

**IDENTIFYING FINANCING SOURCES FOR GLOBAL TERRORISM**

**TESTIMONY FOR THE HOUSE COMMITTEE ON FINANCIAL SERVICES**

**By**

**John F. Moynihan  
Partner  
BERG Associates LLC  
Suite 800  
2300 M St. NW  
Washington, D.C. 20037-1434**

**TESTIMONY  
OF  
JOHN F. MOYNIHAN  
BEFORE THE  
HOUSE COMMITTEE ON FINANCIAL SERVICES  
HEARING ON  
“DISMANTLING THE FINANCIAL INFRASTRUCTURE  
OF GLOBAL TERRORISM”  
OCTOBER 3, 2001**

Mr. Chairman and members of the committee I want to thank you for inviting me to be with you today at this very important hearing. Like all patriotic Americans I share in the pain of the tragic events of September 11<sup>th</sup> and I hope that in some small way through my expertise and testimony here today, I can contribute to the national dialog and help find solutions on how we can defeat this treacherous enemy by attacking his financial infrastructure.

For the record, my name is John Moynihan and I am a founding member and owner of the consulting firm BERG Associates LLC. Among other things, BERG offers our clients services that assist them in the prevention and detection of money laundering and other related forms of financial crime. My experience in this area of investigative expertise derives from my professional background, both in the public and private sector, which I will briefly summarize for the committee.

Upon completing my MBA in international finance, I began my professional career as a plant manager with treasury and operations management responsibilities in a large US based industrial supply company with a vendor and client base throughout the Americas. I was later recruited by the Drug Enforcement Administration (DEA) and was assigned to the New York Division, where I participated in and coordinated Sensitive Undercover Operations, which focused on international drug money laundering. After 4 years at DEA I joined an international accounting and consulting firm, where I was charged with developing a forensic accounting section, designed to offer clients products and services related to money laundering prevention and detection. After three years with the accounting firm, I decided to go out on my own and started this company, BERG Associates with my partners, Robert Nieves, a former DEA Executive and Larry Johnson, a former CIA and State Department counter-terrorism analyst.

Mr. Chairman, as you can no doubt tell, I am not a professional witness, consequently I am unaccustomed to testifying in these venues. In fact, I have never done this before. My expertise generally does not bring me into Congressional chambers as a witness or in front of TV cameras; frankly I have always chosen to leave that to others. Rather, my work brings me into the backroom operations of DEA offices, Federal courthouses, banks, brokerages and trade companies. Although I have never testified in these hallowed chambers before, the product of my work has been recognized by numerous committees both in the House and Senate. I am the man behind the scenes, the forensic technician whose work product has led to important arrests, multi-million dollar seizures and the

dismantling of the financial infrastructure of numerous transnational criminal organizations. It is in that capacity that I am here with you today, to share with this committee my experiences with and understanding of the numerous informal financial systems that operate around the globe.

Let me begin by stating that the Achilles heel of any criminal organization is its financial infrastructure. If you can break the link between a terrorist like Osama bin Laden or Pablo Escobar and his money, you have greatly impacted on his ability to succeed in realizing his stated objectives. Clearly, money is the lifeblood of their criminal organizations. People like bin Laden and Escobar manage their criminal enterprises by remote control, training and sending instructions to surrogates across the globe, from the relative comfort and security of their safe havens abroad.

Mr. Chairman, today there is much that we do not know about the financial dealings of Osama bin Laden and his surrogates across the globe. However, we do understand how informal money markets work. The exact details about how bin Laden's terrorist cells were financed, or exactly how they moved their money, is now the focus of an intense, comprehensive federal investigation. I have no doubt that federal agents will piece together the evidence and understand how these particular individuals moved their money, they will know who conspired with them and they will charge all those involved and bring them to justice.

Today, I have been asked to address "parallel money markets" and to describe, how money moves in these underground financial systems. I hope to be able to shed light on these areas of interest to the committee, as you seek to find ways to implement programs to stem the flow of illicit dollars within these criminal terrorist groups.

### **UNREGISTERED/UNLICENSED MONEY REMITTANCE BUSINESSES**

In the United States there exist many individuals and International Business Corporations (IBC's) that have opened bank accounts at U.S. banks for the purpose of engaging in the exchange of monies and/or for the remittance of monies to recipients. The accounts, which are used by these remittance businesses, are opened as mainstream retail accounts or through the private banking department. These accounts can generate millions and sometimes billions of dollars in transactions within a given year. The owners of these accounts use the accounts in accordance with the centuries old profession of underground or black market banking. Persons from every nationality and geographical reference are involved in this practice.

Some of the persons involved in this underground banking system are from the Middle East. These persons call their system of payments and receipts, Hawala. Others are from the America's, both North and South. We call this underground banking system the Black Market Peso Exchange. Placing a name on a particular system is a rather parochial effort. The system is universal in its practice and regardless of what you call it, the system is based upon trust and most importantly, relationships.

The relationships exist amongst members of the ethnic, social or religious group involved. These relationships form the links between the initiator of a payment and the recipient of a payment. Much the same as a chain on a bicycle, if one link is broken the overall system fails. But also like a bicycle, when the chain is working properly, many persons can come along for the ride. It is the number of persons willing to ride or engage in the system, that gives the system value. As the numbers have grown so has the trust involved with the transactions. High consumer confidence, that their orders regarding payments and receipts will be performed satisfactorily, has evolved over the years.

So, what exactly is being accomplished by these underground-banking systems?

The underground-banking system provides the following services:

- 1) **A source of money.** Regardless of differences in culture, ethnicity, or religion all people need a system for capturing the value inherent in exchanging goods and services and want access to cash.
- 2) **A system for avoiding taxes.** Persons who engage in underground banking are attempting to avoid being identified in formal banking channels, so as to avoid taxation. Much of the black market exists for the sole purpose of avoiding taxation.
- 3) **A system for moving wealth anonymously.** Persons who earn money and wish to remain anonymous seek to transfer that wealth without creating an audit trail which would be available for review to authorities.
- 4) **A system to move money to support or sustain criminal activity.** These criminals seek out black market money exchangers and purchase monies through these channels for delivery to their desired destination.

To further complicate matters, much of the money transacted in the informal market was earned by legitimate means. Criminals seeking to transact monies anonymously often turn to the black market. Therefore, it can be seen that there exists a synergy between the seemingly legitimate and criminal interests. It is this synergy or commingling of interests that creates confusion as to who is responsible for the financing of criminal acts, when the funds were derived from a legitimate business that exchanged its money in the black market.

So why isn't the US Government moving to shut down these illegal operations?

I can answer that question by referring to a particular recent investigation. Presently I am involved in a case with the United States Drug Enforcement Administration in Newark, New Jersey. My involvement is that of an expert contractor aiding in the money laundering aspects of the case. Special Agent Christopher Roberts performed an incredibly well orchestrated street level investigation that led to the identification of a large-scale money-laundering cell. Assistant United States Attorney Peter Gaeta has been the lead prosecutor in the case. The case involves the seizure of approximately 8 million dollars and several million dollars in gold. The petitioner of the funds is an

individual who is a licensed money exchanger from a South American country. Here in the United States he has facilitated the movement of billions of dollars through our banking system. Neither he nor his business is licensed in the United States to engage in money exchange or remittance. Personnel involved in the case have identified numerous black market money exchangers who clear their payments through these New York accounts. A substantial amount of narcotics proceeds were used in this black market money exchange operation. Warrants were served on accounts and monies were seized. A complaint has been filed for forfeiture of the funds.

What then is the issue?

The issue is that AUSA Gaeta and S/A Roberts are not able to use a statute, 18 USC 1960 to prosecute the owners of the accounts. The statute says, if there is a state requirement to be licensed to engage in money remittance and you knowingly violate it, then you can be federally prosecuted. Currently, there is no federal statute that requires money exchangers to be licensed; that section of the law has not been promulgated. Further, if it cannot be affirmatively shown that the account owner knew there was a requirement to be licensed, he cannot be prosecuted.

Most persons involved in the underground banking networks around the world are not traveling across borders everyday; in fact, most rarely travel. What travels are the system participant's orders regarding receipts and disbursements of funds. Developing evidence in these complex international cases is extremely difficult. Under present civil forfeiture laws, the heightened level of proof requires establishing proof by a preponderance of the evidence. This is in sharp contrast to earlier requirements of establishing probable cause for a seizure of assets and using hearsay evidence as proof which then shifted the burden to the claimants who are in the best position to show the source of the funds. The realities of our global world are that we are never going to meet the evidentiary requirement to bring such cases, because most of the countries where the proof lies are in remote areas, inaccessible to travel and investigation, and within borders hostile to Americans. We cannot be naive and think everyone in the world loves Americans and will want to help us. The reality is that a case such as the one I have cited above, would be more easily adjudicated by indicting the owners of the accounts thereby foregoing any civil forfeiture. In fact, since the new Civil Asset Forfeiture Reform Act of 2000 (CAFRA) was adopted, far fewer civil forfeiture cases have been initiated. It used to be that civil forfeiture cases significantly outnumbered criminal. Now that is not the case. Rather, there tends to be a more equal split amongst civil and criminal forfeiture cases, which is undercutting the law enforcement purpose of civil forfeitures. I'm sure it was not the intention of Congress to get everyone indicted when it comes to forfeiture. Yet, this is the direction that forfeiture cases are moving and of course we all realize that you can't indict all suspects.

## RECOMMENDATIONS

1. The issue of underground banking and payments systems must be immediately addressed by the Legislature. **The federal law criminalizing the act of engaging in money exchanging without a license should be promulgated.** Although 18 U.S.C.

1960 (b) (1) (B) provides for violations for people who fail to comply with the money transmitting registration requirement, the regulations have not been promulgated and therefore law enforcement has had rely on 18 U.S.C. 982 for criminal forfeitures. It is recommended that ss1960 be included in the civil forfeiture statute 18U.S.C. 981. Semantics involving the definition of “exchange” should be limited. Persons who either use their bank accounts, businesses etc... for the purpose of making money or delivering money on the money being exchanged, paid or delivered, in whatever form must be subject to federal licensing and oversight. The elimination of the “I didn’t know” defense must be included. As well, such underground banking should be identified as a “specified unlawful activity” so as to be able to seize and forfeit real property and funds that facilitated the activity.

This will significantly hinder persons who are engaging in underground banking from delivering monies to persons as a “favor”, for those persons will fear criminal sanctions. Persons seeking to send relatives money home can and should use the various options available to them. The options are formal banking channels, wire transfer stores, etc... All these channels are subject to regulatory oversight from various federal, state and local agencies.

**2. If it is the intent of the Congress to add to existing forfeiture laws a component addressing terrorism, the assets associated with the terrorist groups that are identified should be forfeited using guidelines prior to CAFRA 2000.** There exists a “carve out” section to the existing civil forfeiture statute. That exception is noted in 18 USC 983 (i). The new law applies to all civil forfeitures under any provision of federal law, unless explicitly exempted by Section 983 (i). The only forfeitures to which 18 USC 983 does not apply are the ones listed in the section which include all title 19 Offenses (Customs) and other statues such as:

1. The Tariff Act of 1930 or any other provision of law codified in title 19;
2. The Internal Revenue Code of 1986;
3. The Federal Food, Drug and Cosmetic Act (21 U.S.C. 301) et seq;
4. The Trading with the Enemy Act (50 U.S.C. App. 1 et seq) or;
5. Section 1 of the title VI of the Act of June, 1917 (40 Stat. 233; 22 U.S.C. 401)

Under present conditions, the reality is, that it is going to be incredibly difficult to investigate and develop the kind of evidence required to meet the burden of proof with regard to identified terrorist’s assets. No doubt, persons in several different countries, where the sharing of information and acquisition of evidence will probably never happen, committed many of the overt acts. Without the use of hearsay evidence, barred under the new law, there is a very high probability that there won’t be much more evidence. The truth is, if we believe differently, then we are fooling ourselves and being somewhat naive.

**3. Ensure that the United States Drug Enforcement Administration plays a vital role in the investigation of these terrorists.** The people who appear to be responsible for these acts are not religious. They are thugs and criminals who have distorted religion

and hijacked a country. Osama bin Laden and his accomplices are clearly protected by the Taliban, a group of fanatics who have distorted the Islam faith and want us to think that they are religious and acting as a governing body over Afghanistan. The reality is, that Afghanistan is a major producer of Heroin and the verdict is out on what role the Taliban plays in this heroin scheme. The DEA has the best international informant and intelligence gathering capability on transnational drug crime; they are expert on the collection and presentation of conspiracy evidence. This comment should not be construed as a criticism of our other law enforcement agencies. When it comes to drugs, informants and intelligence gathering, the DEA is unequivocally the international leader. Through their informant network, they routinely penetrate the international streets like no other agency. They are in the trenches and make the cases. In my humble opinion, to make this case, much overseas street work must be done. DEA should fulfill its mission by contributing its resources to the effort.

### CLOSING THOUGHTS

Mr. Chairman, I want to thank the committee for this opportunity to address you. It is my hope that I have shed some light on the need to address and eliminate the enormous informal banking sector which exists in our country. Criminals from all backgrounds manipulate this network and the system is growing larger by the day. This system is available to everyone; Hawala intermediaries can now combine with Colombian drug traffickers and Asian black-marketers on a regular basis. The informal system is competing with our formal money remittance systems and creating opportunities for criminals to gain greater access to their assets and to use them for their criminal and often, evil purposes. The crisis that we find ourselves in today, with respect to the money, has been growing for some time. Terrorists use the underground system much the same as other criminal groups. I believe that the terrorists did not need to create a new system to move their money, rather they created new relationships with other international criminals, which allowed them to expand their capabilities. Crime will always be, but the true crisis is this informal banking system and it must be dealt with immediately.

Supplemental Contact Info:

Mr. John F. Moynihan  
Partner  
BERG Associates LLC  
Suite 800  
2300 M St. N.W.  
Washington, D.C. 20037-1434  
Phone: 508-740-4188  
Fax: 508-854-4749  
e-mail: [jfm83161@aol.com](mailto:jfm83161@aol.com)

The Congress and the Executive Branch need to agree to:

1. Promulgate the federal law criminalizing the act of engaging in money transmitting without a license.
2. Include any terrorism legislation under pre-CAFRA 2000 guidelines for forfeiture.
3. Ensure that the D.E.A. play a vital role in investigating these terrorists.