

Special Report - June 16, 2004

Four Loopholes in US Anti-Terror Laws

Flaws in US law enable recipients to support anti-American activities and promote terror

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Executive Summary

The Study:

An integral component of the United States' war on international terrorism is to cut off funding to terrorists and their supporters. This special report examines the deficiencies in US anti-terror laws. It demonstrates how US anti-terrorist policy is being undermined in the Palestinian Authority (PA) areas, and documents examples in which recipients of US money are involved in anti-American activities and terror promotion.

Findings:

Current US law is severely flawed, with loopholes that allow US money to end up in the hands of those that promote terror, glorify terrorists, and sponsor anti- American activities.

At the center of US policy is the requirement that organizations receiving US funding obligate themselves not to support or promote terror by signing an anti-terror clause called the Anti-Terrorism Certification (ATC). (See ATC text: Appendix 1). The Palestinian Authority and its NGOs have adamantly rejected the US anti-terror conditions. (See Appendix 2). This universal rejection was reiterated in a vote of the PA Legislature this month:

“The [Palestinian] Legislative [Council] rejects USAID (United States Agency for International Development) conditions regarding support to local organizations (NGOs)... [that is signing] a commitment not to support, finance, or join activities of institutions or individuals of terrorist nature, by the known American definition.” [*Al-Hayat Al-Jadida* (Fatah), June 2, 2004]

It is paradoxical that in spite of the universal rejection by the PA and Palestinian NGOs (Non-Governmental Organizations) of the US anti- terror requirement, USAID continues to fund numerous projects in PA areas, totaling more than \$174 million in 2003, with similar funding planned for 2004. (<http://www.usaid.gov/policy/budget/cbj2005/summary.html>). This flow of US money continues to PA areas because of loopholes in the current US law that allow US money to end up benefiting those who refuse to sign the Anti-Terrorism Certification as well as those who reject its anti-terror terms. This report examines those loopholes.

For example, US money continues to be used to honor terrorists, including murderers of Americans. Last month the PA inaugurated the “**Martyr Salakh Khalaf (soccer) Stadium**” built by USAID at a cost of \$500,000 (*Al-Hayat Al-Jadida* (Fatah), May 9, 2004). Salakh Khalaf, better known as Abu Iyad, was head of the Black September terrorist organization, and was responsible for the murder of two American diplomats, Cleo Allen Noel, Jr. and George Curtis Moore in Sudan in 1973, and the murder of 11 Israeli athletes at the Munich Olympics in 1972. The following appeared this week in the PA daily:

“The *Shahid* [Martyr] Salakh Khalaf [Abu Iyad] Stadium was inaugurated [Friday]... speeches were made by UNICEF representative in Palestine, Jonathan Hutchen... [and] in the name of USAID, who financed the project... Deputy Minister of Youth and Sport, Dr. Jamal Muhaisen, thanked the sponsoring and supporting agencies and praised the management of the *Shahid* (Martyr) Salakh Khalaf Center... which is considered one of the most important and of the

biggest sport centers ... Honor shields were presented by the Ministry of Youth and Sport to Save the Children [and to] USAID..." [*Al-Hayat Al-Jadida* (Fatah), May 30, 2004]

Another recent striking example is one in which the same article describing use of funds by the Gaza City Council to honor terrorists also cites the transfer of \$10,000 of USAID money to the same Gaza City Council, albeit for different projects.

"The Gaza City Council decided, in a recent meeting, to name a street after the distinguished *Shahid* (Martyr) Sheik, Ahmad Yassin (leader of the Hamas terror organization that killed hundreds through suicide bombings) as memorial and honor to his sacrifice and struggle. The city spokesman, Nasser Al-Sawir... said that the City Council, since the beginning of its tenure – 10 years ago - has named more than 300 city streets after Palestinian and Arab Martyrs ...

The City Council reported that the USAID decided to grant the city \$10,000 in the framework of the "Cash Transfer" project... to cover part of the expenses of repairing the damage to the water and sewage systems ..." [*Al-Hayat Al-Jadida* (Fatah), May 24, 2004]

Clearly, there are serious flaws in the American law.

Four flaws in the Anti-Terrorism Certification requirement:

1. Exempted Recipients

The law exempts numerous categories of recipients and services; thus bypassing the ATC is relatively simple.

2. Ignoring the Money Chain

US law does not place sufficient restrictions on the way primary recipients, including international organizations receiving US money such as the World Bank and the United Nations (UN), give out money originating in the US.

3. Ignoring Fungibility of Budgets

US funding agencies routinely ignore terror promotion and anti-American activities of recipients when these activities are not directly funded by US money.

4. Defining and Renouncing Terror

The PA and its NGOs disagree with the US definition of terror.

Analysis in Depth:

1. Exempted Recipients

a. Governments and Municipalities

Governments and municipalities are exempt from signing the ATC. This is a significant loophole, because both the PA and PA municipalities have received substantial US funding, and both continue to be involved in terror glorification and promotion.

The PA and its municipalities honor terrorists and make them into role models for society - especially for children - and initiate hateful anti-American activities. PA summer camps are routinely named for suicide terrorists, and PA-owned and controlled television has repeatedly broadcast calls for terror and for killing Jews and Americans.

Municipalities regularly have events to honor the terrorists from their cities, and name streets for terrorists. For example, the Municipalities of Jenin and Gaza are among the regular recipients of USAID funding in recent years. But the Gaza municipality recently named a street for the late Hamas terror leader Ahmad Yassin, while the mayor of Jenin participated in an anti-American rally in Jenin just days after the horrific lynching of four US soldiers in Fallujah, Iraq. The speakers at the Jenin event blessed the “resistance of the residents of Fallujah.” [*Al-Hayat Al-Jadida* (Fatah), March 28, 2004 and April 4, 2004]

The Gaza Municipality published a paid eulogy for Yassin on the front page of the PA daily, in which it used the common antisemitic language referring to Jews as the “monkeys and pigs ... murderers of prophets and messengers...” and promising that “Jihad and Martyrdom will continue until resurrection.” [*Al-Ayyam*, March 23, 2004]

These municipalities receive regular grants from USAID for various projects amounting to millions of dollars each year, while they continue with their anti-American and terror promotion activities.

In a letter to **Palestinian Media Watch**, USAID explained this US policy:

“Regarding your questions about the Anti-Terrorism Certification (ATC)... the ATC requirement does not apply to contracts and government institutions. This would therefore include Palestinian municipalities.”

[Gayle Schwartz, Program Development Officer, USAID West Bank and Gaza, Dec. 25, 2003]

Is it the intention of US policy to fund projects of municipalities that champion the murder of Americans and Jews?

Recommendation #1:

All US conditions meant to eradicate funding of terror must apply to every recipient, whether private, NGO or governmental.

b. Contractors and Suppliers

Contractors and suppliers are exempt from signing the ATC. PMW received this letter from USAID:

“Contracts are used when the USG purchases goods or services for its benefit. For example, we have a contract with a U.S. firm to build roads. The ATC (Anti-Terrorism Certification) applies to grant agreements only.”[Gayle Schwartz, Program Development Officer, USAID West Bank and Gaza, Dec. 30, 2003]

With this significant oversight in the law, USAID can give money to any NGO, municipality or school that refuses to sign the anti-terror clause by hiring a contractor to do the work. Since the beneficiary has not technically received a grant, it can use US money while still glorifying or supporting terror and anti-US activities.

For example, USAID money was used for road works in Jenin, despite the fact that Jenin has a square named for a suicide terrorist who killed four American soldiers. When the contract is with the developer and not the recipient, USAID can bypass the anti-terror law.

Recommendation #2:

Contractors may be hired with US money only if both the contractor and the beneficiary of the work have fulfilled all US anti-terror conditions, including the signing of the ATC.

c. Universities

PA universities are in a unique terror category because all have official student branches of Hamas (called *Al-Kutlah Al-Islamiyah*) and Islamic Jihad (called *Al-Jama'ah Al-Islamiyah*), both terrorist organizations outlawed by the US and the European Union. PA universities are centers of anti-American activities, and calls for attacks on Americans as part of university activities are commonplace.

For example, at a recent event at the Islamic University in Gaza, then-Hamas head Abdul Aziz Rantisi attacked the US, saying that “Bush is an enemy of God and an enemy of Islam and Muslims, and America has declared war on God.” [*Al-Ayyam*, March 29, 2004]

Last year USAID funded a convention at the Islamic University in Gaza. [*Al-Hayat Al-Jadida* (Fatah), Sept. 22, 2003]

The Arab American University in Jenin, for example, was a center of anti-US activity in 2003, while receiving USAID money. At one gathering, a university lecturer “blessed the Iraqi resistance for its firm stand against the American- British occupation and called on the Arab and Islamic people to give every aid and support to the Iraqi people in order to oust the new occupation.” [*Al-Ayyam*, Nov. 4, 2003]

Hamas and Islamic Jihad student branches at the PA universities have historically been breeding grounds for terrorists. Campuses are used to promote terror and to recruit and plan terrorist activities.

For example, it was Al-Kutlah Al-Islamiyyah (Hamas) at the Al-Najah University that created the horrific celebration of the 2001 Sbarro Pizza bombing by building a mock pizza parlor and decorating the walls and tables with images of pizza and body parts of the 14 murdered Israelis.

Terrorists who have come directly from PA university activities include:

Mahmud Shuraytakh: Chairman of Al-Kutlah Al-Islamiyyah (Hamas) and of the Student Council at Bir Zeit University. Planned a suicide attack on a bus in Tel Aviv Sept. 19, 2002, in which six Israelis were murdered and 71 injured.

Ihab Abdul-Qadir Mahmud Abu Salim: Arab Language student and a member of Al-Kutlah Al-Islamiyyah (Hamas) at Bir Zeit University. Carried out a suicide attack at Zerifin Sept. 9, 2003, in which eight Israelis were murdered and about 20 injured.

Daya Muhammad Hussein Al-Tawil: Engineering student at Bir Zeit University and a member of Al-Kutlah Al-Islamiyyah (Hamas). Carried out a suicide attack at the French Hill junction in Jerusalem March 27, 2001, in which 29 Israelis were injured.

Ramiz Ubaid: Student and a member of Al-Jama’ah Al-Islamiyyah (Islamic Jihad) at Bir Zeit University. Carried out a suicide attack at Dizengoff Center in Tel Aviv March 3, 1996, in which 13 Israelis were murdered and 118 injured.

Hamid Abu Hajlah: Engineering student and a member of Al-Kutlah Al-Islamiyyah (Hamas) at Al-Najah University. Carried out a suicide attack in Netanya on Jan. 1, 2001, in which three Israelis were injured.

Ramiz Abu Salim: Hamas activist and a student at Al-Quds Open University branch in Al-Birah. Carried out a suicide attack at Cafe Hillel in Jerusalem Sept. 9, 2003, in which seven Israelis were murdered and about 20 injured.

Muhammad Al-Rul: Hamas activist and a student at Al-Najah University. Carried out a suicide attack in Jerusalem June 18, 2002, in which 19 Israelis were murdered and 42 injured.

USAID had budgeted millions of dollars this year to PA higher education without making this aid conditional on the closing of the campus terror branches. They can fund universities easily without the university signing the Anti-Terror Certification by bypassing US law, as USAID explained in the following letter to PMW:

“Whether the ATC applies to universities depends on the relationship it has with USAID. If it receives a grant, it must sign the ATC. If the relationship is contractual, it does not have to sign.” [Gayle Schwartz, Program Development Officer, USAID West Bank and Gaza, Dec. 30 2003]

Another way USAID - and, thus, the US Government - indirectly supports terror is by giving scholarships to students who use the money for tuition. The tuition money goes to the universities even though they have terror branches.

Recommendation #3:

No US money may fund a university -directly or indirectly - or any student in a university that has a branch of a terrorist organization, permits activities of a terrorist organization, has events honoring terrorism or terrorists, facilitates anti- American activities, or has not fulfilled any of the other US anti-terror conditions.

2. Ignoring the Money Chain:

Many US-supported institutions are not strict with the use of their money. As a result, US taxpayer money ends up in the hands of terrorists and supports anti-American activities.

a. Universities

The World Bank is in the process of making a major investment in building “PA university infrastructure.” [Al-Hayat Al-Jadida (Fatah), March 25, 2004]. By so doing the World Bank is ignoring the fact that the PA universities all have official student branches of Hamas and Islamic Jihad, terrorist organizations outlawed by the US and EU. The World Bank will be building university infrastructures that will be used by student terrorist organizations to form the backbone of suicide terrorism in coming years.

It is unclear why the World Bank has not made its funding conditional on closing the branches of Hamas and Islamic Jihad.

b. United Nations

The UN does not carefully supervise the use of money in PA areas. One example: last year UNICEF funded the summer camp for young girls named after Wafa Idris, the first woman suicide bomber [Al-Ayyam, July 18, 2003] as well as other camps named for “Martyrs.”

Recommendation #4:

Any non-US funding body (e.g. World Bank or UN) must use the same anti-terror criteria as the US to be eligible to receive US money.

3. Ignoring Fungibility of Budgets

Many recipients of US funding use other parts of their budgets to support terror and anti-US activities, such as, the examples above of the municipalities and universities.

Recommendation #5:

No recipient of US funding may facilitate or use any portion of its budget, whatever the source, for anti-American activities or to honor, support or glorify terror.

4. Defining and Renouncing Terror

A major disagreement between the US and PA recipients, including NGOs and individuals, is the definition of terror. While all PA groups and NGOs openly purport to “renounce terrorism,” they refuse to accept the US list of terror organizations, such as Hamas and Islamic Jihad. They define killing Israelis -- and Americans in Iraq -- as “resistance.”

For example, in the following official protest letter from PA NGOs rejecting the US State Department anti-terror clause, the NGO umbrella organizations argued:

“While NGOs are against any form of terrorism... It is not clear on what basis and upon which criteria the definition of “terror acts” has been set...” - Signed by: Palestinian NGO Network and others [July 12, 2003]

Recommendation #6:

The language of the US Anti-Terrorism Certification must include the renouncing of terrorism, as specified by the US definition and listing of terrorist organizations.

Summary of Recommendations:

All recipients of US funding, including those directly receiving grants, benefiting from US money, or contracting with US money for the benefit of another party -- whether private, public or governmental -- must renounce terrorism and accept the US definition of terror and terror groups. They must not use US grant money or any other portion of their budget, whatever the source, to aid, honor or promote, in any way, any terrorist or terrorist organization, or to facilitate its activities. Any intermediary funding body using US money, including international institutions such as the UN and the World Bank, must require all its recipients to sign the same ATC and adhere to all the US definitions of terror.

Appendix 1:

Anti-Terror Certification

The following is the text of the Anti-Terror Certification that the Palestinian recipients are obligated to sign as it appears on the USAID Web

Site: http://www.usaid.gov/wbg/misc/2004.Certification_Regarding_Terrorist_Financing.pdf.

Certification Regarding Terrorist Financing Implementing E.O. 13224

By signing and submitting this application, the prospective recipient provides the certification set out below:

1. The Recipient has not provided, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in **terrorist acts**, or has committed, attempted to commit, facilitated, or participated in **terrorist acts**.

2. Specifically, in order to comply with its obligations under paragraph 1, the Recipient

will take the following steps:

a.

Before providing any material support or resources to an individual or entity, the Recipient will verify that the individual or entity does not appear (i) on the master list of Specially Designated Nationals and Blocked Persons, which list is maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC) and is available online at OFAC's website :

<http://www.treas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf>, or (ii) on any supplementary list of prohibited individuals or entities that may be provided by USAID to the Recipient. The Recipient also will verify that the individual or entity has not been designated by the United Nations Security (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the "1267 Committee") [individuals and entities linked to the Taliban, Usama bin Laden, or the Al Qaida Organization]. To determine whether there has been a published designation of an individual or

entity by the 1267 Committee, the Recipient should refer to the consolidated list available online at the Committee's website:

<http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>.

b.

Before providing any material support or resources to an individual or entity, the Recipient will consider all information about that individual or entity of which it is aware or that is available to the public.

c.

The Recipient will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support **terrorist activity**. 3. For purposes of this **Certification-**

a.

“Material support and resources” means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives,

personnel, transportation, and other physical assets, except medicine or religious materials.

b. “**Terrorist act**” means-

(i)

an act prohibited pursuant to one of the 12 United Nations Conventions and Protocols related to terrorism (see UN terrorism conventions Internet site: <http://untreaty.un.org/English/Terrorism.asp>); or

(ii)

an act of premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents; or

(iii) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

c. “Entity” means a partnership, association, corporation, or other organization,

group or subgroup.

This Certification is an express term and condition of any agreement issued as a result of this application, and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.

APPLICANT:

Name: _____ Signature: _____

Title: _____ Date: _____

Appendix 2:

Palestinian Media Watch Bulletin - Sept. 3, 2003

PA NGOs Defy US - Refuse to Sign Anti-Terror Document

Introduction

The Palestinian Authority (PA) NGOs have defied the US by refusing to sign a declaration that they will not use USAID grant money for terrorist purposes. This is a major challenge to the US administration, which sees the elimination of Palestinian terror and terrorist organizations as an integral component of US policy. The US has conditioned new funding agreements with PA NGOs, upon their signing an Appendix declaring the funding will not be passed on to terrorists. The PA NGOs are refusing to sign.

The Palestinian NGO opposition is universal, following a meeting of representatives of many NGOs who unanimously agreed they would not sign, and called for disciplinary measures to be taken against any Palestinian organization that signs. The Palestinians called the US anti-terror Appendix “provocative” and called on the NGOs to refuse USAID, as was done during the Jenin battle, rather than sign.

In spite of the significant sums of money given to the Palestinian through USAID, the organization was maligned at the event, one speaker calling USAID a “destructive” organization, whose purpose it to “damage” or “corrupt” Palestinian organizations.

The following is the declaration that the Palestinian NGOs refuse to sign:

“The beneficiary institution further certifies that it will not provide material support or resources to any individual or entity that it knows, or has reason to know, is acting as an agent for any individual or entity that advocates, plans, sponsors, engages in, or has engaged in, terrorist activity, or that has been so designated, or will immediately cease such support if an entity is so designated after the date of the referenced agreement.”

“Another appendix ... includes the names of Palestinian individuals and bodies that the United States considers to be terrorists, and therefore prohibits any cooperation with them such as the Hamas, the [Islamic] Jihad, the Al-Aqsa Martyrs’ Brigades, the Popular Front, the Democratic Front, etc.” [Al-Ayyam, Aug. 25, 2003.]

Organizations refusing to sign include the “Mizan” Center for Human Rights, “The Red Crescent” and the “Federation of Sanitation Activities.” The refusal is based on the PA policy that refuses to see murder of Israelis including suicide bombings as terrorism. The current opposition to suicide bombings, as it is often stressed within the PA, is because of the negative political conditions that make suicide bombings politically detrimental, and not because suicide bombings are terror. Suicide bombings are defined as “legitimate resistance” [See article below].

The organizations say they do not want to be “captive to the funding conditions” set by the US.

The following are texts from articles that have appeared in recent days showing the uniform rejection by PA NGOs of the American terms.

“Relations between the American Agency for International Development (USAID) and the Palestinian civic organizations are undergoing a true crisis. The American Agency has announced that its signature [granting aid] is conditioned on agreements with Palestinian organizations receiving grants [from USAID], and from [other] [American] non-governmental Private Voluntary Organizations, upon the inclusion of the following Appendix:

“The beneficiary institution further certifies that it will not provide material support or resources to any individual or entity that it knows, or has reason to know, is acting as an agent for any individual or entity that advocates, plans, sponsors, engages in, or has engaged in, terrorist activity, or that has been so designated, or will immediately cease such support if an entity is so designated after the date of the referenced agreement.”

“Additionally, this appendix is connected to another appendix ... that includes the names of Palestinian individuals and bodies that the United States considers to be terrorists, and therefore prohibits any cooperation with them such as the Hamas, the [Islamic] Jihad, the Al-Aqsa Martyrs’ Brigades, the Popular Front, the Democratic Front, etc. [Al-Ayyam supplement, “Local Activities,” Aug. 25, 2003]

“Many experts and representatives of private institutions are warning against signing the document, which includes the conditions imposed by the American Development Agency, USAID, on funding Palestinian institutions. They explained that the civic organizations are not political institutions, and therefore the United States’ demand lacks any legal validity, because it is of a political nature. They also emphasized that it is important to stand with the Network of Private Organizations which reject this document and to prepare a memo that will be signed by the private institutions and published in the press, and to take disciplinary steps against members of the Network of Private Organizations who violate the accepted policy [by signing]...

“Senior officials and representatives of many institutions were present at the conference that was held at the hall of the Red Crescent Organization in Gaza. The director of the Red Crescent Organization, Dr. Chaider Abd Al-Shaffi, stated: ‘The objective behind the message that was received from this American institution regarding financing and aid is well known. The basis of the rejection of the United States’ request, is that our institutions are not political...’”

“[Abdul Aziz Abu Qaraya, said] the position against this document that is emerging in the [West] Bank and in the [Gaza] Strip should be solidified, because it relates to all of the civic institutions, including [political] parties. The goal is to contend with this US provocation and its provocative conditions. This provocation indicates a pro-Israel political position.”

“The representative of the Federation of Sanitation Activities, Dr. Rabah Mohana, stated: ‘From the experience with the [US] Agency for Development, it emerges that we are talking about a destructive institution, because it creates a link with salary and administration in order to turn the organization captive to the funding conditions. The Agency for Development is subordinated to the U.S. State Department, and it executes its policies. In addition, it has no connection with private institutions, but in actual fact the agency executes American policy in order to damage civic institutions...’”

“The director of the “Mizan” Center for Human Rights, attorney Issam Yunes, stated: ‘There is no legal basis for this document. This document should be boycotted, including the local authorities, political parties and universities. These institutions should reject this document completely, as it puts them in great danger. We should publicize a list of any institutions that agree to the conditions in the document.’”

“Amar Sheban, the economist, called for the adoption of the position that was taken while the events took place in the Jenin refugee camp, when American aid was rejected.” [Al-Hayat Al-Jadida (Fatah), Aug. 28, 2003]

“Yesterday the network of local Palestinian organizations conducted a meeting of civic institutions. The subject was the problem of the conditions imposed by the American Agency for Development USAID... following the rejection by Palestinian civic organizations of this step, since it imposes conditions upon funding of the Palestinian developmental institutions.

“The network and the committee emphasized the refusal of the institutions [to accept] this appendix. They considered its content to be a clear violation of the Law of Charitable Organizations and Palestinian Local Staffs, section 1 of the year 2000, in which the institutions declared their absolute obligation to implement all of its clauses. They stated that the appendix in the joint agreement [with USAID] is a breach of the sovereignty of the local Palestinian activities, which could diminish the ability of this important sector to continue and participate in the development and growth of Palestinian society.

“The committee and the network have made clear that the Palestinians have declared, on several occasions, their sweeping opposition to terror - and therefore the linkage between legitimate resistance and terror is considered non-suitable to the Palestinian reality.” [Al-Quds, Aug. 28, 2003] [Ed. note - All Palestinian terrorism, including suicide bombings, are included under the umbrella of “legitimate resistance.”]

“Needless to say, the signature of the Palestinian civic organizations on this appendix will place them in a great principal and practical dilemma... It is clear that the Palestinian civic organizations and the United States disagree fundamentally in their definition of terror and terrorist activities. The civic organizations distinguish between actions and activities for national liberation and terrorist acts as the

latter are expressed through actions carried out by the forces of the Israeli occupation, which are definitely a type of state terror against an unarmed people...

“We believe that the American Agency for International Development needs to reassess its decision regarding the signing of the appendix mentioned above, especially while the appendix and its content create a precedent to perpetuate the principle of conditional funding which contradicts the principle of independent local action...” [Al-Ayyam supplement, “Local Activities,” Aug. 25, 2003]

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- June 16, 2004