminal investigations and prosecutions, and improved coordination and cooperation between the intelligence and law enforcement communities. The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) reformed the Intelligence Community, establishing the Director of National Intelligence, the National Counterterrorism Center, National Proliferation Center, National Intelligence Centers, the Joint Intelligence



Community Board, and the Privacy and Civil Liberties Oversight Board. IIRTPA also amended the Foreign Intelligence Surveillance Act of 1978 (FISA) to redefine “agent of a foreign power” to include non-U.S. persons who engage in international terrorism or activities in preparation for such terrorism; allow for more criminal history checks and sharing of grand jury information with foreign governments; clarify and expand the material support statutes; criminalize many hoaxes threatening terrorist acts; improve the weapons of mass destruction statute; create new offenses relating to missile systems designed to destroy aircraft, radiological devices, and variola virus (smallpox); improve the criminal statutes relating to atomic weapons; and provide for pretrial detention for numerous serious offenses.

Most recently, the USA PATRIOT Improvement and Reauthorization Act made 14 of the 16 original USA PATRIOT Act sunset provisions permanent, imposed four-year sunset provisions on certain extensions of the FISA statute, and provided clarification and additional safeguards on certain investigative tools – in particular, National Security Letters – to ensure judicial supervision and effective opportunity to challenge.<sup>1</sup> The USA PATRIOT Improvement and Reauthorization Act also provided a new narco-terrorism statute and comprehensive methamphetamine legislation; provisions aimed at reducing crime and terrorism at U.S. seaports, railroads and mass transportation systems; increased penalties for terrorist financing and additional money laundering and forfeiture authorities; and established the National Security Division in the Department.

These legislative advancements have provided a model for counterterrorism legislation worldwide. We have provided consultation and assistance to numerous countries as they seek to improve their counterterrorism tools, consistent with United Nation resolutions and the International Convention for the Suppression of the Financing of Terrorism, which call upon all member nations to outlaw terrorist financing. We continue to provide drafting assistance to emerging nations and to engage in discussions with our allies as to how to reach conduct which attempts to transform protected conduct into terrorist activity, such as recruitment and training utilizing the internet.

#### **E. Expanded Information Sharing**

Expanded information sharing has been key to our counterterrorism efforts and success. As the collection of intelligence has broadened, our ability to exploit this intelligence through our legal tools and authorities has increased. Elimination of the “stove-

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<sup>1</sup> In order to specifically articulate the importance of the USA PATRIOT Act provisions to the Department’s counterterrorism efforts, and to address any concerns regarding the purpose and use of these provisions, more than 30 Department witnesses appeared at 18 different hearings held in the Senate and House during the 2005 debate over reauthorization that took place between April 5 and July 8, 2005. Congressional oversight was meaningful and robust, and Department officials welcomed the opportunity to successfully demonstrate the critical nature of these provisions.

“piping” of information has enabled us to “connect the dots” and prevent terrorists from exploiting gaps in our knowledge. The decision by the United States Foreign Intelligence Surveillance Court of Review, *In re: Sealed Case*, 310 F.3d 717, 723-28 (F.I.S.C.R. 2002), and two important provisions of the USA PATRIOT Act – Section 218, which amended FISA to allow for authority to issue orders where “a significant purpose” of the requested method was to gather foreign intelligence; and Section 504, which expressly allowed consultation between Department of Justice criminal and intelligence personnel on FISA matters – brought down the artificial wall that had been erected between intelligence and criminal investigative personnel and prosecutors. In addition, Sections 203 and 905 of the USA PATRIOT Act expanded the universe of information developed in criminal prosecutions that could and should be shared with the Intelligence Community. As discussed above, IRTPA provided for similar enhanced information sharing with state, local, tribal, and foreign authorities. These provisions, along with revisions in related Attorney General Guidelines which further implement these statutory improvements, have enhanced our national and international security.

The Department has also improved the sharing of information and management of counterterrorism cases internally. Utilizing the nationwide network comprised of the ATAC coordinators in each U.S. Attorney’s Office and the Regional Coordinators in the Department’s Counterterrorism Section, significant events in terrorism investigations and prosecutions are reported to the Counterterrorism Section where they are assembled in a Daily Report that is distributed to Department officials, the Attorney General, and the Director of the FBI, as well as to the ATAC Coordinators and terrorism prosecutors in the Counterterrorism Section and across the country. Coordination and approval requirements in terrorism prosecutions and disruption efforts have been formalized by the Deputy Attorney General and in the U.S. Attorney’s Manual to ensure that we have a fully integrated approach in our terrorism enforcement program.

#### **F. Training and Guidance**

The expanded responsibilities of the U.S. Attorneys’ Offices in the prosecution of terrorism cases required additional training, guidance and on-going support. The Department met this need in the period immediately after September 11, by enhancing its anti-terrorism training for terrorism prosecutors and broadening its target audience. Training was provided not only for prosecutors but also for law enforcement personnel, and joint training was developed to enhance both the knowledge base and the working relationship among prosecutors and investigators. Through the coordinated efforts of Department personnel in the Counterterrorism Section, the Executive Office for United States Attorneys, the FBI, and the Office of Intelligence Policy and Review, training in national security and terrorism statutes, issues, and procedures was delivered to a broad audience across the country. The Department continues to build on these training efforts so that we maintain and continually improve the expertise of our critical personnel.

These formal training courses have been enhanced by a series of specific resource manuals developed by the Department's Counterterrorism Section which provide guidance to the field on specific terrorism and national security issues. These include monographs on such subjects as: the Classified Information Procedures Act; Applicability of the U.S. Sentencing Guidelines Terrorism Enhancement; Designation Mechanisms for Terrorist Entities and Individuals; Hoaxes; Ricin Cases; Principles Governing Statutes of Limitations in Terrorism Cases; Guidance on Special Administrative Measures; Extraterritorial Jurisdiction and Venue; Extraterritorial Application of the Fourth, Fifth and Sixth Amendments; and many others. Additional guidance to national security prosecutors has been promulgated through United States Attorney Bulletins and Office of Legal Education publications devoted to timely national security topics such as "Counterterrorism Enforcement: A Lawyer's Guide," "Intelligence Reform and Terrorism Prevention Act of 2004," and "Terrorist Financing."

As we have enhanced our expertise at home through training and written guidance, we have shared this expertise with our foreign partners. We have designed and participated in counterterrorism training conferences in numerous countries, including Panama, Israel, Italy, Sri Lanka, Singapore, Philippines and numerous others. Working through various multilateral fora, such as the G-8, the European Union, the Organization of American States, and the U.S.-Canada Cross Border Crime Forum, we have improved information sharing, exchanged best practices, and advanced our procedures for mutual legal assistance. Working bilaterally, we have assisted numerous nations, such as Afghanistan and Turkey, in the development of their own terrorism statutes. The international cooperation exemplified by these efforts helps cement relationships with our foreign partners that benefits us all in our fight against terrorism.

### **III. Key Criminal Prosecution Successes**

Our successes in the war on terrorism include numerous criminal convictions of high-profile terrorists in our courts, demonstrating our ability to use the criminal justice system effectively as one of the elements of national power. Criminal prosecution is one of the ways in which we are defeating would-be terrorists among us and protecting our nation through prevention. Although much of our focus was and continues to be on al-Qaeda, its adherents and sympathizers, as terrorist groups, cells and individual operators have proliferated we have expanded our efforts to encompass all such individuals and groups who would do us harm. We have utilized the full range of charges, tools and evidence available to us, both on the criminal side and in the intelligence arena, and we have had success at trial and in obtaining pleas to significant charges prior to trial.

These successful prosecutions demonstrate not only the skill and dedication of federal prosecutors across the country, they also demonstrate the flexibility of the criminal justice system, the range of charges available to both prevent and punish terrorist acts, and our multi-faceted approach. We have brought significant cases to trial without shying away from the

complexities of the evidence or the challenges of balancing the protection of intelligence sources and methods and the due process rights of defendants. Some cases have been resolved by the defendant pleading to charges, often resulting in cooperation of the defendant which has led, in turn, to further charges against others, and the ability to have law enforcement information fuel the intelligence cycle.

We have used key terrorism charges where they fit the facts of the case – charges such as conspiracy to commit terrorism transcending national boundaries, as in the Moussaoui and Ressam cases, and placing an explosive device on an airplane and attempted use of a weapon of mass destruction, as in the Reid and Badat cases. But our full engagement in the preventive mode has moved our focus to the preparatory stages of terrorist planning and to those who would support and actively encourage such activity. Thus, we rely strongly on the material support statutes to prosecute those who provide funds, services, equipment and all types of assistance to terrorists, terrorist organizations, and designated state sponsors of terrorism, as in the Sattar and Gamarra-Murillo cases. And we have used other criminal charges that apply to the facts of each case in an effort to disrupt terrorist activity before it occurs. It is just as important for us to prosecute those who lie about their efforts or the efforts of others to obtain training so that they or their associates can fight against the United States, like Hamid Hayat, as it is for us to prosecute those who do obtain such training and do seek to fight against us, such as Jeffrey Battle and his co-defendants and John Walker Lindh. Only by identifying and stopping those who plan and prepare to harm us can we continue to prevent terrorist acts. We have employed and will continue to employ a broad range of approaches and initiatives in our effort to keep America safe.

We have actively pursued these cases in Article III courts, prosecuting those responsible for terrorist acts against our citizens and our interests. Even in cases in which we do not have the defendant within our reach, we seek to bring charges if we have the evidence and jurisdiction, so that we can proceed to trial if we are able to obtain custody of the defendant at a future date. We have consistently stated: “We shall never forget.” We painstakingly prepare today so that we may bring to justice in the future, at the appropriate time, those who have caused harm to Americans. We have a long memory and great perseverance in such cases.<sup>2</sup> For example:

- **Artur Tchibassa** was charged with hostage taking, in violation of 18 U.S.C. § 1203, and conspiracy to commit hostage taking, in violation of 18 U.S.C. § 371, in connection with the October 19, 1990, kidnaping of United States national Brent Swan in Cabinda, Angola. Swan was on his way to work as a helicopter repair person for a subcontractor of Chevron Overseas Petroleum, Inc. Swan was held for two months by members of an African separatist group identified as FLEC-PM (Front for the Liberation of Cabinda-Military Position). Defendant Tchibassa was one of the

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<sup>2</sup> Other cases described herein which demonstrate the Department’s long memory in terrorism cases include Safarini and Rashed.

group's leaders who actively participated in negotiations with Swan's employers for his release. On July 11, 2002, defendant Tchibassa was apprehended by the FBI in the Democratic Republic of the Congo and transported to the United States to face the pending charges. On September 12, 2003, a jury in the District of Columbia found Tchibassa guilty of both counts of the indictment against him, hostage taking and conspiracy to commit hostage taking, and he was sentenced to 24 years, 5 months in prison followed by 5 years supervised release and restitution to the hostage, Brent Swan, in the amount of \$303,957. Three co-defendants in this case remain fugitives, and we are committed to locating them and bringing them to justice.

Significant resources have also been devoted to the investigation and mitigation of threats, many of which may not result in criminal prosecutions. Our prevention strategy measures success not only by prosecutions brought and won, but also by threats disrupted and terrorist acts avoided. The 2004 Threat Task Force is an example of this type of success. The 2004 Threat Task Force was formed by Director Mueller to identify senior members of al-Qaeda and their U.S.-based operatives who were reportedly planning to execute an attack against the United States Homeland in the months leading up to the 2004 Presidential election. The primary focus of the 2004 Threat Task Force was to disrupt any attempt to attack the U.S. Homeland, and to address intelligence gaps through development of actionable leads using a multi-agency approach. The scope of this effort was extensive:

- Interviews were conducted of more than 15,000 individuals of interest in terrorism investigations and those who might have information concerning terrorism-related issues.
- A total of 16,680 pending and closed case files were reviewed "under the glare" of the newly reported threat against the Presidential elections.
- Collectively, these efforts produced nearly 1,000 new leads, 9 new terrorism investigations, and 10 new threat assessments.

This successful multi-agency initiative has served as a model for other such investigations.

In addition, significant effort has been devoted to pursuing potential cases, some of which ultimately prove to be hoaxes. Hoax cases require the same level of commitment and investment of resources before the potential threat can be dismissed as unfounded. Because these hoaxes undermine our security by taking resources away from the investigation of other real threats, we sought and obtained from Congress a specific hoax statute so that we can charge these cases as a means of achieving specific and general deterrence, and recoup, at least in part, some of the unnecessary costs they entail. IRTPA provided an additional tool to enable us to charge hoaxes which involve the purported use of biological, chemical, radiological and nuclear weapons, materials, and precursors. Prosecutors have used the hoax statute numerous times, including the mandatory reimbursement provision for costs to state and local governments and to emergency response personnel for costs incurred in the investigation and unnecessary mitigation efforts. Here is an example of a successful

prosecution under this statute:

- On May 5, 2006, in the Southern District of California, **Jose Beltran Quinonez** pled guilty to violating 18 U.S.C. § 1038(a)(1) when he falsely told United States law enforcement in January 2003 that he had smuggled four Chinese chemists and two Iraqi nationals into the United States from Mexico and that these individuals were headed to Boston to await the arrival of a nuclear warhead which was going to be smuggled into the United States. Beltran Quinonez provided extraordinary detail to authorities, including identifying a tunnel located between Mexicali, Mexico and Calexico, California and providing pictures of the four Chinese chemists and two individuals he claimed were involved in the smuggling. Ultimately, it was learned that Beltran Quinonez had fabricated the entire story.

Our successes have not been confined to any single district or any single approach. We have had significant successful criminal prosecutions in every region of the country, as prosecutors nationwide have taken up the counterterrorism mantle. Based on statistics maintained by the Criminal Division of terrorism and terrorism-related criminal cases with an international nexus,<sup>3</sup> as of June 22, 2006:

- 441 defendants have been charged<sup>4</sup>

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<sup>3</sup> These statistics represent defendants charged in terrorism or terrorism-related criminal cases with an international nexus which are tracked by the Criminal Division. These cases arose from investigations primarily conducted after September 11, 2001, which initially appeared to have an international connection, including certain investigations conducted by the FBI's Joint Terrorism Task Forces and other cases involving individuals associated with international terrorists or Foreign Terrorist Organizations. The Criminal Division began tracking these cases during the nationwide PENTTBOM investigation of the September 11, 2001 attacks; indeed, the initial cases tracked involved individuals identified and detained in the course of that investigation and subsequently charged with a criminal offense, though often not a key terrorism offense. Additional individuals have been added who, at the time of charging, appeared to have a connection to terrorism, even if they were not charged with a terrorism offense.

The Executive Office for United States Attorneys maintains separate statistics which encompass terrorism and anti-terrorism cases, including international and domestic terrorism, terrorism-related financing, and terrorism-related hoaxes, as well as anti-terrorism cases, that is, those cases brought to prevent or disrupt potential or actual terrorist threats where the offense conduct is not obviously a federal crime of terrorism.

<sup>4</sup> This includes three defendants, each of whom was charged in two separate indictments; each indictment is counted as a separate case, so these three defendants are counted twice.

- resulting in 261 convictions in 45 jurisdictions<sup>5</sup>
  - including 218 guilty pleas
  - 43 convictions after trial
- 150 cases remain pending<sup>6</sup>
- 29 cases which have not resulted in conviction and are no longer pending<sup>7</sup>
- 1 case which resulted in mistrial and is awaiting re-trial on the same charges

Sections IV through XI of this paper discuss more than 55 convictions in more than 30 districts, which represent enforcement efforts impacting not only al-Qaeda, but 18 designated foreign terrorist organizations and other terrorist groups and entities.

### **A. Material Support Cases**

One of the cornerstones of our prosecution efforts has been the material support statutes. Cutting off the provision of support and resources to terrorists and foreign terrorist organizations is essential to preventing terrorist attacks. The two primary material support statutes are 18 U.S.C. § 2339A, providing material support to terrorists, and 18 U.S.C. § 2339B, providing material support to a designated foreign terrorist organization. The International Emergency Economic Powers Act (IEEPA) also provides prosecutors a tool to charge those who give or receive goods or services from a number of designated terrorists. Through our legislative efforts, we have expanded and clarified the scope and definition of “material support.” The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) amended the definition of “material support or resources,” broadening the definition to clearly encompass all property (whether tangible or intangible) and all services, except for medicine or religious materials. The definition formerly was limited to specified types of material support and “other physical assets.” IRTPA also added definitions for “training” and

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<sup>5</sup> Two of the defendants are counted twice here, reflecting that each was charged and convicted in two separate indictments. A third defendant has been convicted in one case and has another case pending against him.

<sup>6</sup>Pending cases include those in which the defendant is in pre-trial detention awaiting trial, or the defendant is a fugitive or is awaiting extradition; this also includes a number of cases under seal.

<sup>7</sup> Among the 29 charged cases that did not result in a criminal conviction and are no longer pending, 4 defendants were transferred to Customs and Immigration Enforcement (ICE) custody for removal or deportation; 8 were indicted on or have pled guilty to other charges; 8 were dismissed on the government's motion for evidentiary or other reasons; 1 died while still a fugitive; and 1 had his charges dropped after he was designated an enemy combatant by the President.

“expert advice or assistance” to clarify what Congress meant by those terms and to respond to some court decisions which raised questions as to whether the terms, which were not previously defined, might be unconstitutionally vague. The addition of these two definitions did not change the scope of those terms but diminished, to some extent, judicial concerns.<sup>8</sup>

The use of these statutes has not only deterred the provision of money and other resources to terrorists, but has provided a way of intercepting individuals who would seek out and participate in terrorist training before they have the opportunity to use that training in a terrorist attack. These include individuals who finance such training as well as those who give aid along the way by providing safe houses, travel documents, food and equipment or other support to those who seek to attend terrorist training camps. The importance of the material support statutes is apparent, as one of our convicted defendants, Jeffrey Battle, makes clear in this recorded conversation with an informant:

*“[T]he reason it was not organized is, couldn’t be organized as it should’ve been, is because we don’t have support. Everybody’s scared to give up any money to help us. You know what I’m saying? Because of the law that Bush wrote about, you know, supporting terrorism whatever the whole thing. ... Everybody’s scared ... [Bush] made a law that say, for instance, I left out of the country and I fought, right, but I wasn’t able to afford a ticket but you bought my plane ticket, you gave me the money to do it ... By me going and me fighting and doing that they can, by this new law, they can come and take you and put you in jail for supporting what they call terrorism.”*

The Department has had numerous successes in prosecuting material support cases. Among these successes are:<sup>9</sup>

- **Lackawanna Six: Defendants Yahya Goba, Shafal Mosed, Yasein Taher, Faysal**

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<sup>8</sup> Litigation continues in the Ninth Circuit concerning the definition of various aspects of material support. Thus in *Humanitarian Law Project v. U.S. Department of Justice*, 393 F.3d 902, decided December 21, 2004, the Ninth Circuit, sitting *en banc*, vacated the injunction as to "training" and "personnel" and remanded to the district court in light of the changes made by Section 6603 of IRTPA. On remand, the district court found that the term "personnel," as amended by IRTPA, is not unconstitutionally vague but that "training" and "service" are vague and "expert advice or assistance" is vague to the extent that it reaches beyond scientific or technical knowledge to "other specialized knowledge." *Humanitarian Law Project v. Gonzales*, 380 F. Supp. 2d 1134 (C.D. Cal. 2005). The government's appeal and the plaintiffs' cross-appeal are pending.

<sup>9</sup> Other successful material support prosecutions discussed herein include: Abu Ali, Babar, Hassan Makki, Al-Moayad and Zayed, Gamarra-Murillo, Hammoud, Paracha, Syed Shah, Lakhani, Hayat, and Ujaama.



**Galab, Mukhtar Al-Bakri, Jaber Elbaneh, and Sahim Alwan** were charged with conspiring, providing and attempting to provide material support to al-Qaeda based upon their pre-9/11 travel to Afghanistan to train in the Al Farooq camp operated by al-Qaeda. Six of the seven defendants pled guilty, agreed to cooperate, and were sentenced to terms ranging from seven to ten years in prison. The seventh defendant, Jaber Elbaneh, recently escaped from custody in Yemen, along with 22 others. He remains a fugitive. The cooperators have provided information about the al-Qaeda affiliated Al Farooq training camp in Afghanistan and have testified in other terrorism cases brought by the U.S. and by other countries. For example, Yaya Goba testified in the Eastern District of New York in the Al-Moayad case mentioned below.

- **Sattar:** On November 19, 2003, a grand jury in the Southern District of New York returned an indictment against four associates of Sheikh Omar Abdel-Rahman, leader of the terrorist organization Islamic Group, who is serving a life sentence plus 65 years for his role in terrorist activity, including the 1993 bombing of the World Trade Center. The indictment charged that these four individuals – **Ahmed Abdul Sattar**, an Islamic Group (IG) leader and associate of Sheikh Abdel-Rahman; **Lynne Stewart**, an attorney who has represented Abdel-Rahman since his trial and conviction for the World Trade Center bombing; **Mohammed Yousry**, the Arabic language interpreter for communications between Stewart and Abdel-Rahman; and **Yasser al-Sirri**, the former head of the London-based Islamic Observation Center – worked in concert with Abdel-Rahman, in violation of special administrative measures (SAMs) restricting Abdel-Rahman’s communications with the outside world, to provide material support and resources to the IG. On February 10, 2005, a jury convicted the defendants of providing material support to terrorists and other charges. The evidence showed that Sattar plotted to kill and kidnap persons in a foreign country, and that he participated in the drafting and dissemination of a fatwah in Abdel Rahman’s name urging the murder of Jews wherever found. The prosecution highlighted the ability of the government to use voluminous historic FISA collection in criminal prosecutions consistent with due process for the defendants.
- In May 2003, **Iyman Faris**, an Ohio truck driver, pled guilty in the Eastern District of Virginia to conspiracy and providing material support to al-Qaeda for providing the terrorist organization with information about possible U.S. targets for attack. Among other things, Faris, a U.S. citizen from Pakistan, was tasked by al-Qaeda operatives overseas to assess the Brooklyn Bridge in New York City as a possible post-9/11 target of destruction. He also admitted that he provided sleeping bags, cell phones and cash to al-Qaeda. On October 2003, he was sentenced to 20 years in prison. Faris initially provided information and assistance to law enforcement personnel.
- On March 1, 2005, **Mahmoud Youssef Kourani**, formerly of Dearborn, Michigan, and Yater, Lebanon, pled guilty in federal court in the Eastern District of Michigan to one count of conspiracy to provide material support to the designated foreign terrorist

organization Hizballah, in violation of 18 U.S.C. § 371, in connection with his hosting of meetings at his home during which a guest speaker from Lebanon solicited donations to Hizballah's "orphans of martyrs" program to benefit the families of those killed in Hizballah terrorist operations or by Hizballah's enemies. He was sentenced on June 14, 2005, to 54 months in prison and ordered deported. Kourani was previously convicted of illegally harboring an alien under 18 U.S.C. § 1324, for which he served a six-month sentence.

- **Hamid Hayat:** On April 25, 2006, a jury in the Eastern District of California returned a verdict of guilty on all counts of a four-count indictment, which charged Hamid Hayat with providing material support to terrorists and false statements. The charges stemmed from Hayat's attendance at a terrorist training camp in Pakistan and later lying about it when questioned by FBI agents. The trial of Hamid Hayat's father, **Umer Hayat**, on false statement charges ended in a mistrial, and he pled guilty to false statement charges on May 31, 2006.
- **Ali Asad Chandia and Mohammed Ajmal Khan** were indicted in the Eastern District of Virginia on charges of conspiracy to provide material support (18 U.S.C. §§ 2339A and 2339B) to Lashkar e Taiba (LET). This case resulted from the continuation of the Virginia Jihad investigation in northern Virginia, which previously resulted in ten convictions, including the conviction of the spiritual leader of the Virginia Jihad Network, Ali Al-Timimi. All four counts of the indictment rested upon the premise that Chandia and Khan conspired to provide, and did provide, material support to *Lashkar-e-Taiba*, both before and after it was designated as a foreign terrorist organization. Chandia met Mohammed Ajmal Khan, a senior official and procurement officer for *Lashkar-e-Taiba*, at an office of that organization in Pakistan in late-2001. Mohammed Ajmal Khan traveled to the United States in 2002 and 2003 to acquire equipment for *Lashkar-e-Taiba*, and Chandia assisted him in these efforts both times.

A jury found Chandia guilty of three of the four counts of the indictment on June 6, 2006. The assistance of the Terrorism Branch of New Scotland Yard was essential in the conviction of Chandia. Approximately seven witnesses from New Scotland Yard testified at the trial, including a computer forensic expert and a fingerprint examiner. In addition, a number of New Scotland Yard agents testified about the searches of Mohammed Ajmal Khan's residences and computers in the United Kingdom. During the trial of Chandia, the government entered over two dozen exhibits that came from the searches in the United Kingdom.

Chandia's sentencing is set for August 18, 2006. Khan is serving a nine-year sentence in the UK on terrorism charges; the U.S. will seek his extradition at the conclusion of that sentence.

## **B. Terrorist Financing**

Terrorist financing has been a particular focus of our investigative efforts. Terrorists cannot carry out their acts without money to buy weapons, explosives and equipment. Nor should they be able to hide behind our First Amendment protections to provide money to further terrorist activity. As the U.S. Court of Appeals for the Ninth Circuit stated in *United States v. Afshari*, 426 F.3d 1150, 1160 (9<sup>th</sup> Cir. 2005):

*What is at issue here is not anything close to pure speech. It is, rather, material support to foreign organizations that the United States has deemed, through a process defined by federal statute and including judicial review by the D.C. Circuit, a threat to our national security. The fact that the support takes the form of money does not make the support the equivalent of speech. In this context, the donation of money could properly be viewed by the government as more like the donation of bombs and ammunition than speech.*

Financial support also enables terrorists to travel and plan their activities. Terrorists exploit the charitable efforts of others to divert money meant literally for widows and orphans but instead redirect it to cause chaos and havoc. U.S. District Court Judge James S. Moody unequivocally stated this view at the sentencing of Sami Amin Al-Arian on May 1, 2006:

*You were on the board of directors and an officer, the secretary. Directors control the actions of an organization, even the PIJ [Palestinian Islamic Jihad]; and you were an active leader. When Iran, the major funding source of the PIJ, became upset because the PIJ could not account for how it was spending its money, it was to your board of directors that it went to demand changes. Iran wanted its representative to have a say in how its money was spent. To stop that, you leaped into action. You offered to rewrite the bylaws of the organization. You proposed that all PIJ funds be controlled by a three-person committee, of which you would be one of the three. You made calls to fellow directors all over the world to gather support. This committee would account for Iran's money, all to keep the money flowing. You even pleaded for donations to pay for more such operations.*

*[Y]ou continue to lie to your friends and supporters, claiming to abhor violence and to seek only aid for widows and orphans. Your only connection to widows and orphans is that you create them, even among the Palestinians; and you create them, not by sending your children to blow themselves out of existence. No. You exhort others to send their children. Your children attend the finest universities this country has to offer while you raise money to blow up the children of others.*

Our terrorism financing strategy reflects our expanded exploitation of intelligence information and our focused efforts to utilize all techniques and legal authorities available to cut off funding sources. The tools used in terrorist financing investigations are the standard,

time-tested techniques used by the government to ferret out and redress white-collar crime. For this reason, terrorist financing investigations occasionally result in the discovery of non-terrorism plots which lead to significant criminal prosecutions. For example, shortly after September 11, prosecutors focused on public allegations that the 9/11 attacks were foreshadowed by massive aberrational investment patterns in the worldwide capital markets, a phenomenon that would have indicated advance knowledge of the plot and an effort to profit from it. Although the prosecutors ultimately found no evidence of these systemic investment patterns, their efforts did uncover a securities fraud plot to take strategic investment advantage of law enforcement information contained in FBI files. The investigation of that plot resulted in the successful prosecution of Amr Elgindy and others:

- **Amr Elgindy, Jeffrey Royer, Troy Peters, Jonathan Dawes, Lynn Wingate, Derrick Cleveland and Robert Hansen** were charged in the Eastern District of New York with RICO conspiracy, insider trading, and conspiracies involving securities fraud and obstruction of justice, among other charges, in a case involving stock market manipulation and obstruction of justice which began as an investigation into whether foreknowledge of the September 11 attacks resulted in capital market manipulation. Two of the defendants, Cleveland and Hansen, pled guilty and testified against Elgindy and Royer. On January 24, 2005, the jury returned a verdict, convicting Elgindy of racketeering, securities fraud and extortion, and convicting Royer of racketeering, securities fraud, obstruction of justice and witness tampering. Wingate also pled guilty and Peters awaits trial. On June 19, 2006, Elgindy was sentenced to 108 months in prison on these charges and an additional 27 consecutive months on a separate indictment for false statements and committing an offense while on release.

Other examples of successful terrorism financing prosecutions include:<sup>10</sup>

- In the Northern District of Illinois, **Enaam Arnaout**, Executive Director of Benevolence International Foundation (BIF), a purported charity, used his organization to illicitly obtain funds from unsuspecting people to covertly support al-Qaeda, the Chechen mujahideen, and armed violence in Bosnia. He also served as a channel for people to contribute money knowingly to such groups. The Syrian-born naturalized citizen has been in federal custody since he was arrested April 30, 2002, on earlier perjury charges. On February 10, 2003, Arnaout pled guilty to a racketeering conspiracy, admitting that donors of BIF were misled into believing that their donations would support peaceful causes when in fact funds were spent to support violence overseas. Arnaout also admitted to providing various items to support fighters in Chechnya and Bosnia-Herzegovina, including boots, tents,

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<sup>10</sup> Other examples of terrorist financing cases discussed herein which resulted in convictions include: Al-Amoudi, Infocom, and Hammoud.

uniforms, and an ambulance. Arnaout was sentenced to 120 months in prison.

- **Help the Needy:** Seven defendants and a purported charitable organization, including the lead defendant, **Dr. Rafil Dhafir**, were charged in the Northern District of New York with a variety of crimes based on Dhafir's creation and operation of the U.S branch of the charity, known as "Help the Needy." Dhafir and Help the Needy defrauded donors and the Internal Revenue Service in soliciting donations and illegally laundering millions of dollars by transferring funds from the U.S. to Iraq, in violation of U.S. economic sanctions and money laundering statutes. Dhafir was also charged with Medicare fraud and a number of additional offenses. Five of the individual defendants pled guilty, cooperated, and testified at Dhafir's trial, including the Executive Director of Help the Needy, Dhafir's accountant, and Dhafir's wife. One individual defendant remains a fugitive and is believed to be in Jordan. Dhafir's trial began on October 21, 2004 and, on February 10, 2005, a jury returned a guilty verdict on 59 of the 60 counts against him. He was sentenced on October 27, 2005, to 264 months in prison. The Help the Needy Endowment organization was severed from the Dhafir trial and has since been placed in receivership by the Attorney General of the State of New York, thereby obviating trial and forfeiture proceedings.
- **Bathwater:** The Bathwater investigation in the Eastern District of Michigan is an example of the phased approach (see also page 33) that we have used in criminal investigations and prosecutions. The initial multi-defendant, multi-count prosecution of Mohamad Hammoud and others in North Carolina led to a series of related prosecutions in Detroit.

**Elias Mohamad Akhdar** and numerous co-defendants were part of an organization that smuggled low-taxed and untaxed cigarettes from North Carolina and the Cattaraugus Indian Reservation in New York to Michigan in order to evade Michigan State cigarette tax. To accomplish their goals, defendants and their co-conspirators produced counterfeit tax stamps, obtained counterfeit credit cards, laundered money, obstructed justice, and committed arson. Many defendants are believed to have links to Hizballah, and there is evidence that money raised from this scheme may have gone to support that organization. All of the defendants, with the exception of fugitives Jamal Hassan Farhat and Mohamad Krayem, pled guilty in the Eastern District of Michigan and were sentenced.

**Hassan Makki**, one of the co-conspirators in the cigarette conspiracy, was a supporter of the designated foreign terrorist organization Hizballah, and admitted that he knowingly provided more than \$2000 to Hizballah for the orphans of martyrs program in Southern Lebanon to benefit the families of those killed in Hizballah operations or by Hizballah's enemies. Makki pled guilty to providing material support to Hizballah, 18 U.S.C. § 2339B, and to conspiring to conduct an enterprise through a pattern of racketeering activity, 18 U.S.C. § 1962(d).

In support of its requests for detention of co-defendant Elias Akhdar, the government proffered information that he received military training from Amal and participated in military incursions within Lebanon on behalf of Hizballah in the 1970s and 1980s; he also contributed a portion of the profits from his illegal racketeering activities to Hizballah. The government also proffered information that Akhdar participated in a \$500,000 cash transaction and numerous phone contacts with Mohammed Hammoud and his “Charlotte Hizballah cell.” Hammoud was convicted in North Carolina of conspiracy to provide equipment to Hizballah to be used in various violent attacks.

- **Monasser Mosad Omian, Sadik Monasser Omian, Jarallah Nasser Wassil and Saleh Alli Nasser** pled guilty on May 11, 2006, in the Eastern District of Michigan, to operating an unlicensed money remitting business in the Detroit area from 1999 through 2005. The defendants admitted in their plea that they owned and managed an unlicensed money transmitting business, a *hawala*, and used that business to send to Yemen, and disburse to unknown recipients, more than \$9,693,669 that they collected from mosques, businesses, and individuals in eight states. The defendants structured cash deposits into the *hawala* at the reporting threshold of \$10,000 or less on all but a few occasions to cause the financial institutions with which they banked (Comerica Bank and Charter One Bank) to fail to file the currency transaction reports (CTRs) required for currency deposits over \$10,000. The defendants profited from their illegal activity in part by charging a percentage of the money transferred as their commission on the illegal service they were providing.

The case against Sami Al-Arian represents a particularly challenging terrorist financing case – one of the first cases involving extensive use of FISA intercepts and classified information – which ultimately resulted in conviction.

- On September 21, 2004, a 53-count indictment was returned, charging **Sami Amin Al-Arian** and eight co-defendants with using facilities in the United States, including the University of South Florida, to serve as the North American base for Palestinian Islamic Jihad (PIJ), which was designated as a Specially Designated Terrorist (SDT) in January 1995 and a foreign terrorist organization (FTO) in 1997, and providing material support to the PIJ, and conspiring to murder abroad. Additional charges for money laundering and providing material support to an FTO were subsequently added. This case relied on eight years of intercepted conversations and faxes legally obtained pursuant to orders issued by the Foreign Intelligence Surveillance Court to demonstrate the defendants’ active involvement in PIJ’s worldwide operations. Following several months of trial which began on June 6, 2005, and lengthy deliberations, on December 6, 2005, the jury was unable to reach a verdict on three of the four most serious charges against Al-Arian and **Hatem Naji Fariz** – RICO conspiracy, conspiracy to provide material support, and conspiracy to violate IEEPA and other various charges – and acquitted them of conspiracy to murder persons abroad and several substantive travel act, material support and money laundering

charges. Defendants **Sameeh Taha Hammoudeh** and **Ghassan Zayed Ballut** were acquitted of all charges.

Arising from the national security investigation, Sameeh Taha Hammoudeh and his wife, Nadia Hammoudeh, had previously been charged in a separate 15-count indictment charging tax, immigration, and mail and wire fraud offenses. On February 22, 2005, both defendants pled guilty to three counts of the indictment pursuant to a plea agreement and were sentenced on June 3, 2005, to 5 years probation and restitution of over \$8,000 to the IRS. An order of removal was also entered. Hammoudeh has been removed from the United States.

Hatem Naji Fariz was also charged in the Northern District of Illinois in a food stamp fraud and money laundering scheme he operated in Chicago between May 1999 and December 2000, in connection with a grocery business he owned. Fariz defrauded the USDA Food Stamps Program and traded cash for food stamp benefits, depositing the proceeds in his bank account. On Friday, June 16, 2006, he pled guilty to one count of wire fraud, in violation of 18 U.S.C. § 1343; and one count of money laundering, in violation of 18 U.S.C. § 1956 (a)(1)(A)(I). His sentencing is scheduled for August 18, 2006. He has agreed to the forfeiture of \$1,414,020.68 – the sum of the loss resulting from the fraud – to be paid in restitution to the United States.

On April 14, 2006, Sami Al-Arian pled guilty to knowingly conspiring to make or receive contributions of funds, goods and services to the Palestinian Islamic Jihad, a specially designated terrorist, in violation of 18 U.S.C. § 371. In his guilty plea, Al-Arian admitted that, during the period of the late 1980s and early to mid-1990s, he and several of his coconspirators were associated with the Palestinian Islamic Jihad. He further admitted that he performed various services for the PIJ in 1995 and thereafter, knowing that the PIJ had been designated as a Specially Designated Terrorist and that the PIJ engaged in horrific and deadly acts of violence. Such services included: (1) filing for immigration benefits for individuals associated with the PIJ; (2) hiding the identities of individuals associated with the PIJ; and (3) providing assistance for an individual associated with the PIJ in a United States Court proceeding.

On May 1, 2006, Al-Arian was sentenced to 57 months in prison, the maximum sentence under the plea agreement. He will be deported upon completion of his sentence. At sentencing, U.S. District Judge James Moody said:

*Dr. Al-Arian, as usual, you speak very eloquently. I find it interesting that here in public in front of everyone you praised this country, the same country that in private you referred to as "the great Satan"; but that's just evidence of how you operate in the face of your friends and neighbors. You are a master manipulator. You looked your neighbors in the eyes and*

*said you had nothing to do with the Palestinian Islamic Jihad. This trial exposed that as a lie. Your back-up claim is that your efforts were only to provide charities for widows and orphans. That, too, is a lie. The evidence was clear in this case that you were a leader of the Palestinian Islamic Jihad.*

The Israeli National Police provided extraordinary assistance in the investigation and prosecution of the Al-Arian case. They arranged for FBI agents and prosecutors to interview approximately 150 Israeli citizens in Israel, providing critical cultural liaison and translation assistance. In addition, the Israeli National Police coordinated the production of voluminous discovery materials, including documentation concerning the violent attacks alleged in the indictment. During trial, Israeli National Police officers escorted witnesses from Israel for testimony at trial. The Israeli Ministry of Justice and various intelligence and military agencies also assisted U.S. investigators.

As stated above, this was a complex case, and we failed to convince the jury of the weight of the evidence on the charges. In the future, we will need to look at streamlining such complex cases as much as possible. Because of the complexity of the case, the instructions to the jury to govern their deliberations were very important, and the court's legal instructions relative to the racketeering charge were arguably confusing. In addition, the government respectfully disagreed with the court's ruling relating to specific intent as to IEEPA and § 2339B.<sup>11</sup> This ruling was contrary to the rulings of other courts and to later, explicit Congressional enactment. We continue to examine lessons learned from this prosecution. Ultimately, however, Al-Arian pled to a terrorism conspiracy rather than face a retrial, admitted his criminal conduct with respect to a designated foreign terrorist organization, will serve 57 months in prison, and will be removed from the United States.

### **C. Weapons of Mass Destruction**

We have been successful in building a comprehensive statutory framework for charging weapons of mass destruction cases which involve biological, chemical, radiological and nuclear weapons, materials, and precursors. This has included recent additions in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), which created new offenses relating to radiological devices, smallpox, and missile systems designed to destroy

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<sup>11</sup> As part of the Intelligence Reform and Terrorism Prevention Act of 2004, Congress clarified its original intent with respect to the "knowingly provides" requirement, specifying that the government must prove that the defendant knew that the designated foreign terrorist organization (FTO) had been designated as such or that it engages or engaged in terrorist activity. Thus it is unnecessary to establish, as the Al-Arian court held, that in providing material support, the defendant specifically sought to promote or foster the FTO's terrorist activities.



aircraft and improved criminal statutes relating to atomic weapons by extending their reach to those who participate in the unauthorized development or production of special nuclear material outside the United States, extending the jurisdictional bases, and increasing the penalties. Fortunately, we have used these statutes infrequently, although we did recently charge and obtain a conviction for a conspiracy to import a missile system to destroy aircraft, once again demonstrating our success in using criminal prosecution to potentially avert a catastrophic event. Examples of WMD cases include:

- **Chao Tung Wu**, a naturalized U.S. citizen born in China, pled guilty in the Central District of California on April 19, 2006, to conspiracy to import missile systems designed to destroy aircrafts, in violation of 18 U.S.C. § 2332g. According to Wu's plea agreement, he and co-defendant **Yi Qing Chen** told an undercover FBI agent that they could procure 200 QW-2 shoulder-fired missiles from China "with the assistance of a corrupt customs broker" for \$18.3 million. The defendants also told the undercover agent that they could bribe a third country to pretend to order and receive shipment of the missiles in order to remove suspicion of the transaction, but that ultimately the missiles would be shipped to Southern California in sea-land containers. The missiles were never delivered because Wu and Chen were arrested in late August 2005 before the deal was completed. Chen pled not guilty. Wu, who was ordered held without bond, is scheduled to be sentenced on July 31, 2006.
- **William Krar** and **Judith Bruey** were charged in the Eastern District of Texas in a multiple count indictment with several weapons offenses, including chemical weapons charges in violation of 18 U.S.C. §§ 229 and 229A. In addition, Krar and **Edward Feltus** of New Jersey were charged with possession and transfer of more than five false identification documents, including false birth certificates, a Defense Intelligence Agency identification card and a United Nations Multinational Force identification card. Authorities began investigating Krar after a package he mailed to Feltus at a New Jersey address was accidentally delivered to a residence in Staten Island, N.Y. The package contained false documents, including North Dakota and Vermont birth certificates, a Social Security card, a Defense Intelligence Agency ID and a United Nations Multinational Force ID card. Search warrants executed at the home of Krar and Bruey in Tyler, Texas, a storage locker rented by Krar, and Feltus' home and three vehicles in New Jersey resulted in the discovery of weapons, explosives, thousands of rounds of armor-piercing and other ammunition, gas masks, hundreds of knives (including composite knives capable of evading metal detectors), false identification templates for U.S. Government entities, chemicals labeled "sodium cyanide," recipes for making poison gases, explosives, components to make bombs, ready-to-go bombs, black powder, and survivalist manuals. Krar, Bruey and Feltus entered guilty pleas and were sentenced to 135 months, 57 months and 18 months, respectively.
- **Kenneth Olsen**, a computer software engineer, was convicted on July 17, 2003, in the

Eastern District of Washington of two counts of possession of a biological weapon, in violation of 18 U.S.C. § 175, and possession of a chemical weapon, in violation of 18 U.S.C. § 229. Enough ricin to kill about 5,000 was found in Olsen's work cubicle in August 2001 at Agilent Technologies (formerly Hewlett Packard), where hundreds of employees work. Prosecutors did not establish a specific target, but said Olsen may have made the ricin in a plot to murder his wife because he was having an extramarital affair. Olsen was sentenced to 165 months in prison.

- On April 11, 2006, in the District of Arizona, **Casey Cutler** was sentenced to 36 months incarceration with 60 months supervised release after his guilty plea to one count of attempting to produce the biological toxin ricin for use as a weapon. On June 8, 2005, he was indicted on charges of attempting to produce a biological toxin, ricin, for use as weapon, in violation of 18 U.S.C. § 175(a). Cutler obtained the recipe from the Internet but used castor oil instead of castor beans to make the ricin. Because ricin cannot be made from castor oil, Cutler produced only a non-toxic powder. Cutler, who had recently been assaulted, wore the “ricin” in a vial around his neck and intended to use it as a defensive weapon if he was attacked again so that his assaulters would believe it was cocaine and snort it, getting their “just desserts.”

In order to train prosecutors on the use of these new offenses so that they are in a position to effectively use them if and when the need arises, we produced a “Guide to Prosecutors on Prosecuting WMD Cases.” We could and should increase our readiness in this area through recruitment of prosecutors with scientific expertise who can better understand the intricacies of WMD cases and explain them to juries, work more effectively with the interagency community, and participate meaningfully in critical incident preparation and response.

#### **D. Other Key Terrorism Statutes**

The Department has also had success prosecuting more “traditional” cases of terrorism, such as hijacking, kidnaping and murder. Other terrorism statutes reaching traditional terrorist activity include 18 U.S.C. § 2332a (use of a weapon of mass destruction), 18 U.S.C. § 2332b (terrorist acts transcending national boundaries), and explosives and weapons offenses, such as those found in 18 U.S.C. §§ 844 and 924. Examples of the use of such statutes in international and domestic terrorism prosecutions include:

- **Zacarias Moussaoui**, a French national prosecuted in the Eastern District of Virginia, entered the United States on February 23, 2001, under the visa waiver pilot program, and took flight training in Oklahoma and Minnesota. He was taken into immigration custody on August 16, 2001, for overstaying his visa. Moussaoui was charged with six different conspiracies utilizing several different terrorism statutes, including conspiracy to commit acts of terrorism transcending national boundaries, conspiracy to commit air piracy, conspiracy to destroy aircraft, conspiracy to use weapons of

mass destruction, conspiracy to murder U.S. employees, and conspiracy to destroy property.

Moussaoui sought permission in discovery to interview certain enemy combatants held by the U.S. overseas, and the court agreed and ordered the government to afford the defendant this access. On interlocutory appeal, the Fourth Circuit vacated the district court's prior order imposing sanctions on the Government for refusal to afford Moussaoui access via deposition to certain detained enemy combatants and held that substitutions could be crafted under CIPA that would be constitutionally sufficient to replace the interactive access ordered by the district court.

Evidence was determined to be available from a foreign witness in custody in Singapore. The court authorized a Rule 15 deposition of the witness, Bafana, and officials in Singapore cooperated with U.S. prosecutors to facilitate the taking of his deposition, which was introduced into evidence during the sentencing proceeding.

On April 22, 2005, Moussaoui pled guilty to all six charges, acknowledging his role in helping al-Qaeda carry out the September 11 hijackings and terrorist attacks. On May 4, 2006, Moussaoui was sentenced to life in prison.

- In the District of Massachusetts, we prosecuted and convicted **Richard Reid**, the “shoe bomber.” On December 22, 2001, American Airlines Flight #63, with 183 other passengers and a crew of 14 on board, departed Charles DeGaulle Airport in Paris, France, bound for Miami, Florida. About 1½ hours into the flight, a flight attendant smelled what she thought was a burnt match coming from Richard Reid, a U.K. national, who was trying to light the inner tongue of his shoe from which a wire protruded. The FBI laboratory in Washington later determined that there were two functional improvised explosive devices in Reid's shoes made of the explosive triacetone triperoxide, known as TATP. The plane was diverted to Boston where Reid was indicted for attempted use of a weapon of mass destruction, attempted murder, and placing an explosive device on an aircraft, among other charges. Reid pled guilty to all charges on October 4, 2002 and was sentenced on January 30, 2003, to life in prison plus 110 years.

Bomb components virtually identical in design to those that Reid attempted to use were found by U.K. authorities in November 2003, when they arrested **Saajid Badat** and searched his home and mosque outside London. Badat also admitted to police that he was asked to act as a shoe bomber like Reid and received shoe bombs from “Arabs” in Afghanistan. In June 2004, Badat was indicted in the District of Massachusetts for conspiring to destroy an aircraft (18 U.S.C. § 32); attempted use of a weapon of mass destruction (18 U.S.C. § 2332a); attempted homicide (18 U.S.C. § 2332); placing an explosive device on an aircraft (49 U.S.C. § 46505); attempted murder (49 U.S.C. § 46506, 18 U.S.C. § 1113); attempted destruction of an aircraft

(18 U.S.C. § 32); and using a destructive device in relation to a crime of violence (18 U.S.C. § 924), all stemming from Badat's conspiracy with Richard Reid and others to blow up U.S.-flagged commercial aircraft to kill U.S. nationals. U.K. prosecutors have charged Badat with conspiracy and explosives charges and, following extensive negotiations during the pre-trial phase, Badat pled guilty and agreed to cooperate.

- In May 2005, **Ahmed Hassan al-Uqaily** pled guilty in the Middle District of Tennessee to illegal possession of machine guns (18 U.S.C. § 922(o)) and illegal possession of destructive devices (26 U.S.C. § 5861). Al-Uqaily was arrested in an undercover operation after the FBI learned that he had talked about "going jihad" over the current situation in Iraq. He was sentenced to 57 months in prison.
- On September 15, 2005, a jury found **Gale Nettles** guilty of attempting to bomb the Dirksen Federal Building in Chicago, Illinois, in violation of 18 U.S.C. § 844(f)(1). Nettles was the subject of an FBI undercover operation commenced after a fellow inmate reported to the FBI statements that Nettles made about his intention to obtain explosives and destroy the Dirksen Building upon his release from prison on a counterfeiting conviction. Nettles negotiated the purchase of one ton of ammonium nitrate, and accepted partial delivery in August 2003 of what he believed to be ammonium nitrate from an undercover agent purportedly associated with a foreign terrorist organization. Nettles was sentenced on January 12, 2006 to 160 years in prison.
- On August 8, 2002, **Imran Mandhai** pled guilty in the Southern District of Florida to one count of conspiring to destroy power stations through the use of explosives (18 U.S.C. § 844(i), (n)) with regard to a plan to bomb electrical transformers in Florida in retaliation for the government's support of Israel and other countries that allegedly oppress Muslims. Mandhai's goal was to bomb and disable public utilities in the hope that power outages would lead to civil strife and upheaval on the streets of Miami. He planned to demand the release of Muslim prisoners and changes in the government's foreign policy after the bombings. He sought weapons, money, and explosives, and he staked out targets to bomb. Mandhai was sentenced to 140 months in prison, including application of the terrorism enhancement provision under the U.S. Sentencing Guidelines.
- **Shahawar Matin Siraj** was convicted on May 24, 2006, in the Eastern District of New York of conspiring to plant explosive devices at one of the most active transportation hubs in Manhattan in August 2004, just prior to start of the Republican National Convention at nearby Madison Square Garden. The specific charges involved were conspiracy to maliciously damage or destroy, by means of fire or an explosive, a building, vehicle, or other real property, in violation of 18 U.S.C. § 844(i); conspiracy to wreck, derail, set fire to, or disable a public transportation

vehicle, in violation of 18 U.S.C. § 1993(a)(1); conspiracy to place an explosive device in or near a facility used in mass transportation, in violation of 18 U.S.C. § 1993(a)(3); and conspiracy to detonate an explosive device in or against a public transportation system with the intent to cause extensive destruction with the likely result of major economic loss, in violation of 18 U.S.C. § 2332f(a)(1)(B). **James Elshafay** pled guilty in this case in October 2004 to conspiracy to damage or destroy a subway station by means of an explosive, and testified against Siraj at his trial. At trial, the government established that Siraj and Elshafay plotted to plant explosive devices at the Herald Square subway station in order to disrupt commerce and transportation in New York City and damage the economy. The jury heard hours of secretly recorded conversations between Siraj and Osama Eldawoody, an Egyptian nuclear engineer who became a paid informant for the New York City Police Department's Intelligence Division, in which Siraj declared his hatred for America and openly discussed his desire to place explosives on various bridges and in subway stations in New York City.

A more recent addition to the key terrorism statutes is 18 U.S.C. § 842(p), which forbids teaching or demonstrating the making or use of an explosive, destructive device or weapon of mass destruction, or the distribution of information concerning the manufacture of such devices, with the intent that the teaching, demonstration or information is to be used in furtherance of a federal crime of violence or with the knowledge that the recipient of this teaching or demonstration intends to use the knowledge imparted in furtherance of a federal crime of violence.

- **David Wayne Hull**, a member of the Ku Klux Klan, was charged in the Western District of Pennsylvania with various offenses resulting from his efforts to induce others to commit crimes of violence; specifically, he was charged with numerous firearms offenses and with instructing others to manufacture improvised destructive devices with the intent that the information would be used to commit a federal crime of violence, in violation of 18 U.S.C. § 842(p). The court rejected the defendant's claim that the charges abridged his right to freedom of speech and found the fact that demonstrations of specific bombmaking techniques are facilitated by means of speech does not immunize them from prosecution. Hull was convicted at trial and sentenced to 12 years in prison.
- **Stephen John Jordi** was charged on November 12, 2003 in the Southern District of Florida with attempted arson (18 U.S.C. § 844(i)); distribution of information pertaining to the manufacture and use of explosives and destructive devices (18 U.S.C. § 842(p)); and possession of an unregistered firearm (a silencer) (26 U.S.C. § 5861(d)), in connection with a plot to bomb abortion clinics in South Florida and elsewhere. He pled guilty to one count of attempted arson (18 U.S.C. § 844(I)) of a Miami reproductive clinic and was sentenced to 5 years in prison.

- **Daniel James Schertz** pled guilty on August 4, 2005, in the Eastern District of Tennessee, to making a destructive device (26 U.S.C. § 5861(f)); possessing a destructive device (26 U.S.C. § 5861(d)); transferring a destructive device (26 U.S.C. § 5861(e)); teaching the making of a destructive device in furtherance of a crime of violence (18 U.S.C. § 842(p)); transferring explosive materials (18 U.S.C. § 844(o)); and possession of a firearm while subject to a domestic violence protective order (18 U.S.C. § 922(g)(8)). The charges arose from Schertz’s interaction with a confidential informant for the Bureau of Alcohol, Tobacco, Firearms and Explosives, whom he first met while performing security duties at a North Georgia White Knights of the Ku Klux Klan rally in Dunlap, Tennessee in October 2004 and to whom he transferred bombs and bombmaking materials he believed would be used against Haitians and Mexicans. Schertz was sentenced to 170 months in prison and 3 years of supervised release.

#### **E. Terrorism-Related Offenses**

In addition, the Department’s counterterrorism efforts have broadened since September 11 to include pursuit of offenses terrorists often commit, such as identity theft and immigration violations. These statutes include 18 U.S.C. § 1546 (fraudulently obtaining travel documents), 18 U.S.C. § 1425 (immigration violations), and 18 U.S.C. § 1001 (making misrepresentations to federal investigators). Prosecution of terrorism-related targets on these types of charges is often an effective method – and sometimes the only available method – of deterring and disrupting potential terrorist planning and support activities without compromising national security information. Some examples of this approach include:<sup>12</sup>

- On June 17, 2004, a jury in the Northern District of Ohio convicted Cleveland imam **Fawaz Damrah** of violating 18 U.S.C. § 1425 for concealing material facts in his citizenship application. Damrah had concealed his affiliation with groups, including Palestinian Islamic Jihad, and that he had incited, participated, or assisted in the persecution of others by advocating violent terrorist acts. On March 15, 2005, the Sixth Circuit affirmed the conviction, which favorably addressed a number of important issues, including: (1) the constitutionality of the FISA order, (2) the admissibility of testimony from an expert on terrorism, and (3) the availability of Federal Rule of Criminal Procedure Rule 901(b)(4) to authenticate videotapes when there is no evidence of how the tapes were made and handled prior to their seizure. *United States v. Damrah*, 412 F.3d 618(6th Cir. 2005). Damrah served his sentence and is awaiting deportation.
- In two separate trials, **Soliman Biheiri** was convicted in the Eastern District of

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<sup>12</sup> Other examples of cases involving terrorism-related offenses discussed herein include: Mohammed Warsame (18 U.S.C. § 1001) and Yassim Aref and Mohammed Hossain (18 U.S.C. §§ 1001, 1546).

Virginia of violating 18 U.S.C. §§ 1425 and 1546 (fraudulently procuring a passport), as well as of making false statements to government investigators in violation of 18 U.S.C. §§ 1001 and 1015. Biheiri was the president of a New Jersey-based investment firm suspected of having links to terrorist financing schemes. He will be deported after serving his term of imprisonment.

- **Mohammad Radwan Obeid** came to the attention of the FBI when a librarian in a Troy, Ohio, public library observed Obeid accessing websites relating to al-Qaeda and the construction of explosive devices. The librarian contacted the FBI, who questioned Obeid, obtained a search warrant for his computer, and learned that he had been corresponding with other individuals relating to terrorist activity. When questioned about this activity, Obeid lied and was charged with lying to the FBI. Obeid pled guilty in the Southern District of Ohio on December 29, 2005; sentencing is scheduled for July 7, 2006.
- **Mohammad Salman Farooq Qureshi** was charged in the Western District of Louisiana with making material false statements to FBI agents, in violation of 18 U.S.C. § 1001, in connection with a federal terrorism investigation. On February 11, 2005, Qureshi pled guilty to a one-count information, charging him with making false statements to the FBI (18 U.S.C. § 1001), and a detailed factual proffer in support of the plea was filed with the Court. The proffer established Qureshi's connections to and contacts with al-Qaeda member Wadih El Hage, his contact with a subject under investigation in Oregon, and his activities and financial support of a non-governmental organization called Help Africa People, which was believed to have been used by El Hage and others in connection with the attacks on the United States Embassies in Kenya and Tanzania. The plea agreement between the parties requires Qureshi's full cooperation in the ongoing investigations. On August 25, 2005, Qureshi was sentenced to 4 years and a \$50,000 fine.
- **Arwah Jaber**, a graduate student at the University of Arkansas, told one of his professors and a dean at the university that he planned to leave graduate school to go to Palestine to join the Palestinian Islamic Jihad and made statements to many others regarding his desire to engage in jihad. He was charged in the Western District of Arkansas with attempting to provide material support to the Palestinian Islamic Jihad, in violation of 18 U.S.C. § 2339B; use of a false social security number, in violation of 42 U.S.C. § 408(a)(7)(b); providing false information in a naturalization application, in violation of 18 U.S.C. § 1015(a); providing false information in an application for a U.S. passport, in violation of 18 U.S.C. § 1542; and naturalization fraud, in violation of 18 U.S.C. § 1425. On June 19, 2006, he was convicted on all counts except the material support charge.

## **F. Terrorism-Related Initiatives**

There has been some criticism of our use of non-terrorism offenses, such as false statement charges, immigration fraud, and use of fraudulent travel documents, in terrorism cases. Yet the appropriate charging of such offenses is so important to our disruption of terrorist plans that the Department has urged prosecutors to undertake initiatives to increase their use of these statutes. By definition, a prevention strategy requires us to engage the enemy earlier than if we waited for them to act first. We cannot wait for terrorists to strike to begin investigations and make arrests. We must use the full range of criminal offenses at our disposal to charge offenses that fit the facts before those who would do us harm put their plans into action.

On September 14, 2005, President Bush addressed the U.N. Security Council, stating,

*“We have a solemn obligation -- we have a solemn obligation to stop terrorism at its early stages. We have a solemn obligation to defend our citizens against terrorism, to attack terrorist networks and deprive them of any safe haven, to promote an ideology of freedom and tolerance that will refute the dark vision of the terrorists. We must do all we can to disrupt each stage of planning and support for terrorist acts. Each of us must act, consistent with past Security Council resolutions, to freeze terrorists’ assets; to deny terrorists freedom of movement by using effective border controls and secure travel documents; to prevent terrorists from acquiring weapons, including weapons of mass destruction. Each of us must act to share information to prevent a terrorist attack before they happen. The United States will continue to work with and through the Security Council to help all nations meet these commitments.”*

As the President has urged, we are pursuing all legal means to disrupt terrorists before they have a chance to act. In particular, we know terrorists are anxious to exploit weaknesses in our identification, immigration, critical infrastructure, and financial systems to facilitate potential attacks. Indeed, many individuals with clear ties to terrorism have been prosecuted for crimes of this nature, and seven of the 9/11 hijackers possessed fraudulent Virginia identification cards. Prosecutors in the Criminal Division and each U.S. Attorney’s Office have contributed to the counterterrorism mission by implementing initiatives and enforcement programs that are helping to make our country safer. Some of these enforcement strategies, and how they have been implemented are described below.<sup>13</sup>

### **1. Combating Identification and Immigration Fraud**

- U.S. Attorneys’ Offices, through the Anti-Terrorism Advisory Councils (ATACs) and relevant law enforcement agencies, have strengthened their

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<sup>13</sup> For the most part, the cases prosecuted pursuant to these initiatives are not counted by the Criminal Division in the statistics set forth at pages 12-13.



relationships with state departments of motor vehicles to identify corruption and use federal resources to eliminate it. This prevents individuals from exploiting identification systems through corrupt employees. The District of Arizona has prosecuted a number of public corruption cases involving the illegal sale by Arizona officials of both driver's licenses and vehicle registration records. The District of Columbia has an ongoing initiative with a joint federal/local task force of investigators from the FBI, the District of Columbia Office of the Inspector General, Metropolitan Police Department and District of Columbia's Chief Financial Officer to ensure integrity in the issuance of District of Columbia drivers' licenses. They have successfully prosecuted over 15 individuals – primarily employees of the D.C. Department of Motor Vehicles – in 10 separate cases over the past two years for corruption in connection with the issuance of drivers' licenses and special truck licenses.

- U.S. Attorneys' Offices, through the ATACs and the Department of State, have sought to eradicate visa and passport fraud. As with driver's licenses and state identification cards, we have seen individuals fraudulently obtain travel documents, allowing these criminals more ability to blend into society without detection. Federal prosecution upholds the integrity of the visa and passport systems and reduces fraud. The U.S. Attorney's Office in the District of Columbia, working with the Diplomatic Security Service of the Department of State, obtained convictions in a visa fraud and bribery scheme operating in Armenia which involved a U.S. consular official. The Southern District of New York successfully prosecuted Uzair Paracha, who was convicted on material support charges related to his participation in a scheme to obtain fraudulent immigration documents for a known al-Qaeda operative who sought to enter the U.S. to engage in a chemical attack on U.S. soil.
- Marriage fraud is a nationwide problem. Organized rings provide American women for marriage to alien men in exchange for a few hundred dollars. Abu Ali, convicted of terrorism offenses in the Eastern District of Virginia, spoke of marrying an Anglo woman in order to blend in while he prepared to attack. In the Southern District of New York, an elaborate fraudulent visa scheme was uncovered, whereby an Imam at a storefront mosque fraudulently sponsored hundreds of illegal aliens during the 1990s under the Religious Worker Visa program. Mohammad Khalil and all his co-conspirators were convicted of all charges and the Bureau of Customs and Immigration Enforcement (ICE) is pursuing denaturalization of Khalil. U.S. Attorneys' Offices have worked with ICE to emphasize integrity in this process, analyze potential sham marriages that raise concerns, prosecute offenders, and deport the aliens.

## **2. Protecting Critical Infrastructure**

- U.S. Attorneys' Offices, in conjunction with appropriate federal, state, and local law enforcement agencies, have reviewed security or restricted area badge holders at airports, train stations, and critical work sites to identify those with fraudulent badges or inappropriate access. For example, in the Western District of Texas, 28 individuals at Austin Bergstrom International Airport were charged with providing false and fraudulent information on application forms to obtain access badges to secure areas – including the control tower and the interior and cargo holds of planes – as part of Operation Tarmac, a massive multi-agency investigation that began in October 2002, designed to promote heightened security at our nation's airports. More than 60 districts conducted similar reviews, resulting in numerous prosecutions.
- U.S. Attorneys' Offices, along with ICE, the Social Security Administration, and state departments of motor vehicles, have reviewed holders of commercial driver's licenses with endorsements for driving tankers, tractor-trailers, or hazardous materials in order to determine any discrepancies, such as use of fraudulent social security numbers, and to prevent inappropriate access to materials that could form the basis of weapons of mass destruction. In the Eastern District of Michigan, an investigation centered on a driving school which was involved in the fraudulent issuance of certificates enabling individuals to obtain commercial drivers' licenses with HAZMAT endorsements.
- In districts that have nuclear power plants, U.S. Attorneys' Offices, through the ATACs, have worked with the FBI, the Department of Energy, and all other relevant law enforcement agencies, to review worker employment information at the nuclear plants for discrepancies such as fraudulent social security numbers. These reviews have also been undertaken at seaports, military installations, and other critical areas.
- U.S. Attorneys' Offices, in conjunction with the FBI, have reviewed the names, social security number data check, criminal history, and home address of holders of Federal Aviation Administration pilot's licenses to determine any discrepancies that might support a criminal charge. The Northern District of Illinois is among the districts that pursued this type of initiative.

## **3. Financial System Safeguards**

- U.S. Attorneys' Offices have created Suspicious Activity Report (SARs) Review Teams to maximize the value of the information that financial institutions regularly provide to law enforcement and uncover those providing

financial support to terrorists and terrorist organizations. The Northern District of Indiana, Eastern District of Missouri, and District of Idaho are among the districts that have been operating such multi-agency teams for two years. The teams meet monthly to review SARs in an effort to uncover potential terrorist-based suspicious money movements as well as to identify non-terrorism related crimes, investigations and potential asset seizure and forfeiture proceedings. A total of 56 U.S. Attorneys' Offices have on-going or projected SARs Review Teams.

- U.S. Attorneys' Offices have sought to identify and prosecute operators of *hawalas*, which are unlicensed money transmitting businesses. These *hawala* operators potentially allow terrorists to send great sums of money overseas to support their comrades. The USA PATRIOT Act improved our ability to utilize a criminal statutory provision, 18 U.S.C. § 1960, against the *hawala* operators in order to put them out of business. The District of Massachusetts used this approach in prosecuting and convicting Mohamed Hussein in May 2002.

We are constantly looking for opportunities to implement new initiatives and projects that will assist local, state and federal law enforcement to focus on the Department's primary mission of prevention, disruption, and prosecution of terrorists.

#### **IV. Convictions Result in Cooperation and Future Prosecutions**

As a result of the severe penalties facing defendants in the criminal justice system – penalties which have been increased by the USA PATRIOT Act – defendants who plead to such charges often cooperate and provide intelligence to the government that can lead to the detection of other terrorism-related activity. This not only leads to disruption of terrorist-related activity and further criminal prosecutions; it also provides valuable information for national security officials so that we learn terrorists' tradecraft and methods. Some examples of our leveraging substantial criminal convictions and penalties to obtain cooperation include:<sup>14</sup>

- **Abdurahman Muhammad al-Amoudi**, a naturalized U.S. citizen and founder of the American Muslim Council, was stopped in England in August 2003 en route to Syria with \$340,000 in U.S. currency in his suitcase. At the time, he claimed that the Libyan government had paid him the funds for helping to lift U.S. sanctions, and that

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<sup>14</sup> Other successful prosecutions discussed herein in which convicted defendants became cooperators include: Lackawanna Six, Faris, Ressam, Babar, Battle, Qureshi, Help the Needy, and the Drugs-for-Stinger-Missiles case.

he planned to deposit the money in a Saudi bank and bring it back to the United States in smaller increments to avoid detection by authorities. Al-Amoudi admitted traveling to Libya several times over the last few years, which in itself violated U.S. law. For these trips, he used a false Yemeni passport and a visa obtained through the Libyan Embassy in Canada. In September 2003, he was arrested as he re-entered the U.S. at Dulles Airport. On July 30, 2004, Al-Amoudi pled guilty in the Eastern District of Virginia to violating sanctions on trade with Libya, naturalization fraud, and corruptly endeavoring to obstruct the IRS. As part of the plea, Al-Amoudi stipulated to his involvement in a Libyan plot to assassinate Crown Prince Abdullah of Saudi Arabia and to the applicability of the terrorism enhancement under the U.S. Sentencing Guidelines. He has been debriefed on several occasions in connection with a number of ongoing investigations. He has cooperated against other defendants both here and abroad, including providing significant assistance to the United Kingdom. He was sentenced on October 15, 2004, to 23 years in prison.

- **John Walker Lindh** cooperated after pleading guilty in the Eastern District of Virginia to supporting the Taliban, in violation of the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. § 1705(b)), and carrying an explosive during the commission of a felony (18 U.S.C. § 844(h)(2)), in exchange for a 20-year prison sentence. Lindh was apprehended in Afghanistan, armed and engaged on behalf of the Taliban. He had traveled to Pakistan and then crossed into Afghanistan, where he trained with the Taliban and took up arms on their behalf despite the fact that the United States had declared a national emergency with regard to the Taliban based on a finding by the President that “[t]he Taliban continues to allow territory under its control in Afghanistan to be used as a safe haven and base of operations for Usama bin Laden and the al-Qaida organization who have committed and threaten to continue to commit acts of violence against the United States and its nationals.” Lindh admitted that by supplying services to and fighting in support of the Taliban, he provided protection and sanctuary to al Qaeda, a designated foreign terrorist organization. Lindh cooperated and provided information about training camps and fighting in Afghanistan in 2001.
- **Earnest James Ujaama** was involved in a plot to set up a jihad training camp at a farm in Bly, Oregon, and he also operated websites for co-conspirator Abu Hamza al-Masri, the former imam of the Finsbury Park Mosque in London, England. On April 14, 2003, pursuant to a plea agreement, Ujaama pled guilty in the Western District of Washington to a one-count felony information charging a conspiracy to violate the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. § 1705(b)). The defendant admitted to conspiring with others to provide support, including money, computer software, technology and services, to the Taliban and to persons in the territory of Afghanistan controlled by the Taliban. As part of the plea agreement, Ujamma agreed to cooperate with the government in ongoing terrorism investigations for up to 10 years from the date of the agreement. On February 13, 2004, as

contemplated by his plea agreement, Ujaama was sentenced to 24 months in prison. He was released from custody in April 2004, and his cooperation is ongoing. His cooperation has led to charges against a number of other individuals, including Mustafa Kamel Mustafa (aka Abu Hamza, Abu Hamza al-Masri), Haroon Rashid Aswat, and Oussama Kassir.

## **V. Use of Traditional Criminal Investigative Tools**

The Department has achieved these impressive successes in cases involving links to international terrorism by utilizing traditional criminal investigative tools, such as undercover investigations, cooperating witnesses and informants, and doggedly pursuing terrorists' reliance upon traditional criminal activity, such as narcotics trafficking and cigarette smuggling. We have been patient in devising comprehensive prosecution strategies that enabled us to dismantle complex operations using a measured, step-by-step approach. By utilizing traditional criminal investigative approaches, we have dismantled conspiracies aimed at providing material support to terrorist organizations. Some cases which exemplify this approach are:

### **A. Classic Criminal Investigative Approach**

- On March 28, 2001, **Mohamad Hammoud** and several co-defendants were indicted in the Western District of North Carolina in a RICO and material support to terrorism case that alleged their involvement in a Charlotte-based Hizballah cell that engaged in a cigarette tax evasion scheme and in military procurement ordered by Hizballah leaders in Lebanon. The criminal conspiracy involved the smuggling of untaxed and low-taxed cigarettes between Michigan, North Carolina and the Cattaraugus Indian Reservation near Irving, New York, resulting in the evasion of more than \$ 3.5 million in Michigan state cigarette taxes, as well as the procurement and use of fraudulent credits cards to purchase contraband cigarettes and other merchandise in Michigan, New York, North Carolina, Florida, Canada, the United Arab Emirates and Italy. The RICO conspiracy had two established connections to the designated foreign terrorist organization, Hizballah: one of the largest suppliers of contraband cigarettes to the racketeering conspiracy was Mohamad Hammoud of the Charlotte, North Carolina Hizballah cell; and Hassan Makki, who pled guilty to RICO conspiracy and providing material support to Hizballah in the Eastern District of Michigan and was sentenced to 57 months in prison, admitted that the money he sent to Hizballah from cigarette trafficking was intended to support Hizballah's "orphans of martyrs" program, which compensates the families of those killed in Hizballah terrorist operations or by Hizballah's enemies.

The Hammoud case was initiated by a tip from a state police officer who observed suspicious activity in the mass purchase of cigarettes in North Carolina. Brothers Mohamad and Chawki Hammoud were convicted in June 2002 and sentenced in

February 2003. The Fourth Circuit, sitting en banc, affirmed the convictions, rejecting First Amendment-based challenges to the convictions on the material support counts. *United States v. Hammoud*, 381 F.3d 316 (4<sup>th</sup> Cir. 2004) (en banc), vacated and remanded for re-sentencing, 543 U.S. 1097, reinstated in part, 405 F.3d 1034 (4<sup>th</sup> Cir. 2005). *United States v. Hammoud* was the first trial in the nation alleging the provision of material support to a foreign terrorist organization (18 U.S.C. § 2339B).

- **Hemant Lakhani** attempted to sell a shoulder-fired surface-to-air missile to a FBI cooperating witness for the purported purpose of downing a U.S. civilian airliner as part of jihad against the U.S. In July 2003, Lakhani and the cooperating witness traveled to Russia to meet with the missile's suppliers who, unbeknownst to Lakhani, were undercover agents from the Russian Federal Security Service. The Russian agents gave Lakhani a replica missile, which Lakhani arranged to ship to the U.S. out of St. Petersburg as medical equipment. In negotiations with the Russian agents, Lakhani expressed interest in purchasing 50 more surface-to-air missiles and a large quantity of C-4 plastic explosive. Lakhani's co-defendants worked as money transmitters between Lakhani and the cooperating witness. The cooperating witness gave co-defendant Abraham a \$30,000 cash down payment, which Abraham then transferred through his *hawala* to Lakhani. Lakhani was charged in the District of New Jersey with attempting to provide material support to terrorists (18 U.S.C. § 2339A) and illegal brokering of defense weapons (22 U.S.C. § 2778). Lakhani's two co-defendants were charged with conspiring to operate an illegal money transmitting business (18 U.S.C. § 1960). Russian and U.K. law enforcement officials provided key trial testimony. Lakhani's co-defendants pled guilty and Lakhani was convicted at trial and sentenced to 47 years in prison.
- **Mohammed Zaki Amawi** and two others are charged in the Northern District of Ohio with conspiracy to kill, kidnap, maim or injure persons outside the United States, in violation of 18 U.S.C. § 956(a)(1), and conspiracy to provide material support to terrorism, in violation of 18 U.S.C. § 2339A. In addition, Amawi is charged with distributing information pertaining to the manufacture and use of a destructive device, in violation of 18 U.S.C. § 842(p)(2)(A) and threatening the President of the United States, in violation of 18 U.S.C. § 871. This case stems from a lengthy investigation of the three defendants, in which the defendants are alleged to have discussed and obtained military-style training with a cooperating witness. The defendants are alleged to have participated in the viewing of jihadist videos, including a video which explained how to build and use a suicide bomb vest. The defendants also allegedly participated in firearms training, and Amawi allegedly discussed providing a chemical explosive to an individual abroad for use by jihadists. According to the indictment, Amawi also traveled to Jordan where he intended to provide computers to jihadists overseas. The defendants' targets are alleged to have been American forces overseas. The case is pending.

## B. Phased Approach

- **Infocom:** Prosecutors pursued a series of prosecutions in the Northern District of Texas to put the principals of Infocom in Richardson, Texas, out of the business of financing terrorism. In the initial case, **Ihsan Elashyi**, founder, principal owner and controlling person of Tetrabal Corporation, pled guilty in June 2002 to several federal charges stemming from a 39-count indictment against him. Tetrabal Corporation sold and exported computer hardware, computer software, and telecommunications equipment. Ihsan Elashyi admitted that on September 22, 2001, he and Tetrabal willfully violated export restrictions by exporting and attempting to export goods and commodities, including computers and monitors, from the United States to Saudi Arabia. He also admitted to credit card fraud and money laundering. He was sentenced to four years in prison.

In the second phase of the prosecution strategy, seven defendants and their company, Infocom, an Internet service provider believed to be a HAMAS front organization that also exported computers and computer components, were convicted on July 7, 2004, on multiple charges, including making illegal exports to Syria and Libya, making false statements on export declarations, conspiracy, and money laundering.

The third phase focused on dealing in the property of co-defendant **Mousa Abu Marzook**, a designated terrorist. Five of the seven defendants from the first Infocom trial were charged with multiple violations for dealing in the property of a Specially Designated Terrorist and money laundering. More specifically, the defendants, through Infocom, concealed a financial arrangement they had with Abu Marzook for which they supported his wife and family from the proceeds of an investment he made in their company, while he was traveling the world running HAMAS. Three of the defendants were convicted by a jury in April 2005. Two of the defendants, Abu Marzook and his wife **Nadia Elashi**, are currently fugitives. The convicted defendants are awaiting sentencing.

## C. Narco-Terrorism

Prosecuting terrorism related to the drug trade has also yielded much success – both in combating violent terrorist actions and in stemming the supply of illegal drugs into our country. We recently obtained an additional narco-terrorism statute in the USA PATRIOT Improvement and Reauthorization Act which we anticipate will further assist us in these efforts. It has become clear that a number of terrorist organizations are using the drug trade to finance their operations.<sup>15</sup> Our efforts in these areas are disrupting their supply of money

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<sup>15</sup> For example, a one-count indictment returned by a federal grand jury in the U.S. District Court for the District of Columbia on March 1, 2006, and unsealed March 22, 2006, names as defendants 50 leaders of the Revolutionary Armed Forces of Colombia (FARC), a

and weapons. Some examples of our successes are:

- In what has become known as the **Drugs-for-Stinger-Missiles** case in San Diego, two Pakistani citizens, **Syed Mustajab Shah** and **Muhammed Abid Afridi**, and one U.S. citizen, **Ilyas Ali**, were charged in the Southern District of California with conspiring to provide material support to al Qaeda in a scheme to trade heroin and hashish for Stinger anti-aircraft missiles. On March 3, 2004, Pakistani citizen Afridi and U.S. citizen Ali pled guilty to drug and material support to al-Qaeda charges. Afridi and Ilyas were each sentenced to 57 months in prison. They cooperated in the case against Shah, who also pled guilty and who is now awaiting sentencing.
- In the **“Operation White Terror”** cases in the Southern District of Texas, nine defendants are charged and seven pled guilty to charges including conspiracy to provide material support to a terrorist organization (18 U.S.C. § 2339B) and drug conspiracy (21 U.S.C. §§ 841, 846). The charges related to a deal in which the defendants attempted to procure \$25 million worth of weapons for the terrorist organization *Autodefensas Unidas de Colombia* (AUC). Three of the defendants were sentenced on May 31, 2006: Elkin Arroyave was sentenced to 180 months in prison on material support charges; Uwe Jensen to 168 months concurrently for material support and drug conspiracy; and Edgar Blanco to 180 months for material support and life in prison for drug conspiracy.

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designated foreign terrorist organization, on charges of importing more than \$25 billion worth of cocaine into the United States and other countries. Three of the charged FARC leaders are currently in custody in Colombia, and the United States is seeking their extradition.

According to the indictment, the FARC currently supplies more than 50 percent of the world’s cocaine and more than 60 percent of the cocaine that enters the United States. The indictment charges that FARC leaders collected millions of dollars in cocaine proceeds and used the money to purchase weapons for the FARC’s terrorist activities against the government and people of Colombia. According to the indictment, the charged FARC leaders used terrorism and violence to further the FARC’s cocaine-trafficking activities and ordered that Colombian farmers who sold cocaine paste to non-FARC buyers or otherwise violated the FARC’s strict cocaine policies be murdered. The defendants also allegedly ordered FARC members to kidnap and murder U.S. citizens to discourage the U.S. government from disrupting the FARC’s cocaine-trafficking activities. According to the indictment, the charged FARC leaders authorized their members to shoot down U.S. fumigation planes, and plotted to retaliate against U.S. law enforcement officers who were conducting the investigation into the FARC’s narcotics activities.



- In the Middle District of Florida, **Carlos Enrique Gamarra-Murillo**, a Colombian national, had a shopping list of weapons that he wanted to buy for the FARC, a designated foreign terrorist organization (FTO) – including M-16 assault rifles, M-60 machine guns, grenade launchers, grenades and Stinger anti-aircraft missiles. He made a substantial down payment, with the balance to be paid in cash and cocaine. On February 11, 2005, Gamarra pled guilty to one count of illegally brokering weapons (22 U.S.C. § 2778) and one count of attempting to provide material support to the FARC (18 U.S.C. § 2339B). On August 8, 2005, Gamarra was sentenced to 25 years in prison.

#### **D. Terrorist Travel**

Targeting terrorist mobility is as critical as targeting terrorist finances, and attacking the criminal travel infrastructure exploited by terrorists and others is a national security imperative. Smuggling networks can be used by terrorists, and we must use every effort to protect our citizens by protecting the integrity of our borders. These cases require interagency coordination at home, as we work closely with U.S. Immigration and Customs Enforcement, and often require international coordination as well, as we work with our counterparts in other countries. Two examples of successful prosecutions involving terrorist travel follow:

- **Salim Boughader-Mucharrafille**, a Mexican national of Lebanese descent, was the head of an alien smuggling ring based in Tijuana. The ring was broken up by his arrest in December 2002 by U.S. law enforcement authorities. After his arrest, U.S. law enforcement authorities obtained records concerning some 300 aliens he had helped smuggle into the U.S. between 1999 and 2000, along with identifying information about these aliens’ sponsors and current whereabouts. The records indicated that most of the aliens were from Lebanon, but others were from Syria, Iran, Pakistan, China, Albania and Greece, and some were sympathizers of Hizballah and HAMAS.

Boughader relied on corrupt officials in Beirut, Mexico City and Tijuana to facilitate the illicit travel of his “clients.” He would obtain Mexican tourist visas from a Mexican Embassy official in Beirut so his clients could legally enter Mexico. Once in Mexico, Boughader arranged their illegal crossing of the U.S.-Mexico border at Tijuana. In addition to the thousands of dollars clients reportedly paid to get the visas in Beirut, Boughader would charge a \$2,000 down payment plus another \$2,000 once the client made it to the U.S. as the smuggling fee.

The 9/11 Commission specifically cited Boughader as the only “human smuggler with suspected links to terrorists” convicted to date in the U.S. After his conviction in San Diego on alien smuggling charges, Boughader served approximately one year in prison before being deported to Mexico, where he and several other co-conspirators

are awaiting prosecution there for alien smuggling.

- A coordinated U.S.-Colombian investigation into alleged document fraud and human smuggling led to the January 26, 2006 arrest in Bogotá, Colombia, of Palestinian native **Jalal Saadat Moheisen**, and Colombians **Victor Daniel Salamanca**, **Bernardo Valdes Londoño**, **Carmen Maria Ponton Caro**, **José Tito Libio Ulloa Melo**, **Jorge de los Reyes Bautista Martinez**, **Nicholas Ricardo Tapasco Romero**, and **Edizon Ramirez Gamboa**. Two other defendants, **Luis Alfredo Daza Morales** and **Julio Cesar Lopez**, were subsequently arrested. All await extradition to the U.S. On January 3, 2006, the ten foreign nationals were indicted in the Southern District of Florida on charges of conspiracy to provide material support to the Revolutionary Armed Forces of Colombia (FARC), a designated foreign terrorist organization, conspiracy to commit alien smuggling, and related charges. According to the indictment, during the course of an undercover operation, the defendants arranged and facilitated travel from Colombia to the United States for individuals they believed to be members of the FARC; provided fraudulent Colombian and Spanish identity documents, including Spanish passports, which allow individuals to enter the United States without a visa; offered to sell large quantities of firearms, helicopters and cocaine; and offered to and did launder money. The defendants purchased airline tickets to the United States for the individuals and arranged their undetected passage through immigration controls at the international airports in Bogotá, Colombia, and Panama City, Panama. The defendants charged over \$20,000 for their services.

#### **E. Use of the Internet**

Terrorists are using the Internet not only to solicit funds and for recruitment but also for training and operational planning. This remains a significant challenge to our counterterrorism efforts. We continue to seek effective means of enforcement in this area while protecting our cherished First Amendment freedoms. Congress has furthered this effort through the USA PATRIOT Act, which updated our investigative and prosecution tools to match technological advances. Utilization of the bombmaking statute (18 U.S.C. § 842(p) – distribution of information relating to explosives, destructive devices, and weapons of mass destruction) offers a strategy for attacking conduct that terrorists seek to cloak in the garb of free speech.

- **Mark Robert Walker**, a 19-year old student at Wyoming Technical College in Laramie, Wyoming, pled guilty in the Western District of Texas on April 28, 2005, to one count of attempting to make a contribution of goods and services to a specially designated global terrorist organization, Al-Ittihad Al-Islamiya (AIAI), in violation of 50 U.S.C. §1705(b) and 31 C.F.R. §§ 595.204 and 595.205. He was sentenced to two years in prison followed by three years of supervised release. Walker's college roommate reported to authorities that Walker was using a computer in the college dorms to access jihadist websites. Upon learning that the authorities were aware of

his activities, he fled to Mexico City, Mexico. The FBI subsequently learned that Walker was an administrator for an Islamic website which promotes jihad, that he posted messages on jihadist sites, and expressed a desire to travel to and fight in Somalia. Walker was intercepted at the El Paso airport on his way to meet a contact he met on the website; he had \$2,200 in U.S. currency on his person, which he intended to use to support AIAI.

- **John Thomas Georgelas** pled guilty on May 23, 2006, in the Northern District of Texas, to knowingly and intentionally accessing a protected computer without authorization and recklessly causing damage, in violation of 18 U.S.C. §§ 1030(a)(5)(A)(ii) and 1030(a)(5)(B)(i). Sentencing is scheduled for 08/15/06. Georgelas was a computer technician employed by Rackspace Managed Hosting in Grapevine, Texas. Georgelas intentionally intruded into the website of the American Israel Public Affairs Committee (AIPAC) and captured access passwords. In conversations discovered on stored logs at work, Georgelas described AIPAC's website as a "main Zionist site" and stated that he hated working at Rackspace because the company employed "Zionists" and "former Marines." Other logs indicated that Georgelas was developing a website that promoted *jihad*.

One case involving use of the internet that did not result in conviction is the case of Sami Omar Al-Hussayen.

- **Sami Omar Al-Hussayen**, a Saudi citizen and University of Idaho graduate student, was a registered agent for the Islamic Assembly of North America (IANA) and the administrative contact on a number of IANA-operated Internet sites. IANA is a U.S.-based charity whose mission is to proselytize Islam through a variety of media outlets, including Internet sites that have contained messages designed to raise funds and recruit persons for anti-U.S. violence. On May 15, 2001, an IANA website posted an article entitled "Provisions of Suicide Operations," which suggested the use of aircraft as instruments of suicide attacks. Other Internet sites linked to Al-Hussayen contain statements calling for violent jihad. Al-Hussayen was charged with visa fraud, false statement offenses, and conspiracy to provide and providing material support or resources to terrorists by helping to create and maintain Internet websites for IANA and the Al-Haramain Islamic Foundation that sought to recruit persons and raise funds for violent jihad, particularly in the Middle East and Chechnya. He was acquitted at trial on all three terrorism counts against him, as well as one count of making a false statement and two counts of visa fraud. Jurors could not reach verdicts on three more false statement counts and five additional visa fraud counts, and the court declared a mistrial on those charges. The government agreed to dismiss the remaining charges in exchange for an agreement by Al-Hussayen to withdraw his appeal from an order of deportation entered against him, and he was deported to Saudi Arabia.

This case demonstrates the difficulty of prosecuting cases where solicitation of support for terrorists and their activities, including fundraising, recruitment, and radicalization, exploits and subverts the exercise of our right to freedom of speech. The Court instructed the Al-Hussayen jury that they needed to find that the government's proof met the "clear and present danger" standard set forth in *Brandenburg v. Ohio*. The government objected strongly to this instruction, arguing that the First Amendment did not protect speech by the defendant that was in the nature of conduct (e.g., fund-raising and recruitment), and the instruction appeared to contradict the Court's pretrial ruling on this subject. Because the case resulted in an acquittal, the government could not appeal the Court's decision to instruct the jury in this manner.

## VI. Foreign Cooperation

The Department has leveraged international law enforcement cooperation to prevent terrorists from freely roaming the globe. The Department has answered hundreds of formal requests from our partners around the world for mutual legal assistance (MLATs) in terrorism investigations. In addition, thousands of pieces of threat-related information are shared on an informal basis. We have provided critical evidence to other countries which has enabled them to successfully prosecute terrorists, thus making the world safer for all. These cases include:<sup>16</sup>

- **Northern Virginia Jihad: Ali Al-Timimi**, a spiritual leader at the Dar al-Arqam Islamic Center in Falls Church, Virginia, encouraged others to undertake paramilitary training in Virginia and to go to Pakistan to receive military training from Lashkar-e-Taiba in order to be able to go fight against American troops expected to arrive in Afghanistan. This encouragement was significant enough that four of those he encouraged, **Yong Ki Kwon, Khwaja Mahmood Hasan, Masoud Ahmad Khan and Mohammed Aatique**, left the United States and travelled to a Lashkar-e-Taiba training camp to train. Eleven of Al-Timimi's followers were indicted on numerous charges, including conspiracy to levy war against the United States, conspiracy to provide material support to al-Qaeda, providing services to the Taliban and Lashkar-e-Taiba, and various gun charges, among others. Four pled guilty and five others were convicted after trial. Al-Timimi was also charged for soliciting others to levy war against the United States, inducing others to aid the Taliban and to violate the Neutrality Act, and several conspiracy and aiding and abetting charges. He was convicted on all counts on April 26, 2005, following a two-week jury trial, and

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<sup>16</sup> Additional cases where we have cooperated with other governments in prosecuting terrorism cases include: assistance to Germany in their prosecution of Hamadei; assistance to Greece in their Rashed prosecution; assistance to Canada in the Air India prosecution; assistance to the Philippines in their Abu Sayyaf prosecutions; assistance to Spain in the Yarkas prosecution; and assistance to Kazakhstan in their prosecution of Serik.

sentenced on July 13, 2005, to life in prison. Al-Timimi filed a notice of appeal in the Fourth Circuit but that appeal was vacated on April 26, 2006, pursuant to agreement of both parties, and remanded to the district court for further proceedings on defendant's motion concerning the Terrorism Surveillance Program.

This case also resulted in notable assistance to one of our foreign partners. On May 3, 2005, Yong Ki Kwon and Mahmood Hasan, who pled guilty and testified in the Northern Virginia jihad case and against Al-Timimi in the subsequent prosecution, provided testimony by video link in an Australian criminal proceeding against Faheem Khalid Lodhi, who had been charged with plotting to bomb the National Electricity Group and several defense sites in Sydney, Australia. Through his testimony, Kwon, who is serving an 11-year sentence for his role in the Virginia Jihad case, helped to establish Australia's charge that Lodhi trained with Lashkar-e-Taiba, a terrorist organization.

- **Mohammed Junaid Babar**, a naturalized U.S. citizen of Pakistani origin who lived in the U.S. from approximately 1977 until September 20, 2001, when he moved to Pakistan, has provided extensive cooperation to the U.S. and the U.K. Babar was charged in the Southern District of New York in a five-count information filed on May 28, 2004, on which date he signed a plea and cooperation agreement. The criminal information contained two counts based on Babar's provision of material support to a British group and three counts based on Babar's provision of material support to al-Qaeda. He pled guilty on June 3, 2004. In the course of his cooperation, Babar described his involvement with Omar Khyam, Salshuddin Amin, Jawd Akbar, Waheed Mahmood, Shujah Mahmood, Anthony Garcia, and Nabeel Jussain, who were arrested and charged in the United Kingdom and Canada in connection with a pre-July 7, 2005 plot to bomb soft targets in the United Kingdom after some of them had received weapons training in Pakistan. Babar was transported to the United Kingdom for a 6-week period during which he testified for three weeks at the 2006 London trial of the plotters, where he was the primary prosecution witness against all the defendants. That trial is on-going.
- On October 26, 2004, the Central District Court of Jakarta convicted **Rusman Gunawan**, also known as "Gun Gun," for facilitating terrorism and sentenced him to four years in prison. Specifically, Gun Gun was found to have aided or facilitated the transfer of money that was ultimately used to finance the August 5, 2003, bombing of the J.W. Marriott in Jakarta. During his trial, Gun Gun admitted transferring money, upon the request of Hambali, to Al Qaeda operative Amar al-Baluchi, but took the position that he did not know that the money was going to be used for terrorism. The U.S. assisted Indonesia in this prosecution by providing declassified FISA-derived evidence of the money transfer which consisted of emails between Ammar al-Baluchi, Majid Khan and Zubair. The Attorney General granted use authority for this

evidence in May 2004. Gun Gun was one of six Indonesian students arrested during raids in Pakistan and was a member of the Ji/Al Qaeda cell know as the Al Ghuraba cell. Three other members of the cell are also standing trial for terrorism in Indonesia.

Our assistance to our overseas partners has been beneficial to the United States: they have reciprocated by assisting us with information and evidence. We owe some of the success in our terrorism investigations and prosecutions to unprecedented cooperation from foreign governments.<sup>17</sup>

- On March 10, 2005, a jury in the Eastern District of New York convicted **Mohammed Ali Hasan al-Moayad** and **Mohammed Zayed** of conspiracy to provide and of providing material support to al-Qaeda and HAMAS. Both were charged with violations of 18 U.S.C. § 2339B and related offenses in connection with an undercover operation in which they were to facilitate a \$2 million donation to fund violent jihad. To establish his bona fides and obtain this donation, Al-Moayad boasted to FBI confidential informants, posing as the donor and his associate, during meetings in Germany that he had strong connections to al-Qaeda and HAMAS, a financing network that extended into Brooklyn, and that before September 11, 2001, he provided recruits and more than \$20 million to Usama bin Laden. Al-Moayad and Zayed were sentenced to 75 years and 45 years in prison, respectively.

Al-Moayad and Zayed could not have been brought to justice without the assistance of our German colleagues, who worked alongside the FBI in the undercover operation and made the arrests that ultimately culminated in the extradition of the defendants to the U.S. from Germany. The Department also received critical assistance from Croatian and Israeli authorities in obtaining the testimony of a Croatian intelligence officer about the evidence seized from mujahideen during the Bosnian conflict, and the testimony of a young Israeli victim of the HAMAS bus bombing that was referenced during the meetings in Germany.

The investigation of this case uncovered Al-Moayad's contacts in Brooklyn, New York, including an associate who had transferred over \$20 million overseas through the bank account of his tiny ice cream store. These contacts and associates have been charged with, and convicted of, various federal crimes ranging from unlicensed money remitting to making false statements, consistent with the Department's disruption approach.

- **Ahmed Omar Abu Ali**, a 24-year-old U.S. citizen, moved to Medina, Saudi Arabia, to study at the Islamic University. In June 2003, he was arrested by Saudi authorities

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<sup>17</sup> Other cases involving assistance from our foreign partners include: assistance from Italy in Yunis, from Indonesia in Shiroasaki, from the UK in Chandia, and from a number of countries in Moussaoui.

as part of a major crackdown following the May 2003 Riyadh bombings. Investigation revealed that Abu Ali had sought out and joined an al-Qaeda cell in Medina, Saudi Arabia, where he received training in weapons, explosives, and document forgery. He, along with other members of the cell, began to develop plans for several potential terrorist attacks against the United States, including a plot to assassinate President Bush and a plot to hijack aircraft transiting the United States and use them in 9/11-style attacks. On November 22, 2005, a federal jury convicted Abu Ali on all counts, including conspiracy to provide and provision of material support to al-Qaeda and conspiracy to assassinate the President. On March 29, 2006, Abu Ali was sentenced to 30 years in prison followed by 30 years' supervised release. We received unprecedented assistance from Saudi Arabia in this case, which permitted depositions of members of their security service. These depositions were introduced as evidence during pre-trial proceedings and at trial.

- **Anthonius Wamang** was indicted in the District of Columbia on charges related to the ambush of ten school teachers in Indonesia; the attack resulted in the death of two American citizens and one Indonesian citizen. Through the cooperation of the Indonesian authorities, the FBI has established that the attack was perpetrated by members of a faction within the Free Papua Movement (OPM), in an operation led by Wamang. Wamang is charged with murder of a U.S. national (18 U.S.C. § 2332), causing serious bodily injury (18 U.S.C. § 2332), and firearms charges (18 U.S.C. § 924). The defendant remains a fugitive; the case is pending.
- **Wesam al-Delaema**, a Dutch citizen, was charged in the District of Columbia with conspiracy to kill U.S. nationals (18 U.S.C. § 2332), conspiracy to use WMDs (18 U.S.C. § 2332a), and possession and conspiracy to possess a destructive device in a crime of violence (18 U.S.C. § 924). Delaema is alleged to have traveled from the Netherlands to Iraq in October 2003 as part of a group called "Mujahideen from Fallujah" with the purpose of killing Americans. It is alleged that, as part of his plan, he unearthed explosives on a road near Fallujah. Delaema was arrested by Dutch authorities on May 2, 2005, and ordered extradited to the U.S. in December 2005. He currently awaits extradition; thus the case is pending. Dutch authorities continue to cooperate in the U.S. investigation of Delaema's activities.
- On August 19, 2004, **Mohammed Salah, Mousa Mohammed Abu Marzook and Abdelhaleem Hasan Abdelraziq Ashqar** were charged in the Northern District of Illinois with participating in a 15-year racketeering conspiracy in the United States and abroad to illegally finance terrorist activities in Israel, the West Bank and Gaza Strip, including providing money for the purchase of weapons. The indictment, which for the first time identified HAMAS as a criminal enterprise, alleged that the enterprise committed multiple acts of conspiracy to commit and solicitation of first degree murder, conspiracy to kill, kidnap, maim or injure persons in a foreign country, money laundering and attempt and conspiracy to do so, obstruction of justice,

providing material support or resources to designated foreign terrorist organizations, hostage taking, forgery or false use of a passport, structuring financial transactions and travel in aid of racketeering.

Salah filed a motion to suppress custodial statements that he made following his 1993 arrest by Israeli authorities. Salah claimed that his statements were involuntary because they were adduced through torture and coercive techniques inflicted by Israeli Security Agency (Shin Bet) interrogators. Acting on a motion filed by the government, the court ordered that the courtroom be closed during the testimony of Israeli Security Agency witnesses at the suppression hearing. The judge found that federal prosecutors have “an overriding interest in maintaining the agents’ sensitive testimony, including testimony regarding intelligence gathering methods and counterintelligence measures, as classified.” On June 8, 2006, the court granted in part and denied in part defendant **Muhammad Salah**’s motion to suppress, ruling that the government had met its burden of proving the voluntariness of statements made to Israeli intelligence officers who testified at the suppression hearing and that those statements would be admissible. The only statements that were suppressed were those statements made to an officer who the government did not call as a witness at the suppression hearing. The assistance provided by the government of Israel in making intelligence officers available to testify in a criminal court in another country is unprecedented. This case is currently pending.

## **VII. Overcoming Difficulties of Prosecution**

Although the Department has been remarkably successful in utilizing the criminal justice system to prosecute terrorists, these cases are not easy. They present a real challenge to even the most experienced and skillful prosecutor, who must protect against potential harm to national security while meeting discovery obligations and complying with other procedural protections which afford defendants due process and a fair trial in our courts. This is especially challenging as we expand our use of intelligence information as evidence, an approach that the USA PATRIOT Act and decisions of the Foreign Intelligence Surveillance Court clearly allow us to do. In order to utilize intelligence information legally obtained through intelligence tools in our criminal prosecutions and still protect national security interests, we follow the procedures established by the Classified Information Procedures Act (CIPA).

### **A. Classified Information Procedures Act**

The United States Congress enacted the CIPA in 1980 to ensure that the government could protect itself against “graymail,” a practice that some defendants had used in national security cases in an attempt to cause the government to forego the prosecution or risk the disclosure of national security intelligence information. Prior to the enactment of CIPA, the United States did not have a formal statutory scheme for evaluating such potential disclosure



threats before trials began. CIPA established procedures by which defendants are ensured access to information needed to defend against the charges they face and the government is able to obtain rulings from the court in regard to classified information before jeopardy attaches.

CIPA did not change the government's discovery obligations; nor did it alter the rules of evidence. Rather, CIPA provides procedural mechanisms to protect classified information, including classified sources and methods, while at the same time protecting a defendant's due process rights. CIPA's procedural protections, and the government's ultimate control over whether classified information will be disclosed, also apply to national security intelligence information from other countries that is shared in confidence with the United States. Accordingly, other countries can share national security intelligence information with the United States, knowing that the procedural protections of CIPA permit the appropriate sharing and protection of their information. Some prosecutions which demonstrate the use of CIPA include:

- **Jeffrey Battle** and six co-defendants were charged in the District of Oregon, with seditious conspiracy, conspiracy to provide material support to al-Qaeda and the Taliban, possession of firearms, and related charges, in connection with the attempt of six of them, including lead defendant Jeffrey Battle, to enter Afghanistan through China and Pakistan to fight alongside the Taliban against U.S. and allied forces. The seventh defendant, **October Martinique Lewis**, channeled money to Battle during the course of his trip, including his later travel to Bangladesh to join Tabligh Jamaat – an evangelical Islamic group – as a way of entering Pakistan and ultimately Afghanistan. Four defendants agreed to cooperate after pleading guilty to various charges, including conspiracy to contribute services to the Taliban in violation of the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. § 1705(b)), conspiracy to possess firearms in furtherance of a crime of violence (18 U.S.C. § 924(c), (o)), and money laundering (18 U.S.C. § 1956). This case is yet another example of the importance of obtaining the cooperation of defendants who plead to terrorism charges, as the cooperation of the four defendants who initially pled guilty in this case was essential to obtaining guilty pleas from the final two defendants, and was vital to the investigation into those who provided support to the Portland Cell. Ultimately, six of the seven defendants pled guilty. Their sentences range from 3 years to 18 years in prison. The seventh defendant, al-Saoub, was reportedly killed in Pakistan in 2003.

Classified materials related to lawfully obtained FISA electronic surveillance in this case were handled under the procedures outlined in CIPA. Prosecutors provided the required summary notice to the court and the defendants. Materials were reviewed, declassified where possible, and declassified materials disclosed to the defense. Other pertinent materials were disclosed pursuant to a protective order. CIPA motions were filed to protect certain categories of information.

- **Ahmed Ressam** was charged on February 14, 2001, in the Western District of Washington with terrorism transcending national borders (18 U.S.C. § 2332b), among other charges, in connection with the Millennium plot to bomb the Los Angeles airport. Information developed in the course of the investigation of this case included classified information supplied by a foreign government. The prosecutors determined that this evidence was encompassed by the discovery rules and had to be disclosed to the defendant. Because the information had been disclosed by the foreign government on condition that it not be declassified, prosecutors sought the court's permission to disclose the substance of the information to the defendant utilizing the substitution mechanism authorized by CIPA. The court reviewed the information at issue and approved the substitutions, enabling the prosecutors to comply with discovery obligations and affording the defendant the materials necessary for his defense. Ressam was convicted in April 2001 and sentenced on July 27, 2005, to 22 years in prison.

As we have increasingly used CIPA in national security prosecutions, we have become aware of the need for additional improvements. For example, clarification of the appropriate application and scope of CIPA were highlighted in the prosecution of Zacarias Moussaoui, and we need the ability to explain our reasons for invoking CIPA to the court under seal. We will work with Congress to address these issues.

## **B. Terrorists Detained Abroad**

The Department has also been successful in obtaining many court rulings which have enabled prosecutors to meet evidentiary and discovery obligations in a manner that is consistent with due process and does not compromise national security. This has been especially important in cases where the defendant sought evidence relating to terrorists detained abroad. These cases include:

- In the Southern District of New York, we successfully prosecuted **Uzair Paracha**, a Pakistani, who helped an al-Qaeda operative in custody overseas apply for a refugee travel document and to retrieve his passport. Paracha agreed to pose as the operative, deposited money in the operative's bank account, used the operative's credit cards, and closed the operative's post office box in Gaithersburg, Maryland, in order to make it appear as if the operative was in the U.S. During the execution of a search warrant at Paracha's residence, agents found the operative's driver's license, Social Security card, and ATM card, and a key to the post office box. The operative promised Paracha a \$200,000 investment in his business, contingent on Paracha's assistance.

Paracha was charged with conspiring to provide and providing material support to assist an al-Qaeda member to enter the United States to commit a terrorist act. Paracha filed motions seeking to interview individuals detained overseas, including

Khaled Shaikh Mohammad, Majid Khan (unindicted co-conspirator), and his father, Saifullah Paracha. The court ruled that the defense had made a showing of “plausible materiality” as to Saifullah Paracha and that he should therefore be made available as a defense witness. DOD agreed to make Paracha available at Guantanamo subject to certain conditions, and the government and defense counsel reached an agreement on those conditions. However, defense counsel decided they no longer wished to interview Saifullah Paracha. The government turned over declassified statements of Khalid Sheik Mohammed, Majid Khan, and Ammar Al-Bulichi. Defense counsel then filed a motion requesting Rule 15 depositions of these three individuals, but the court ruled that the declassified statements were sufficient and that he would not order these depositions since the defendant had failed to pursue access to his father, which the court had previously granted.

On November 23, 2005, a jury convicted Paracha of conspiring to provide and of providing material support to al-Qaeda for his efforts, together with his father, to assist an al-Qaeda member enter the United States to commit a terrorist act. Paracha faces up to 75 years in prison.

### **C. Enemy Combatants**

The Supreme Court has recognized the President’s authority to designate and hold individuals, even U.S. citizens, as enemy combatants. As the plurality opinion in *Hamdi v. Rumsfeld*, stated:

*There is no bar to this Nation's holding one of its own citizens as an enemy combatant. . . . “[c]itizens who associate themselves with the military arm of the enemy government, and with its aid, guidance and direction enter this country bent on hostile acts, are enemy belligerents within the meaning of . . . the law of war.” . . . A citizen, no less than an alien, can be “part of or supporting forces hostile to the United States or coalition partners” and “engaged in an armed conflict against the United States”; such a citizen, if released, would pose the same threat of returning to the front during the ongoing conflict. . . . Because detention to prevent a combatant's return to the battlefield is a fundamental incident of waging war, in permitting the use of “necessary and appropriate force,” Congress has clearly and unmistakably authorized detention [in the circumstances of Hamdi's case].*

542 U.S. 507, 519 (2004) (quoting *Ex Parte Quirin*, 317 U.S. 1, 20 (1942)) (citations omitted).

The Department has been criticized in regard to how it has proceeded against those designated by the President as enemy combatants. Critics have urged the use of the criminal justice system to proceed against such individuals, yet when criminal charges were brought

against Jose Padilla we were again criticized on the grounds that the charges brought did not reflect the basis of his designation as an enemy combatant: that he was preparing to set off a “dirty bomb” within the U.S. Jose Padilla is charged along with Adham Hassoun, Mohamed Youssef, Kafir Jayyousi and Kassem Daher for conspiracy to murder or maim individuals in a foreign country and conspiring to provide and providing material support to terrorists. These are serious charges with significant penalties, and the scope of the evidence will be aired at trial, which is set for September 2006, including information derived from FISA surveillance. These charges permit the public trial of serious criminal terrorism charges of which he stands accused.

In some cases, criminal charges may not be the appropriate way to proceed. The Al-Marri case is an example of just such a case in which the initial criminal charges brought paled in light of information revealed upon further investigation. Ali Saleh Kahlah Al-Marri, a Qatari national, was arrested on December 12, 2001, as a material witness in the investigation of the September 11, 2001 attacks and subsequently charged with credit card fraud and false statements and detained. Later investigation, however, revealed that he had an extensive history of involvement with al-Qaeda. According to a recently released and declassified declaration from the Department of Defense, Al-Marri personally met with al-Qaeda leaders Usama bin Laden, Khalid Sheikh Muhammed, and Mustafa Al-Hawsawi in preparation for his mission in the United States. In his meeting with bin Laden, Al-Marri offered to become a martyr or to do anything else that al-Qaeda needed. Because of Al-Marri's computer expertise, he was eventually tasked with finding ways to hack into banks and cause havoc with banking records in order to damage the U.S. economy. Al-Marri was also trained by al-Qaeda in the use of poisons, and a search of Al-Marri's computer in the United States revealed that Al-Marri had compiled information on a number of dangerous chemicals, including potassium cyanide, sodium cyanide, sulfuric acid and arsenic. See Declaration of Jeffrey N. Rapp, *Al-Marri v. Hanft*, No. 04-CV-02257 (D.S.C. Apr. 5, 2006). After extensive input from the Central Intelligence Agency, the Department of Defense and the Department of Justice, including the FBI, the President determined on June 23, 2003, that the seriousness of Al-Marri's activities warranted designating him an enemy combatant and he was transferred from civilian to military custody.

Litigation involving enemy combatants presents unique challenges. As the Supreme Court concluded in *Hamdi v. Rumsfeld*, “a citizen detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification, and a fair opportunity to rebut the government’s factual assertions before a neutral decision maker” but presumptions in favor of the government may be appropriate and hearsay may need to be accepted. The *Hamdi* Court further stated that,

*We have no reason to doubt that courts faced with these sensitive matters will pay proper heed both to the matters of national security that might arise in an individual case and to the constitutional limitations safeguarding essential liberties that remain vibrant even in times of security concerns.*

An enemy combatant who seeks to challenge his designation may file a habeas petition and support his petition with evidence of his own. But his failure to offer anything but a general denial is insufficient. As Magistrate Judge Robert S. Carr found in the Al-Marri habeas filed in the District of South Carolina,

*Al-Marri brought this action and has now refused to participate in a meaningful way. \*\*\* The petitioner's refusal to follow...the orders of the court...is either a sophomoric approach to a serious issue, or worse, an attempt to subvert the judicial process and flout due process.*

The extent of procedural safeguards required in such cases must be considered on a case-by-case basis in the context of due process.

#### **D. Material Witness Warrants**

The use of material witness warrants to secure the testimony of witnesses, before a grand or petit jury, is a long-standing practice that is authorized by statute, dating back to 1789 and the First Congress. Material witness warrants are not a creation of the USA PATRIOT Act nor are they a creation of the Intelligence Reform and Terrorist Prevention Act of 2004. Material witness warrants have not been issued solely in terrorism investigations; courts have issued such warrants in matters ranging from alien-smuggling to organized crime investigations. Indeed, the vast majority of the material witness warrants the Department seeks are for immigration related cases along the southwest border. Material witness warrants are prevalent in immigration cases because the aliens trafficked into this country are obvious flight risks and their testimony is essential to establish the elements of the crime: that the defendant transported or moved an alien within the United States, that the alien was present in violation of law, that the defendant was aware of the alien's status, and that the defendant acted willfully in furtherance of the alien's violation of the law. The presence of material witnesses who can testify, because we can ensure their appearance, is critical to our ability to successfully prosecute traffickers or to obtain guilty pleas, in which case the material witness may be released and the need for testimony negated.

The Department has been subject to much criticism directed at the use of material witness warrants in terrorism cases, but that criticism is based largely on faulty premises and incorrect information. The Department of Justice cannot unilaterally arrest and detain an individual as a material witness, but must comply with a whole regimen of procedural requirements. Material witnesses can only be arrested if a judicial officer issues a warrant authorizing the arrest, based upon an application from the government that establishes probable cause to believe that a witness's testimony is material and that it would be impracticable to secure that witness's appearance by subpoena. Nor are material witnesses held incommunicado. A material witness has the right to be represented by an attorney, and can challenge his or her confinement in court. Counsel will be appointed if the material witness cannot afford to pay for a lawyer.

Once a material witness gives full and complete testimony, he or she is generally released, barring some other source of authority for continued detention, such as an immigration detainer or criminal charges. It is true that some material witnesses are released without testifying before the grand jury. For instance, following the arrest of a material witness, the witness will provide information to federal agents and prosecutors who may determine either that the witness does not have information that would be useful to the grand jury or that the information provided by the witness can be presented to the grand jury from another satisfactory and less resource intensive source. Other circumstances might become known to the government that dictate the material witness's release, or the target of the investigation might enter a plea agreement, obviating the need to detain the material witness. The witness would then be released by the court. But it is important to note that these situations are case-specific and must be assessed on a case-by-case basis.

Some critics have cited the *Mayfield* matter as an example of an abuse of the material witness warrant. Although there were some problems with the identification of Mayfield, as described below, the use of a material witness warrant in that matter was appropriate and according to statute and procedure.

- Following the March 11, 2004, commuter train bombings in Madrid, Spain, the Spanish National Police recovered fingerprints on a bag of detonators related to the bombings. Copies of the fingerprints were sent to the FBI laboratory for identification, and examiners concluded that one of the prints matched that of Oregon attorney **Brandon Mayfield**, who previously represented one of the "Portland Seven" defendants in a child custody matter. The FBI opened an investigation on Mayfield, and on May 6, 2004, the Department of Justice sought and obtained from the court a material witness warrant for Mayfield under 18 U.S.C. § 3144, along with search warrants for Mayfield's home and office.

An April 13, 2004 examination by the Spanish National Police fingerprint laboratory yielded a negative match for Mayfield. On May 17, 2004, the Court ordered that the fingerprint be examined by an independent expert, who concurred with the FBI finding. On May 19, the Spanish National Police reported that the latent fingerprint matched that of another individual, Ouhmane Daoud. The Department immediately moved to release Mayfield on bond. After reviewing Daoud's prints, the FBI withdrew its identification of Mayfield, and the Department immediately moved to dismiss the material witness warrant against Mayfield.

The Department conducted an internal investigation into the Mayfield matter. The Inspector General looked at the FBI's role and the Office of Professional Responsibility looked at the role of Department attorneys. The Inspector General determined that there had been a number of reasons for the misidentification, including an unusual similarity between Mayfield's and Daoud's fingerprints, circular

reasoning by the examiners from the known prints of Mayfield, faulty reliance on certain details, and failure to re-examine the prints after the negative finding by the Spanish National Police, among others. Although the Department's use of a material witness warrant came under criticism, the Office of Professional Responsibility found that the material witness statute was properly used in the arrest of Mayfield.

The material witness warrant is a valuable tool and is appropriate to be used in terrorism cases. See *United States v. Awadallah*, 349 F.3d 42, 62 (2d Cir. 2003).

#### **E. Terrorism Surveillance Program**

The Terrorism Surveillance Program (TSP) is the surveillance program authorized and described by the President which involves the targeted interception by the National Security Agency (NSA) of communications in which one party is outside the United States and there are reasonable grounds to believe that at least one party to the communication is a member or agent of al Qaeda or an al Qaeda affiliated terrorist organization. There are a number of pending criminal cases in federal district courts across the country in which a defendant has requested information regarding the alleged use of warrantless electronic surveillance by the NSA and/or has filed motions alleging that any NSA activities conducted are either unconstitutional or not authorized by statute.

The government has already responded to a number of these defense motions pursuant to the Classified Information Procedures Act, which is discussed above. As of May 1, 2006, in the ten cases in which a United States District Court Judge ruled on a defense motion, an order was issued denying the defendant's motion. There are a number of requests that have been communicated to the Department that we are working to resolve.

#### **VIII. Problem Case**

In investigating and prosecuting terrorism cases, we acknowledge that we have met with some obstacles and problems. We have learned from missteps when they have occurred, and have obtained some victories despite initial adverse rulings. In our criminal justice system, the jury is the ultimate fact finder, and if we are unable to convince them by the evidence available to us for use at trial that the defendant is guilty beyond a reasonable doubt, then we must accept that decision. But in the vast majority of cases we have brought, we have met with overwhelming success, and that record is not undone by the *Koubriti* prosecution.

- **Karim Koubriti** and three others were charged with engaging in a conspiracy and providing material support for purposes of engaging in violent attacks against persons and buildings abroad and within the territory of the United States, as well as various visa and document fraud charges. On June 3, 2003, the jury returned verdicts against the four defendants, finding Koubriti and Abdel Ilah el Mardoudi guilty on the

terrorism conspiracy charge and the document fraud conspiracy charge. Ahmed Hannan was convicted of the document fraud conspiracy and Farook Ali Haimoud was acquitted of all charges.

On October 16, 2003, Koubriti and two of his co-defendants filed a joint motion for a new trial based on allegations of prosecutorial misconduct and *Brady* violations, as well as several other issues. The government directed a prosecutor from a separate office with no connection to the Koubriti prosecution to fully investigate the misconduct charges and recommend appropriate action. When this investigation uncovered support for these allegations, the government filed a brief recommending that the court reverse the terror convictions due to prosecutorial misconduct and, on September 2, 2004, the court did just that. In doing so, the court found that:

*With respect to the Government team, in vigorously pursuing and producing to the Court all possible evidence, and helping to develop a complete record upon which a decision could be made, Government counsel has followed the evidence impartially and objectively and allowed the facts to lead where they may. The Court recognizes the initial impulse, under the circumstances presented here, to find fault with a system that allowed the mistakes now acknowledged by the Government -- and, to be sure, the Defendants' due process rights have been compromised as a result of these errors. Nonetheless, any such criticism must be considerably tempered by the Government team's post-trial commitment to uncover all of the evidence and carefully assess whether, in fact, the Defendants were denied their right to a fair trial. \*\*\* In the Court's view, the position the Government has now taken -- confessing prosecutorial error and acquiescing in most of the relief sought by the Defendants -- is not only the legally and ethically correct decision, it is in the highest and best tradition of Department of Justice attorneys. Given the nature and background of this case, the Government's decision could not have been an easy one and, no doubt, is one that will come in for criticism and second-guessing from some quarters. However, it is the right decision.*

The government declined to retry the defendants on the terrorism charges. The government moved to dismiss the remaining travel document fraud charges, and initiated mail fraud charges, 18 U.S.C. § 1341, against defendants Koubriti and Hannan on December 15, 2004. On March 22, 2005, Hannan entered a guilty plea to the mail fraud charge and was sentenced to six months with credit for time served. The mail fraud charges against Koubriti remain pending. In addition, the government pursued a criminal investigation of the prosecutorial misconduct and, on March 29, 2006, a federal grand jury indicted the former lead prosecutor and a former State Department official on charges of conspiracy, obstruction of justice and making false statements.



This case clearly demonstrates that the government takes seriously charges of prosecutorial misconduct. We investigate such allegations and pursue the appropriate remedies when such allegations are substantiated. This matter should not cast a shadow on the good work of the hundreds of other prosecutors who work hard, ethically and within the bounds of the criminal justice system to keep American safe.

## **IX. Protection of Our Cherished Rights and Freedoms**

The Department is also charged with the responsibility of safeguarding civil liberties, ensuring not only the physical safety of Americans but also the preservation of our values and rights. We are cognizant of the fact that our expanded tools and statutory authorities should not be used to act outside the legal framework and established procedures in the name of the war on terrorism. As Justice O'Connor stated in *Hamdi v. Rumsfeld*, “\*\*\*a state of war is not a blank check for the President when it comes to the rights of the Nation’s citizens.” We are careful in our exercise of these tools that we do not compromise the freedoms we seek to preserve.

### **A. New Authorities Apply to Non-Terrorism Cases**

Our critics claim that we are somehow overstepping our authority by misusing provisions of the USA PATRIOT Act not only to charge terrorists but also to pursue non-terrorism criminal investigations and prosecutions. We respectfully respond that there is nothing that limits the application of many provisions of the USA PATRIOT Act to terrorism cases, and we would be remiss if we did not aggressively use these legal tools to investigate suspected drug traffickers, white-collar criminals, blackmailers, child pornographers, money launderers, spies, and corrupt foreign leaders and to pursue a broad law-enforcement agenda. Moreover, as explained previously, terrorists frequently use, or at least benefit from, the fruits of such “routine” criminal activity.

### **B. New Statutory Protections**

The USA PATRIOT Act Improvement and Reauthorization Act adds numerous additional civil liberties safeguards.<sup>18</sup> These protections include four-year sunset provisions on three provisions – FISA multipoint (“roving”) electronic surveillance; FISA business records provision; and the “lone wolf” provision from the Intelligence Reform and Terrorism

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<sup>18</sup> These safeguards are in addition to the oversight provided by the Department’s Inspector General (IG) and the Government Accountability Office (GAO). Perhaps because of the sensitivity and significance of the Department’s counterterrorism efforts, the IG and GAO frequently focus on these matters. We welcome these inquiries as an opportunity to provide information on the scope and depth of our commitment to keeping America safe while preserving our liberties.

Prevention Act of 2004 – permitting Congress to re-visit how these provisions are working. In addition, high-level approval is required for requests for sensitive categories of records such as library records and medical records, and judicial challenges to such requests are authorized. Additional safeguards have been put in place on the use of multi-point electronic surveillance under FISA. These include, with respect to the roving provision, increased specificity for applications for surveillance so that each application describes a single, unique target; clarification that a judge granting surveillance must ensure in the order that the surveillance is authorized only for the target in the application; and a requirement that investigators inform the court within 10 days when “roving” surveillance authority is used to target a new facility – such as when a terrorist or spy changes to a new cellular service provider. There are also significant new safeguards pertaining to the use of National Security Letters (NSLs). Judicial challenges are authorized and standards of review for non-disclosure are adopted.

### C. Victims Rights

In our pursuit of these cases, we have been sensitive to the many victims of terrorism. While the justice system relies upon their cooperation to assist in investigating and prosecuting these cases, we also have a responsibility to protect their concerns and interests. In 2005, pursuant to Congressional direction, the Department established an Office of Justice for Victims of Overseas Terrorism. The purpose of this Office is to ensure that the investigation and prosecution of terrorist deaths of American citizens overseas are a high priority within the Department of Justice. This office is responsible for, among other things, monitoring the investigation and prosecution of terrorist attacks against Americans abroad, working with federal prosecutors to ensure that the rights of victims and their families are honored and respected, and responding to inquiries on the Department’s response to such attacks.

The Department has a long memory for terrorist acts committed against U.S. citizens and U.S. interests and is unwavering in its steadfast pursuit of justice in these cases. We continue to pursue these cases despite the passage of time. Where such cases are prosecuted by other countries and the sentences upon conviction are insufficient, we reserve the right to prosecute independently on U.S. charges in order to fully vindicate the rights of the victims. Among the examples of our long memory in the pursuit of justice for victims of terrorism is the case of Zaid Hassan Abd Latif Safarini, a successful prosecution in the District of Columbia.

- **Safarini:** On the morning of September 5, 1986, Pan Am flight 73, en route from Karachi, Pakistan, to Frankfurt, Germany, was hijacked on the tarmac in Karachi by four armed men disguised as security guards. While negotiations were on-going, the hijackers shot and killed an American passenger, Rajesh Kumar, and dumped his body onto the tarmac to dramatize their demands. When nightfall came, the auxiliary

power unit that supplied power to the aircraft failed, the plane went dark, and the hijackers opened fire on passengers on the plane. Approximately 20 additional passengers and Pan Am employees were killed, including U.S. national Surendra Meenubhai Patel. Pakistani authorities arrested four hijackers at the scene and arrested a fifth person, who was involved in the planning of the crime, about a week later as he was attempting to leave Pakistan. These five individuals were tried and convicted in Pakistan in 1987 for the hijacking and were sentenced to death. However, the death sentences were commuted to life in prison; further reductions resulted in a 14-year sentence.

On August 29, 1991, the five individuals charged by Pakistan and a sixth man were indicted in the District of Columbia for the hijacking of Pan Am Flight 73. On September 28, 2001, **Zaid Hassan Abd Latif Safarini** was released from Pakistani custody and apprehended by the FBI. Because the Department deemed the 14-year Pakistani sentence insufficient to vindicate the deaths of two Americans and the death and injury of many more in this brutal attack, Safarini was brought to the U.S. to stand trial on the pending criminal charges, which were superseded on August 28, 2002. Extensive pre-trial litigation occurred relative to whether the death penalty was legally available for this defendant. On December 16, 2003, Safarini pled guilty to all 95 counts of the superseding indictment and waived his right to appeal his sentence in exchange for the government's agreement not to pursue the death penalty against him. On May 13, 2004, after a two-day sentencing hearing before Judge Sullivan, Safarini was sentenced, pursuant to the plea agreement, to three consecutive life terms plus 25 years. He is serving his sentence in a maximum security facility.

In connection with the May 12, 2004 sentencing of Safarini, the prosecutors initiated and directed a massive effort to locate victims and victims' family members to afford them an opportunity to participate in the sentencing. In all, 59 victims and family members from the United States and five other nations were located and agreed to attend the sentencing. The prosecutors arranged for funding to pay for the travel, lodging, and other expenses of the victims and family members attending the sentencing.

The other four defendants prosecuted in Pakistan remain in Pakistani custody. A sixth individual identified by the United States as John Doe, also known as "Ahmad Sobhi" and as "Tayseer," remains a fugitive and his current whereabouts are uncertain. We have every intention of bringing the remaining defendants to justice if we are able to obtain custody of them.

- At a plea hearing on December 17, 2002, **Mohammed Rashed**, a Jordanian national, pled guilty to Conspiracy to Commit Murder (18 U.S.C. § 1117), Conspiracy (18 U.S.C. § 371) and Second Degree Murder within the Special Maritime and Territorial

Jurisdiction of the United States (18 U.S.C. § 1111) in connection with his role in the August 11, 1982 bombing of Pan Am flight 830, which was carrying 285 passengers and crew from Tokyo to Honolulu. The bomb killed Toru Ozawa, a 17-year-old boy, and injured 15 other passengers. Rashed, who previously was prosecuted and jailed in Greece for the bombing, admitted his involvement in a terrorist organization known as “15 May” which was responsible for several bombings in Europe and the Middle East in the early 1980s. The pro-Palestinian organization was based in Baghdad, Iraq, and was provided safe haven and support by Saddam Hussein’s regime.

Rashed was sentenced on March 24, 2006, and passengers and crew who had been on Pan Am flight 830, and their family members, spoke at the sentencing hearing to describe the impact of the crime upon them, their families, and the other victims. Their statements were very powerful. In addition, the prosecutors read statements from others who could not attend the sentencing hearing and submitted to the court written statements from witnesses and victims, including letters from the family of the young man who was killed in the bombing.

## **X. Domestic Terrorism**

In recent years, the attention of the Department and the Nation has been focused on international terrorism and the disruption, investigation and prosecution of international terrorists. Yet we have not ignored the threat from domestic extremist groups and disaffected individuals. As with the British homegrown terrorists who bombed the London subway system, an increasing number of investigations indicate that we share this problem of individuals disaffected from mainstream society who are turning to terrorism.

Domestic terrorism includes acts that are dangerous to human life, violate federal or state criminal laws, and appear to be intended to intimidate or coerce a civilian population, influence government policy through intimidation or coercion, or effect the conduct of government by mass destruction, assassination or kidnaping. Current domestic terrorism threats include animal rights extremists, eco-terrorists, anarchists, anti-government extremists such as “sovereign citizens” and unauthorized militias, Black separatists, White supremacists, and anti-abortion extremists. In addition, we have placed additional focus on investigations concerning the radicalization and recruitment of terrorist sympathizers in our prison system. Although we do have at least one specialized statute aimed at animal enterprise terrorism, domestic terrorism cases often involve firearms, arson or explosive offenses; crimes relating to fraud; and threats and hoaxes.

The Department has also enjoyed success in its efforts to combat domestic terrorism by extremists within our boundaries.

- **Eric Rudolph.** In April 2005, Eric Rudolph pled guilty in the Northern District of

Alabama and the Northern District of Georgia to the fatal bombing at Centennial Olympic Park on July 27, 1996, which killed Olympic spectator Alice Hawthorne and seriously injured more than 100 other people; the bombing of a Sandy Springs, Georgia, family planning clinic on January 16, 1997, which injured more than 50 people; the bombing of a midtown Atlanta nightclub, the Otherside Lounge, on February 21, 1997, which injured five people; and the fatal bombing of a Birmingham family planning clinic on January 29, 1998, which killed Birmingham Police Officer Robert Sanderson and critically injured nurse Emily Lyons. Rudolph received multiple sentences of life in prison, as well as other lengthy prison sentences, as a result of his plea.

Before his capture, Rudolph had eluded law enforcement efforts to arrest him for years. As part of his plea agreement, Rudolph also disclosed to law enforcement the existence and locations of more than 250 pounds of dynamite buried in several locations in the Western North Carolina area.

- **Stop Huntingdon Animal Cruelty (SHAC)** Another success in the Department's fight against domestic terrorism was the conviction after trial in the district of New Jersey of Stop Huntingdon Animal Cruelty (SHAC) and six of its members for their roles in a campaign to terrorize officers, employees and shareholders of a company that used animals for laboratory research and testing, as well as companies that did business with the lab and their employees. Part of the stated mission of SHAC was to "operate outside the confines of the legal system," according to its website. Through its websites, SHAC encouraged "direct actions" against Huntington Laboratory Sciences (HLS) and other companies using its "top 20 terror tactics" to intimidate and harass and to destroy personal and real property. The "top 20 terror tactics" encouraged the invading of offices, vandalizing property and stealing documents; physical assault, including spraying cleaning fluid into someone's eyes; smashing windows of a target's home or flooding the home while the individual was away; vandalizing or firebombing cars and bomb hoaxes; and threatening telephone calls or letters, including threats to kill or injure someone's partner or children.

A significant challenge in the SHAC case was finding federal charges to address SHAC's activities which were difficult to charge under state or local law because they spanned numerous jurisdictions. While similar conduct had been prosecuted in the past under the Hobbs Act, a decision of the United States Supreme Court in 2003 made clear that this statute did not, in fact, apply because the defendants did not take tangible property from their victims. Prosecutors overcame this challenge by identifying a variety of other federal crimes violated by SHAC and its members. The Department is currently seeking legislation to make it a crime to cause economic loss via animal enterprise terrorism.

- Operation Backfire:** Yet another success in the Department's efforts to combat domestic terrorism involved Operation Backfire, a multi-agency, multi-jurisdictional investigation into arsons and other vandalism in Oregon, Washington, Colorado, California and Wyoming. This investigation culminated in the arrests of more than a dozen defendants beginning in December 2005, and continuing through the first half of 2006, based upon acts of domestic terrorism undertaken on behalf of the extremist Earth Liberation Front (ELF) and Animal Liberation Front (ALF) over the five-year period extending from 1996 to 2001. The defendants are implicated in 17 attacks, including the \$12 million arson of the Vail Ski Resort in Vail, Colorado, in 1998; the sabotage of a high-tension power line near Bend, Oregon, in 1999; and attacks on federal land and animal management sites, private meat packing plants, lumber facilities, and a car dealership with damages reaching \$80 million. These cases are still pending.
- In April 13, 2006, **Demetrius Van Crocker** was convicted in the Western District of Tennessee stemming from a six-count indictment that included attempting to acquire a chemical weapon, possession of plastic explosives, and possession of an explosive device. The investigation of Crocker began in April 2004 when a cooperating witness advised the FBI that Crocker, who had expressed strong pro-Nazi and anti-Semitic views, wanted to obtain nuclear materials in order to detonate a bomb at a government building. During a later meeting with the undercover agent, Crocker asked about the possibility of obtaining chemical weapons, specifically VX, to use against a federal government facility. Crocker stated that he had automatic weapons and that he would be willing to kill law enforcement officers and "government people." On October 7, 2004, Crocker provided the undercover agent with \$500 cash to obtain sarin gas or its precursor, difluorophosphonic acid (commonly known as "difluoro"). The undercover agent delivered inert substances, purporting to be difluoro and C-4 plastic explosives, just before Crocker's arrest.
- Matthew Hale**, leader of The World Church of the Creator, a white supremacist and anti-Semitic group, was charged in the Northern District of Illinois with two counts of solicitation of murder and three counts of obstruction of justice stemming from Hale's plan to have murdered U.S. District Judge Joan H. Lefkowitz, who presided over a trademark lawsuit filed in Chicago over the use of the name "World Church of the Creator." The obstruction charges are based on Hale's request to his father to provide false information to the federal grand jury and his false statements to the court in the trademark case, representing that he had destroyed everything bearing the trademark when he had not. On April 26, 2004, he was convicted at trial of one count of solicitation to murder a federal judge and three counts of obstruction of justice. He was sentenced on April 6, 2005, to 40 years in prison.

## **XI. Challenges Ahead**

The Department anticipates many challenges ahead as we continue to aggressively prosecute terrorism cases. Some of these challenges will be similar to those discussed above: challenges presented by the need to utilize intelligence information as evidence at trial, novel or complex theories of prosecution or defense which are difficult to explain to juries, and evidence and witnesses located abroad or otherwise unavailable. There are significant challenges to prosecuting terror cells that are motivated by terrorist dogma, but for which there is no unclassified admissible evidence that individuals were acting under the direction or control of a designated foreign terrorist organization. In addition, as time passes and the immediacy of the September 11 attacks recedes, juries and the general public may lose sight of the importance of early detection and disruption, which are critical to our prevention strategy.

We can anticipate that there will be threats from familiar and unfamiliar locations and groups. For example, the threat posed by Iran, operating through Hizballah or otherwise, may increase and may be reflected in the cases that are ultimately prosecuted. We have already prosecuted several individuals who provided material support to Hizballah, including Makki and Akhdar in the Bathwater investigation and Mahmoud Kourani in the Eastern District of Michigan; Mohamad Hammoud and others in Charlotte, North Carolina; Mohamad Fazeli in the Central District of California; Naji Abi Khalil in Eastern District of Arkansas, and Fadl Maatouk in the Middle District of Florida. Regardless of the threat, we will continue to avail ourselves of all existing legal means to ensure that we will incapacitate terrorists and their activities through successful prosecutions when it is the appropriate means and time to do so.

Numerous cases currently pending in the courts will present the challenges discussed above, as well as new challenges. These cases include:

### **A. Material Support**

- **Adham Hassoun, Jose Padilla, Mohamed Youssef, Kifah Jayyousi, and Kassem Daher** were indicted for conspiracy to provide material support to terrorists (18 U.S.C. § 2339A) and conspiracy to murder individuals in a foreign country (18 U.S.C. § 956). Trial is set for September 2006.
- **Ronald Grecula** was indicted in the Southern District of Texas with attempted material support (18 U.S.C. § 2339B) for attempting to sell bombs to al-Qaeda. He was arrested during an undercover operation. Trial is set for September 2006.
- **Mustafa Kamel Mustafa (aka Abu Hamza)**, a cleric in London's Finsbury Park mosque, **Haroon Rashid Aswat**, and **Oussama Kassir** were indicted in the Southern District of New York on charges of conspiracy to commit hostage taking (18 U.S.C.

§ 1203), material support (18 U.S.C. §§ 2339A and 2339B), and IEEPA violations (50 U.S.C. § 1705), related to a plot to establish a terrorist training camp in the United States, and to provide support to al-Qaeda and the Taliban. Abu Hamza is also charged in connection with a hostage taking in Yemen in late December 1998 involving 16 victims, including two U.S. citizens, and was involved with Ujaama in the operation of websites. Abu Hamza is currently in criminal proceedings in the United Kingdom.

- **Tarik Shah, Rafiq Sabir, Mahmud Brent and Abdulrahman Farhane** were indicted in the Southern District of New York on charges of providing material support to a terrorist organization (18 U.S.C. § 2339B). Brent had attended an LET camp, and Shah attempted to recruit people to train in martial arts for al-Qaeda. Sabir, a doctor, agreed to provide medical support to wounded jihadists overseas. A trial date has not been set.
- **Mohammed Warsame**, a Somali national, was indicted in the District of Minnesota on charges of conspiracy to provide material support to al-Qaeda (18 U.S.C. § 2339B) and making false statements (18 U.S.C. § 1001). The charges arise from Warsame's attendance at an al-Qaeda training camp and other associations with al-Qaeda. He currently is awaiting trial.
- **Babar Ahmad**, a citizen of the United Kingdom, was indicted in the District of Connecticut on charges arising out of Ahmad's management of Azzam Publications and its family of jihadist websites (including [www.azzam.com](http://www.azzam.com), [www.qoqaz.net](http://www.qoqaz.net), and [www.waaqiah.com](http://www.waaqiah.com)). He is charged with providing, and conspiring to provide, material support to terrorists, in violation of 18 U.S.C. § 2339A; conspiring to commit reverse money laundering, in violation of 18 U.S.C. § 1956; and conspiring to kill or maim persons abroad, in violation of 18 U.S.C. § 956. Babar Ahmad was ordered to be extradited to the U.S. and the U.S. government has given assurances to the U.K. government that he will not be subject to the death penalty or to a military commission.
- **Syed Haris Ahmed**, a naturalized United States citizen, was charged in the Northern District of Georgia with conspiring and attempting to provide and providing material support to terrorism, in violation of 18 U.S.C. § 2339A.
- **Nuradin M. Abdi**, a Somali national, is charged in the Southern District of Ohio with conspiracy to provide material support to al-Qaeda, conspiracy to provide material support to a terrorist act and immigration violations, in violation of 18 U.S.C. §§ 371, 2339A, 2339B, 1546, and 956. Following a suppression hearing on August 25-26, 2005, the court suppressed certain of Abdi's voluntary statements, and the government appealed. That interlocutory appeal is pending.



- **Syed Hashmi** is charged in the Southern District of New York with providing, and conspiring to provide, material support, i.e. military gear, to al-Qaeda, knowing that it was to be used by jihadists fighting American troops in Afghanistan, in violation of 18 U.S.C. § 2339B and 50 U.S.C. § 1701 et seq. On June 6, 2006, Hashmi was arrested in London, England, by New Scotland Yard pursuant to a U.S. provisional arrest warrant as he was preparing to board a flight to Pakistan. The U.S. is commencing formal extradition proceedings with the UK to secure Hashmi's presence for trial here.
- In the Southern District of Florida, **Narseal Batiste, Patrick Abraham, Stanley Grant Phanor, Naudimar Herrera, Burson Augustin, Lyglenson Lemorin, and Rotschild Augustine** are charged with violations that include conspiracy to provide material support to the al Qaeda terrorist organization and conspiracy to levy war against the United States, in contravention of 18 U.S.C. §§ 2339B, 2339A, 844(n) and 2384. Pursuant to a government undercover investigation and Title III interceptions, the conspirators allegedly discussed and planned attacks on targets in the United States, including the Sears Tower in Chicago and FBI facilities.

## **B. Terrorist Financing**

- **Yassin Aref and Mohammed Hossain** were indicted in the Northern District of New York on charges of money laundering (18 U.S.C. § 1956), conspiracy to provide material support to terrorists (18 U.S.C. § 2339A), conspiracy to provide material support to a terrorist organization (18 U.S.C. § 2339B), and making false statements (18 U.S.C. §§ 1001 & 1546) in relation to an undercover investigation involving a plan to conceal the proceeds from the importation of a surface-to-air missile (SAM).
- **Abdelhaleem Ashqar** (and others) were indicted in the Northern District of Illinois and charged with participating in a 15-year racketeering conspiracy in the United States and abroad to illegally finance terrorist activities in Israel, the West Bank and Gaza Strip, including providing money for the purchase of weapons. Charges include money laundering, providing material support, and racketeering (18 U.S.C. §§ 1956, 2339B, and 1962).
- **Holy Land Foundation:** Shukri Abu Baker and six others were charged in the Northern District of Texas on 42 counts, including conspiracy and substantive counts of the following: IEEPA violations for dealing in the property of a Specially Designated Terrorist (HAMAS) (50 U.S.C. § 1701); providing material support to a Foreign Terrorist Organization (HAMAS) (18 U.S.C. § 2339B); money laundering (18 U.S.C. § 1956); and filing false tax returns (26 U.S.C. § 7201). The Holy Land Foundation for Relief & Development (HLF) was the largest Muslim charity in the

United States until it was declared a Specially Designated Terrorist Organization on December 4, 2001, and shut down. HLF was a HAMAS front organization that raised millions of dollars for HAMAS over a 13-year period. HLF received start-up assistance from Mousa Abu Marzook, a leader of HAMAS and a specially designated terrorist. HLF has ties to the Infocom matter, discussed above.

- **Khalid Awan** was charged in the Eastern District of New York with providing material support to a terrorist organization known as Khalistan Commando Force (KCF) and money laundering, in violation of 18 U.S.C. §§ 2339A and 1956(a)(2)(A). The charges stem from Awan's acting as a conduit for monies collected by members of the Sikh communities in Canada and the United States who are seeking to force the Indian government to accept the establishment of an independent Sikh state called "Khalistan." Awan is currently in federal custody, having just completed serving a sentence of 60 months for a conviction for credit card fraud.
- **Pedrouz Sedaghaty** (a.k.a. Pete Seda) and **Soliman Hamd Al-Buthe** were charged in the District of Oregon with conspiracy to defraud the U.S., tax fraud and currency smuggling charges (18 U.S.C. § 371, 26 U.S.C. § 7206, 31 U.S.C. § 5316(a)(1)(A)) stemming from a \$150,000 transaction intended for the benefit of Chechen *mujahideen* and the defendants' efforts to conceal this transaction from U.S. law enforcement authorities. Both are fugitives.
- **Emaddein Muntasser** and **Muhamed Mubayyid** were charged in Massachusetts with a scheme to defraud various U.S. agencies of information relating to a Massachusetts charity known as Care International, in violation of 18 U.S.C. §§ 371, 1001(a)(1) and 2; Mubayyid is also charged with filing false tax returns, in violation of 26 U.S.C. § 7206(1).

### **C. Weapons of Mass Destruction**

- **Michael Alan Crooker** was charged in the District of Massachusetts with violations of 18 U.S.C. §§ 921 and 922(g) arising from Crooker's transportation of a firearm in interstate commerce as a felon. A search of Crooker's car revealed an improvised explosive device (IED), and a search of his apartment revealed laboratory devices, apparent IEDs, fermenting castor beans, chemicals and chemical equipment appropriate for the processing of castor beans into ricin, and what appeared to be ricin and ricin precursors in various stages of development, indicating that Crooker was successfully manufacturing ricin.

### **D. Other Key Terrorism Statutes**

- **Yasith Chhun** was charged in the Central District of California with conspiracy to

kill individuals in a foreign country (18 U.S.C. § 956), conspiracy to damage/destroy property in a foreign country (18 U.S.C. § 956), and carrying out an expedition against a friendly country (18 U.S.C. § 960). Chhun, President of the Cambodian Freedom Fighters based in Long Beach, California, allegedly carried out attacks in Phnom Penh in an attempt to overthrow the Cambodian government. U.S. citizen Kiri Richard Kim led the attacks and was tried and convicted in Cambodia.

- **Palmera Pineda**, also known as Simon Trinidad, a FARC leader, was charged with hostage-taking (18 U.S.C. § 1203) with regard to three American hostages who were taken in Colombia in February 2003 and are still being held by the FARC. He was extradited from Colombia to the United States and is currently in pre-trial proceedings in the District of Columbia.
- **Kevin James, Levar Washington, Gregory Patterson and Hammad Samana** in the Central District of California, conspired to target “enemies of Islam” including U.S. and Jewish supporters of Israel, and scouted targets, including the Israeli Consulate, military recruiting centers, and synagogues. They were indicted on charges of seditious conspiracy (18 U.S.C. § 2384), conspiracy to murder members of the U.S. armed forces and foreign government officials (18 U.S.C. § 1117), interference with commerce by robbery (18 U.S.C. § 1951), and possession and conspiracy to possess a firearm in furtherance of a crime of violence (18 U.S.C. § 924). Trial is set to begin in October 2006.
- **Khadafi Janjalani** and 10 others, members of the terrorist Abu Sayyaf group in the Philippines, were indicted in the District of Columbia for hostage taking resulting in death and conspiracy to commit hostage taking (18 U.S.C. § 1203) in connection with the hostage taking of American missionaries and others. Provisional arrest warrants have been sent to the Philippines.
- **Francois Karake, Gregoire Nyaminani and Leonidas Bimenyimana** were charged in the District of Columbia with hostage taking and murder of several tourists, including Americans, in the Bwindi National Park in Uganda. They are indicted on charges of murder and conspiracy to commit murder (18 U.S.C. §§ 2332 and 1111) and use of a firearm during a crime of violence, causing death (18 U.S.C. § 924). The matter is presently in pre-trial litigation, and trial is set for February 17, 2007.
- **Ahmed Omar Sheikh** was indicted in the District of Columbia on hostage taking charges for the 1994 kidnaping of U.S. citizen Bela Nuss in New Delhi, India, and in the District of New Jersey for the kidnaping and murder of journalist Daniel Pearl. Sheikh currently is in custody in Pakistan, where he has been convicted of the Pearl kidnaping and murder.

- **Arturo Torres and Adolfo Medina** were indicted in the District of Columbia on charges of conspiracy to murder U.S. nationals (18 U.S.C. § 2332) and using a weapon of mass destruction (18 U.S.C. § 2332a). The charges related to a grenade attack against several Americans in a Bogota restaurant that was authorized by the FARC in retaliation for the killing of a FARC leader. The defendants were convicted in Colombia and are awaiting extradition to the United States.
- **Abdullah Ahmed Khadr** was charged in the District of Massachusetts with conspiracy to murder a U.S. national outside the United States, in violation of 18 U.S.C. § 2332(b)(2); conspiracy to use a weapon of mass destruction, in violation of 18 U.S.C. § 2332a(a)(1) and (3); possession of a destructive device in furtherance of a crime of violence and aiding and abetting, in violation of 18 U.S.C. §§ 924(c) and 2; and conspiracy to possess a destructive device in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(o). These charges stem from Khadr's alleged purchasing of munitions and explosive components, specifically hydrogen peroxide, to make mines to use against United States and Coalition Forces in Afghanistan.
- **Dhiren Barot, Nadeem Tarmohamed and Qaisar Shaffi**, all British nationals, were charged in the Southern District of New York with assisting in a plot to attack United States financial sectors, including the New York Stock Exchange and the Citigroup building in New York, the Prudential Building in New Jersey, and the International Monetary Fund and World Bank buildings in Washington, D.C. They were charged with plotting to provide material support to terrorists, including al-Qaeda; namely, with conspiracy to use weapons of mass destruction against persons within the United States (18 U.S.C. § 2332a(a)(2)); conspiracy to provide and conceal material support and resources to terrorists (18 U.S.C. § 2339A); providing and concealing material support and resources to terrorists (18 U.S.C. § 2339A); and conspiracy to damage and destroy buildings used in interstate and foreign commerce (18 U.S.C. § 844(I) and (n)). Barot, Tarmohamed, Shaffi, and several others were arrested by law enforcement in the United Kingdom. They have since been charged with a variety of British terrorism offenses, including conspiracy to murder, for which they currently are awaiting trial.

## **XII. Conclusion**

The Department of Justice has been – and will continue to be – unrelenting in waging its battle against terrorist threats. We will continue to use every tool and authority available to us – consistent with the Constitution and laws – to seek out and prevent future terrorist attacks on our homeland.

As Attorney General Gonzales has said,

*Our enemy seeks to destroy the American promise of liberty and prosperity. They*

*stand in the way of peace and progress. So we have no higher calling than the protection of our fellow citizens.*

One of the most important roles that we have as federal prosecutors and investigators is to maintain a long-term focus on terrorism prosecutions. We will use every tool available to us in the criminal justice system to achieve justice and support our national priority of keeping America safe.

The criminal justice system remains one of the pillars of national power in the war on terrorism. Our legal system supports effective investigation and prosecution of terrorists and their supporters while preserving individual privacy and freedom of speech and association. We continue to work with our partners abroad, including developing democracies, to build and strengthen their legal systems so that we can be true partners in transnational efforts to bring terrorists to justice. We share best practices, strengthen coalitions and partnerships, and train and learn together in order to fortify counterterrorism efforts around the globe. We will continue to use all the tools available in the criminal justice system to prevent and disrupt terrorist acts and to bring to justice those who threaten our freedoms and our democratic way of life.