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PREPARED STATEMENT OF MARK S. ZAID, ESQ.

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UNITED STATES SENATE

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"Able Danger and Intelligence Information Sharing"

Mr. Chairman, distinguished members of the Committee, thank you for the opportunity to appear before you to discuss some very important matters relating to our country's national security interests. I would respectfully request that my statement be included as part of the Committee's official record.

Unfortunately I am here today as a surrogate for several witnesses who the Department of Defense has forbidden from appearing before you. I am a partner in the Washington, D.C. law firm of Krieger & Zaid, PLLC, which primarily represents cases that pertain to national security issues. Our typical clients are active members of the U.S. Intelligence Community. We currently represent Lieutenant Colonel Anthony Shaffer, a civilian employee of the Defense Intelligence Agency and reserve officer within the U.S. Army, and Mr. James Smith, a defense contractor at the time with Orion Scientific Systems. Both men, who are sitting right behind me and were more than willing to appear before you today, actively worked on components of what is known as Able Danger.

I am here to impart to this Committee some degree of knowledge of what Able Danger was and what it accomplished, as well as identify some crucial questions surrounding related events. To be sure most of the information that will comprise my testimony is hearsay except to the extent I participated in specific activities. However, the value of my testimony does not derive from the truth of my statements but is to serve as a stepping stone to allow your Committee to undertake a proper and necessary investigation into matters that are very clearly within your jurisdiction.

I want to make it perfectly clear that nothing I say today constitutes a legal waiver of the attorney-client privilege that exists between my clients and I. My testimony primarily repeats information that has been discussed in open settings before third parties, or that I have obtained through non-client sources. Nor is anything I am stating today intended to be classified and, so far as I am aware, is classified. Although I have been in contact with the Department of Defense, and especially DIA, throughout the last several weeks about this matter, at no time did any

government official inform me that classified information was at issue or that any concerns existed with respect to the public comments that had been made by my clients.

## THE CREATION, OPERATION AND DISMANTLING OF ABLE DANGER

Able Danger was formed in 1999. General Peter Schoomaker, now the Chief of Staff for the Army, and General Hugh Shelton, then Chairman of the Joint Chiefs, were instrumental in creating Able Danger. To date, to my knowledge, neither has publicly commented about what they knew. Until approximately the Summer of 2000 it operated under the auspices of the U.S. Army, and particularly through the U.S. Special Operations Command (SOCOM) and the Land Information Warfare Center (LIWA), which supports the Intelligence and Security Command (INSCOM).

It was the understanding of those who worked on Able Danger during this time frame that their efforts were primarily unclassified. After LIWA severed its ties to Able Danger, the team shifted LIWA's responsibility to defense contractors. This effort, which some are calling Able Danger II, lasted from the Summer 2000 to no later than March 2001, and did handle a significant amount of classified information. The information I am presenting today derives from the initial activities of Able Danger.

In the most understandable and simplistic terms, Able Danger involved the searching out and compiling of open source or other publicly available information regarding specific targets or tasks that were connected through associational links. No classified information was used. No government database systems were used. In addition to examining Al Qaeda links, Able Danger also handled tasks relating to Bosnia and China. The search and compilation efforts were primarily handled by defense contractors, who did not necessarily know they were working for Able Danger, and that information was then to be utilized by the military members of Able Danger for whatever appropriate purposes.

With respect to Al Qaeda, the starting point were those terrorists who were associated with the 1993 World Trade Center bombing and the New York City terror plots. Sheik Omar Abdel-Rahman, known as the blind Sheik, was one of those individuals who served as a focal point. By that I mean those supporting Able Danger would take specific names and attempt to obtain a list of individuals who were known to associate with the target names. The information might have been, but was not limited to, that derived from the Internet, commercial services such as Lexis/Nexis or Westlaw, or purchased from subcontractors who obtained data from multiple sources including foreign.

Again, what was being explored were associational links between individuals, meaning person "A" who was associated with Sheik Abdel-Rahman, and then identifying person "B" who was associated with person "A" and so on. Essentially, think in your mind how the game "Six Degrees of Kevin Bacon" operates. That is a simplistic explanation of part of Able Danger's activities.

The compiled information would be uploaded into an interactive computer program designed by the contractor that would create depictions of the links accompanied by all the underlying data to support those links. When possible photographic images of the identified individuals would be obtained and entered into the system. Every link and the data that supported the link could be accessed electronically with "drill down" capabilities, and usually the data had multiple sources. Each visible screen would then be printed out as a hard copy for submission, along with all supporting documentation, to the Able Danger liaison. These are the infamous charts we have heard about.

As part of their efforts multiple individuals associated with Able Danger have stated that they identified four of the terrorists, including Mohammed Atta, who subsequently were involved in the terrorist attacks on 9/11. At least one chart, and possibly more, featured a photograph of Mohammed Atta and had him linked through associational activities to the blind Sheik and others operating in or around Brooklyn, New York.

On at least three occasions those involved with Able Danger attempted to provide the FBI with information they had obtained. Each attempt failed, as it has been said, as a result of Army lawyers who either precluded the sharing or prevented the Able Danger personnel from attending the meeting. The stated concern was whether legal limitations restricted Able Danger from compiling information on U.S. persons. Their definition apparently included foreigners legally present on our soil. Based on my understanding of the law surrounding Posse Comitatus and the relevant DoD regulations, it would appear such an interpretation was unduly restrictive, and this is clearly an area for investigation by this Committee. I would specifically encourage the Committee to obtain the legal memoranda that would undoubtedly have been drafted and disseminated by the military lawyers. If a wall existed, it is imperative to understand if it still exists and how to dismantle it.

Eventually during the period December 2000 and March 2001, all records, both electronic and hard copy, were destroyed under orders of the Army. Additionally, we just recently learned that duplicate documentation that was maintained by Lt Col Shaffer at his civilian DIA office was apparently destroyed - for reasons unknown - by DIA in Spring 2004.

Let me emphasize two specific items for clarification purposes because they have been distorted and invited undue criticism from some.

? At no time did Able Danger identify Mohammed Atta as being physically present in the United States.

? No information obtained at the time would have led anyone to believe criminal activity had taken place or that any specific terrorist activities were being planned. Again, the identification of the four 9/11 hijackers was simply through associational activities. Those associations could have been completely innocuous or nefarious. It was impossible to tell which, and the unclassified work of Able Danger was not designed to address that question.

Additionally, let me also focus on several key points that led to this hearing being convened today.

First, those associated with Able Danger who remember the Atta photograph continue to believe that it was, in fact, the same Mohammed Atta who acted as one of the 9/11 hijackers. They specifically recall the photograph, which is not the same photograph published by any U.S. Government agency or the 9/11 Commission, because of the daunting and literally evil expression on his face.

Second, as has been stated repeatedly, Lt Col Shaffer met with staff members of the 9/11 Commission, to include its Executive Director, while serving on active duty in Afghanistan in October 2003. It is Lt Col Shaffer's specific recollection that he informed those in attendance, which included several Defense Department personnel, that Able Danger had identified two of the three successful 9/11 cells to include Atta. That statement is disputed by the 9/11 Commission and may never be resolved. Nevertheless, it is clear the 9/11 Commission took Lt Col Shaffer's comments, whatever the substance, very seriously and immediately attempted to obtain supporting documentation, which we now know had already been destroyed. Whatever documents the 9/11 Commission were given by the Department of Defense obviously did not support Lt Col Shaffer's statements. That is an issue best directed not at the 9/11 Commission but at the Department of Defense.

Where it would appear the Commission failed to fulfill its responsibility was to simply go back to Lt Col Shaffer and query him for additional information, such as to identify other members of Able Danger who could have supported his statements. Had they done that in January 2004 they would have been led directly to numerous individuals, including James Smith, Navy Captain Scott Philpott (who on his own initiative in July 2004 approached the Commission) and others, who would have confirmed Lt Col Shaffer's information. Thus, where we are today could have been investigated more than 18 months ago.

Third, while we have never claimed that Lt Col Shaffer's security clearance problems were connected to his work on Able Danger, the coincidences of the timing should not be overlooked. An investigation was initiated and his security clearance suspended by the DIA shortly after it became known that he had provided information to the 9/11 Commission. The revocation of his security clearance conveniently took place two days ago just as he was preparing for his testimony before this Committee. As part of my law practice I specialize in security clearance cases. That is why I was retained by Lt Col Shaffer in the first place. Based on years of experience I can say categorically that the basis for the revocation was questionable at best. I am authorized and would be happy to discuss the specifics of Lt Col Shaffer's security clearance during questioning.

Fourth, unfortunately we are not aware of the continuing existence of any chart containing Mohammed Atta's name or photograph. The copies that would have been in the possession of the U.S. Army were apparently destroyed by March 2001. The copies within Lt Col Shaffer's files were destroyed by the DIA in approximately Spring 2004. The destruction of these files is an important element to this story and I encourage the Committee to investigate it further. It would appear, particularly given the Defense Department's outright refusal to allow those involved with Able Danger to testify today, that an obstructionist attitude exists. The question for this Committee is to investigate how far that position extends and why.

Additionally, James Smith maintained a copy of one chart that measured approximately 4 ½' x 5' through Summer 2004. But it was damaged in an office move and destroyed. Congressman Weldon was apparently in possession of either that specific or similar chart in late September 2001 and delivered it Stephen Hadley, then Deputy National Security Advisor. To my knowledge neither Mr. Hadley or the NSC has ever commented upon this fact.

Presumably one or more of the contractors would have retained copies of either the charts or at least some of the underlying data, and I would encourage the Committee to subpoena the information.

Finally, we will never know if the sharing of the Able Danger information with the FBI would have done anything to prevent or interfere with the terrorist plans of 9/11. Frankly, given what we know from the 9/11 Commission and other official investigations, there is no reason to believe anything would have changed.

However, according to the key members of the Able Danger team they identified four individuals who later became 9/11 hijackers. Those individuals were on a chart that had as many as five dozen names.

I would submit to you that the primary concern we should focus on is not who to blame for the obvious disconnect that occurred with respect to sharing information. We are already well aware of that problem, which still exists today. Instead, the focus should be on identifying the current location of the other several dozen possible terrorists on that list and what are they planning against us today, as well as to reconstitute the successful work initially started by Able Danger.

Thank you for this opportunity. I would be happy to try and answer any questions you might have.