

PREPARED STATEMENT OF MARK S. ZAID, ESQ.

BEFORE THE COMMITTEE ON JUDICIARY,
UNITED STATES SENATE

WEDNESDAY, SEPTEMBER 21, 2005

“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 full statement be included as part of the Committee’s official record.¹

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 formerly employed by Orion Scientific Systems. Both men, who are sitting right behind me, were more than willing to appear before you today. Each of them actively and directly contributed to efforts associated with what is known as Able Danger.

I am here to impart to this Committee some degree of knowledge of certain aspects of Able Danger and what it accomplished, as well as identify some crucial questions surrounding related events. Because I have not had access to

¹ A copy of my curriculum vitae is attached to my testimony.

classified information or even the full scope of the unclassified efforts, my testimony is not intended to serve as the complete picture. I guarantee you that I will be presenting just a couple of facets of a multi-facet diamond. And 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. Finally, this is not a partisan issue. There is enough blame to go around for failures in the system. I am confident that once the full story of Able Danger comes out that much of what we perceive today as a possible cover-up, particularly emanating from the Defense Department, is more of the typical Washington, D.C. "CYA" than anything associated with the substantive work that Able Danger was conducting.

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 because it was recognized we had an enemy – Al Qaeda – that needed to be confronted. 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 and I encourage the Committee to talk to both of them. 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 many of those who worked on Able Danger during its early period that their efforts involving Al Qaeda were primarily unclassified. LIWA, I should note, at this time was also handling tasks relating to Bosnia and China. 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 (but was essentially inactive by the end of 2000), 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, the aspects of Able Danger that led to the infamous charts we will discuss involved the searching out and compiling of open source or other publicly available information regarding specific Al Qaeda targets or tasks that were connected through associational links. No classified information was used. No government database systems were used. The search and compilation efforts were primarily

handled by defense contractors such as Mr. Smith, who did not typically 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 planning purposes. Able Danger itself, on the whole scale, was much more than what I just described.

With respect to Al Qaeda, the starting point for one facet of Able Danger were those terrorists who were associated with the 1993 World Trade Center bombing, the New York City terror plots and the 1998 Embassy bombings in Africa. 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 a 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 later came to realize that they had 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 DoD 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. This included both LIWA and Able Danger files. 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 met with the Commission) and others, who would have confirmed Lt Col Shaffer's information. Most importantly, copies of the Atta chart still existed at this time. Thus, where we are today could have been investigated and cleared up 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. Earlier this month Lt Col Shaffer offered to assist DIA to attempt to locate relevant files. That offer was declined. 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, although James Smith maintained a copy of one chart that measured approximately 4 ½' x 5' through Summer 2004, 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 nor the NSC has ever commented upon this fact. Clearly, Mr. Hadley should be questioned and NSC files should be searched.

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 little 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.

In closing, if there are errors in my testimony, which I certainly tried to avoid, they are the result of the Defense Department's efforts to impede a full and accurate investigation into Able Danger and its activities.

I applaud the Committee's tenacity in pursuing this topic notwithstanding the hurdles that have been placed in your way. I truly hope you will help educate the country to the truth and ensure that the images of those associated with Able Danger are not tarnished by governmental spin when they should instead be awarded with the accolades they deserve for their patriotism.

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