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## Memorandum for the Record

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This memorandum provides a summary of the most important points covered in the above-entitled interview, but is not a verbatim account. The memorandum is organized by subject and does not necessarily follow the order of the interview. All information in this memorandum was provided by the witness during the interview unless stated in brackets.

Background: Djinis started his career as a trial attorney in the Department of Justice, Narcotic and Dangerous Drug Section, from 1985 to 1991, where he engaged in money laundering investigations and prosecutions. From 1991 to 1995, he was the Director of the Office of Financial Enforcement (OFE) at the Department of the Treasury, where he was responsible for regulatory efforts involving the BSA. When OFE merged with FinCEN in 1995, he continued with same role: responsible for writing and implementing the BSA regulations. In October 2002 he left the government to start his own legal practice, advising financial institutions on the operation of the BSA.

While at main Treasury, he reported to the Assistant Secretary for Enforcement, a position that was later elevated to Undersecretary. His first boss was Peter Nunez, then James Johnson. When he moved over to FinCEN, he worked for Stan Morris, and then Jim Sloan.

As an initial observation, Djinis thought that the merger of OFE and FinCEN was not well thought out. FinCEN has no expertise in regulations or administering a regulatory program. Regulating the financial industry requires a balancing between law enforcement and the industry, which is better done by an entity closer to the Secretary's office, preferably in the General Counsel's office. Regulating under the BSA means that you have lots of masters, and it is unlikely that you will satisfy everyone. Law enforcement wants lots of data very fast. The industry sees this as a cost center and wants fewer regulations and lower costs for compliance. Treasury needs to make sure these equities are resolved in a fair manner and that the regulations give no competitive advantage either to offshore entities or to unregulated US competitors. For this, the entity doing the regulating needs to be a buffer, and close to the Secretary's office. He

stated that a number of Treasury offices, including International Affairs and Domestic Finance, have equities that need to be listened to before regulations can be issued. FinCEN is not suited to bring those entities together. Djinis noted that most of the USA PATRIOT regulations were written by the GC's office.

Moreover, the new Patriot Act requirements mean that a whole host of other industries -- insurance, hedge funds, broker-dealers, real estate investment trusts, and the automobile and travel industries -- will be regulated. FinCEN has little expertise in these areas and is poorly equipped to learn them. When FinCEN had to write regulations concerning banks, it went to the Fed and OCC to gain expertise on these new industries. Unfortunately, with a host of these otherwise unregulated industries, there is no one to turn to. FinCEN as a result will have a difficult time of it.

The Secretary of the Treasury is responsible for the enforcement of the BSA. He has delegated that enforcement, in the case of banks, to the functional federal regulator such as the Fed or OCC. For industries that are not otherwise regulated, like insurance and MSBs, the IRS is the default regulator. A central difficulty with the new regulatory efforts is the fact that compliance rests on the IRS examination division, which has "turned its back on BSA enforcement" in favor of more traditional tax enforcement issues. Djinis stated that IRS resources are dwindling at the same time that its responsibilities are increasing. Maureen Sanders is the head of the Title 31 examination program for IRS. Djinis stated that the office has been a revolving door with no real expertise in the area and no infrastructure to support an enforcement program. Previously, every district had a Title 31 coordinator who was responsible for the effort, but Djinis is now unsure whether such dedicated personnel still exist.

With regard to FinCEN analysts, stated that most analysts are under trained and do not have a good understanding of techniques of money laundering or financial investigations. The failure to train is compounded by a compartmentalization of roles that do not allow the analysts to see the bigger picture. For example, analysts will get a broad law enforcement request regard the subject of an investigation. An analyst will run the BSA data and perhaps some other commercial databases, but will not go any further. The agent in the field will simply get a run of data, but no understanding about how all of these pieces fit together. The analysts do not really engage in analysis and no follow up is conducted. FinCEN is not staffed for it. Djinis suggests that FinCEN analysts get sent out to the field to work major money laundering cases. They will add value to the investigations and they will gain an understanding of how major money laundering investigations work, and of some of the techniques used by criminals to launder money. This was done in the 80's in the "Operation Polar Cap" cases to great success.

Djinis feels that the artificial intelligence effort, in which computers look at the data to find financial anomalies, is also poorly staffed and suffers from the same ailment as the other analysts. There are a few analysts who are good at running the queries that will show anomalies. However, after the primary data runs are completed, there is no attempt to do the second step, which is to research and analyze the evidence to determine what the anomalies may mean.

Djinis confirmed that there is a significant time lag between when an SAR/CTR is filed and when it is available for use by law enforcement. There were times when the gap was a year or more. The problem is that FinCEN does not control the input of the data. The IRS Detroit Service Center receives funds separately to do that, and FinCEN has no authority or control over the IRS operations as a result. There was a contractual "goal" of a 30 day turnaround, but the volume of SARs is so great that they were quickly overwhelmed. There may have been a Treasury IG or GAO audit of the situation.

Djinis believes that the PACS system has great potential to shorten the time lag between filing the SAR and having it show up in FinCEN's database, because the data is dumped from the bank directly into the FinCEN database. It also can eliminate filing errors by preventing incomplete forms from being filed. Djinis believes that FinCEN should ultimately require institutions with internet access to file via PACS. He stated that some of his clients had difficulties using PACS, and that the customer support was terrible.

With regard to the manner in which law enforcement gets data out of the system, he states that "Gateway," the computer system used to query and retrieve BSA data, is useful but limited. It allows law enforcement to get the data, but it does not provide a context. With the exception of a few agents and prosecutors in some judicial districts – New Jersey, New York and South Florida, for example – most agents and police will not have the expertise to do anything meaningful with the data.

Djinis was involved in the KYC proposal of the late 90's. It stemmed from a law enforcement frustration with a lack of consistency in customer identification procedures among banks. It was an attempt to mandate a minimum customer identification, so that banks could understand whether specific customer transactions were in fact suspicious. Djinis stated the reaction to KYC was extremely negative, and that the banking community "piled on" and blew what the regulators were trying to do all out of proportion. Congress introduced legislation that would have converted the SAR program from one of mandatory compliance, enforced by civil and criminal penalties, to a voluntary system. This would have effectively killed the program. The proposal got approximately 100 cosponsors, indicating that there was serious support for the proposal. While the legislation ultimately died, the regulators were thereafter very circumspect about proposing any future regulation.

With regard to the MSB regulations, when congress in 1994 required FinCEN to regulate MSBs, FinCEN decided to proceed on three tracks: registration, suspicious activity reporting, and lower reporting thresholds. Only the registration requirement was actually mandated by Congress. The second two proposed areas of regulation slowed the entire regulatory process down. Additionally, there was a hesitancy to write these regulations without a commitment by IRS, who would be the enforcement agency, to get resources to enforce these regulations. Additionally, there was substantial controversy within main Treasury about these regulations. The compromise, ultimately, was that they would allow an exceedingly long phase in period – something like 18 to 24 months. As the date for implementation approached, it became clear that they would not be able to implement

the regulation. There was neither the resources nor the infrastructure to do it. [JR note: the regulations were to go into effect on 12/31/01 or 1/1/02]. As a result, a memo was sent [from FinCEN?] to Secretary O'Neill, asking him to delay implementation. O'Neill said no, that the implementation would go on as originally mandated. The result was great confusion, to the point that they did not even have a separate SAR form designed for MSBs, and MSBs were asked simply to write across the top of the form that banks used that the report involved an MSB.

With regard to the 9/11 transactions, Djinis is of the opinion that a good data collection and analysis system should have detected that the financial transactions of the 19 hijackers were an anomaly, which could have triggered a more thorough inquiry. The combination of the various factors -- that they came in in groups of 2 or 3, the shared addresses, often PO boxes, the illogical explanations as to why they were in the country, the frequent changing of addresses, the fact that they didn't want checking accounts but relied on ATM transactions -- while individually innocuous, in the aggregate should have merited further scrutiny.

Djinis stated that LE needs to share more information with financial institutions. The section 314(a), originally designed to do this, does not work very well because "it is devoid of context:" it is simply a list of names and identifiers without any explanation as to why these names are important. Additionally, it is being used too often and with only a pro forma review. Djinis suggests that the process be used more sparingly, perhaps only after review by an interagency committee. Additionally, banks would like to have feedback on specific instances where SARS or 314(a) request responses resulted in law enforcement action. Additionally, banks need some intelligence on live cases. A clearinghouse in which publicly available indictments or affidavits, describing the techniques of specific money laundering schemes, would be very useful.