

THE COCAINE CARTEL'S BEST KEPT SECRET... THE BLACK MARKET PESO EXCHANGE; THE GOING IS GOOD, BUT FOR HOW LONG, AND AT WHAT PRICE?

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I. INTRODUCTION

The date is July 2, 1991, piled upon rectangular tables are stacks of United States dollars. The stacks reach three feet vertical from the tops of the tables, and extend to a breadth of two feet, completely covering the table's surface. The incredulity of the scene though is that the tables extend from one side of the meeting room to the other, a distance of at least sixty feet. The greenbacks make a level surface for most of the distance, except for the occasional hill, and

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a speaker's podium in the center. In front of the speaker's podium, on the ground are canvas bags stacked one upon another reaching higher than the tops of the tables. These bags bear the markings of the Federal Reserve, and although no greenery is observed, they leave no doubt to the observer that they are filled with United States currency.

The occasion is a press conference announced by The United States Customs Service Miami Division, to herald the seizure of one of the largest amounts of drug dollars ever seized in the United States from the cocaine cartels. The total amount from this seizure was an incredible \$22 million, all in United States currency.¹ These monies were not destined to be placed aboard a Lear jet and flown to Colombia, but instead they were intended for a highly sophisticated and secretive system for laundering drug dollars, which is only now being recognized as a serious threat to both the United States and Colombia.

For many years, the American anti-drug rallying cry has been the "war on drugs," with Colombian cocaine being the chief target. In the middle 1980s, however, the United States government widened the conflict by also targeting drug proceeds, and introducing anti-money laundering statutes as heavy-duty weapons into the conflict. One target of these weapons was the billions of dollars generated annually by the Colombian cocaine cartels, and introduced into its principal laundering vehicle, the Colombian Black Market Peso Exchange (BMPE).

A currency black market has been defined as "a provider of foreign exchange service to those who are unable or unwilling to use the official market."² Since the cartels were unable to simply deposit drug proceeds into American banks, an alternate system was required to fulfill their financial needs, resulting in the BMPE.

A. *The Black Market Peso Exchange Revealed*

"The BMPE method as used by the cartels is the single most efficient and extensive money laundering 'system' in the Western Hemisphere."³ The warning sounded by the United States Department of the Treasury's Financial Crimes Enforcement Network in 1997 was repeated by an even more recent warning in 1999. This warning provided that, "this underground financial and trade financing system is a major-perhaps the single largest avenue for the

1. Buddy Nevins, *Customs Seizes \$22 Million in Cash*, SUN-SENTINEL SO. FLA., July 3, 1990, at 7B.

2. Robert Grosse, *Colombia's Black Market in Foreign Exchange*, 20 No.8 World Dev. 1193, 1196 (1992).

3. U.S. DEP'T OF THE TREASURY FINANCIAL CRIMES ENFORCEMENT NETWORK, 9 *FinCen Advisory*, at 2 (Nov. 1997)[hereinafter 9 *FinCen Advisory*].

laundering of the wholesale proceeds of narcotics trafficking in the United States."⁴ What is this notorious system? Why has so little been exposed about the BMPE before? What can be done to put the BMPE out of business?

First, this article will identify the complex and highly secretive workings of the BMPE. Next, it will discuss governmental seizures of BMPE money. The last part of the paper will concern the United States government's civil and criminal anti-money laundering laws, and how the law applies to money that is seized by the government and had been introduced into the BMPE.⁵ This article seeks to advise Colombian and American attorneys and their clients of the perils of dealing in black market monies of unknown origins. These warnings also extend to the industrial companies and financial institutions that are the recipients of BMPE monies. These perils are not limited to the threat of seizure and arrest by the "Norteamericanos," but also to the political threat that they pose to the "homeland."

B. *Overview of the Black Market Peso Exchange (BMPE)*

The American cocaine industry has been estimated to be over a fifty billion dollar a year industry.⁶ As cocaine enters the United States through major source cities and makes its way to Main Street USA, the money trail follows a reverse flow, ending in major cities like Los Angeles, New York City, and Miami. In these cities, hundreds of thousands of bills in five, ten, and twenty-dollar denominations accumulate, pending their next change of ownership. The most ironic of facts is that though these monies belong to the Colombian cartels, most of them will never leave the borders of the United States.

The monies that accumulate in the United States are the cartel's income. The cartels that have produced and shipped the cocaine, now await the monies owed to them. The cartels require these monies in Colombia to pay their operating expenses. Since it would be difficult to pay their operating expenses in American dollars, their ideal situation is to receive the monies in Colombian pesos. "Lavish lifestyles, and the support of business empires in Colombia, cannot be maintained with United States dollars because they are not readily useable in Colombia. The traffickers must find a way to convert dollars into

4. U.S. DEP'T OF THE TREASURY FINANCIAL CRIMES ENFORCEMENT NETWORK, *12 FinCEN Advisory*, at 1 (June 1999)[hereinafter *12 FinCEN Advisory*].

5. Several states have passed their own anti-money laundering laws. For a thorough treatise of Florida's anti-money laundering statutes, see Israel Reyes, *Florida's Anti-Money Laundering Statutes*, Fla. Bar J., 66 (July/Aug. 1999).

6. 9 *FinCen Advisory*, *supra* note 3.

pesos, which cannot be done effectively on street corners.”⁷ The great dilemma for the cartel was how to get their million dollars located in Miami to Cali or Medellin, and convert it into pesos.

While the cartel was confronting this dilemma, there existed many people in Colombia that needed dollars in the United States. In 1967, out of fear that Colombia’s dollar reserves were depleting, resulting in inflation; Decree Law 444 was passed. “The controls [were] imposed to protect the government’s limited supply of foreign exchange reserves.”⁸ Decree Law 444 limited Colombians in the amount of United States dollars they could purchase annually from the National Bank (the only legal source of United States dollars in Colombia). Decree Law 444 also required purchasers to pay a premium exchange rate to obtain dollars from the government. Finally, Decree Law 444, required importers to disclose the types of items being imported, which resulted in purchasers making additional payments of taxes and duties to the government. Law 444 which predated marijuana and cocaine smuggling eventually resulted in the creation of the BMPE.

Originally the BMPE in Colombia served as a way to send money to friends and relatives living in other countries (especially the United States), as well as a way for Colombians to accumulate stable United States dollars as a hedge against an unstable Colombian Peso. The BMPE was especially needed by Colombians to obtain dollars needed for travel to the United States for either business or pleasure, since the limitations of the law made no exceptions or allowances for even these purposes. During this period, dollars were usually purchased by black marketers from visiting tourists or businessmen to Colombia, who were paid a premium above the “official” government exchange rate. The black marketers then sold these dollars to their Colombian clients at a percentage above the rate they paid, which was still cheaper than the government price of the dollars at the national bank.

During the 1980s, the black marketers needing dollars in the United States, and the cartel families needing pesos in Colombia came together. The result was the BMPE we have today, which has been estimated to handle up to eighty-five percent of the monies owed to the cartels from the sale of cocaine in the United States.⁹ The billions of drug dollars from nationwide drug sales that flow back to the major cities of Miami, New York, and Los Angeles do not remain idle and accumulate. Instead, they are used to purchase machinery, replacement parts, new technologies, and other equipment for Colombian industry and business. “United States exports that are purchased with narcotics

7. David Marshall Nissman, *The Colombia Black Market Peso Exchange*, 47 U. S. Atty’s USA Bulletin No. 3, at 31 (June 1999) [hereinafter *Nissman*].

8. Grosse, *supra* note 2, at 1193.

9. Grosse, *supra* note 2, at 1198.

dollars through the BMPE system often include household appliances, consumer electronics, liquor, cigarettes, used auto parts, precious metals, and footwear.”¹⁰

C. *Players in the BMPE*¹¹

In order to better understand the workings of the BMPE, both in the United States and in Colombia, it is necessary to identify the members that make it work and their respective roles.¹²

The Cartel Family

Each cartel whether from Cali, Medellin, or the North Atlantic is comprised of several families. It is a certain family (and its members and associates) that is responsible for the production, transportation, and distribution of each load of cocaine that is imported into the United States.

The Narcotics Trafficker

It is this individual and his organization, which directly imports or receives loads of cocaine from the Cartel, and is responsible for its distribution to lower level distributors. This individual or organization is also responsible for the collection of monies generated from the sale of cocaine, and its remittance to the cartel family.

The Financial Manager

In each individual cartel organization, there is a person or persons involved in the bookkeeping responsibilities of the organization's business. This person keeps track of the monies owed to the organization, and is advised when monies are ready to be collected from the different narcotics trafficking organizations. When these monies are ready to be collected, the financial manager contacts major money brokers in Colombia and sells these dollars to them in multi-million dollar lots at discount exchange rates.

10. 12 FinCen Advisory, *supra* note 4, at 2. In addition, the following was also found at the same location and should be noted: “Because the [BMPE] operates at the intersection of the United States financial and trading systems, attention is being directed both to the international trade community and the financial community. Thus, the United States Customs Service is issuing a ‘Trade Advisory’ concerning ‘Black Market Peso Brokering’ to United States exporters.”

11. This section is based upon information obtained by the author while conducting investigations involving the Black Market Peso Exchange.

12. See Appendix A & B-Flow Charts.

The Major Money Broker

The major money broker is the key component of the BMPE. He purchases the dollars in multi-million dollar lots from the cartel financial manager at a bargain exchange rate, and is usually given a period of thirty days to pay for these dollars with their equivalent amount in pesos. These multi-million dollar lots are then broken down and are sold in smaller quantities to money exchangers at a premium above that the major broker paid.

The Money Exchanger

The money exchanger is the lower level money broker, who after purchasing lots of dollars, sells these smaller quantities of dollars to even lower level exchangers (at a premium) or to Colombian businessmen or tourists; whose activities require the purchase of dollars for use in the United States.

The Money Exchanger's "Associate" in the United States

The "associate" in the United States will usually receive the drug dollars directly from the cartel representative in the United States, or a member of the trafficker's organization. The associate receives the money concealed in boxes, shopping bags, or suitcases filled with currency. The associate is the individual who "cleans" the money through a variety of methods, and then delivers them to their intended destination. The destinations include American bank accounts, American vendors of goods exported to Colombia, and to specified individuals located in the United States.

The Consumer or Client

The main clients of the BMPE are Colombian businessmen, who pursuant to Colombian Decree Law # 444 are limited in the number of dollars they can legally purchase from the national bank. The BMPE is also utilized by Colombians traveling abroad who wish to have sufficient spending money, and by Colombians who stash dollars into bank accounts in the United States as a protection against political and economic instability. As Professor Grosse stated:

[O]n the demand side for dollars are Colombian businesspeople, who seek to obtain dollars for their business needs and/or to hold their wealth overseas. These two motives are the basic ones in virtually all of the demand for black market dollars. The businesspeople who buy these dollars tend to deal in fairly large quantities of money (e.g. \$US

10,000 or more), and they generally want to keep the dollars outside of Colombia.¹³

The consumer pays the money exchanger when the delivery of the purchased dollars has been confirmed. The payment is made in Colombia, and is made in pesos. The demand in Colombia for these black market dollars is quite high, since Law 444 restricted the purchase of legal dollars each year per Colombian citizen. The plethora of drug dollars available resulted in the price of dollars at an exchange rate usually twelve to fifteen percent below the official government rate. Therefore, not only are the black market dollars cheaper to purchase, but their purchase leaves no "official" paper trail which results in additional duties or taxes. The use of the BMPE also avoids unwanted attention to a businessman's activities and assets by government officials (the method of delivery can also be more convenient as well). As a result, the currency black market is regarded as an institution in the Colombian economic way of life.¹⁴

D. *The Mechanics of the BMPE*

In order to understand the various applications of anti-money laundering laws, it is necessary to understand the mechanics of the BMPE, which consists of two interrelated activities, one occurring in Colombia (the purchasing of the accumulated drug dollars in America), and the other occurring in the United States (the actual delivery of the drug dollars to the money exchanger's associate in the United States).

1. The Purchase of the Dollars in Colombia¹⁵

The following testimony before a United States Congressional Committee was provided by a former moneybroker detailing the manner in which moneybrokers purchase the drug dollars from the cocaine cartels:

Financial representatives of the cartel, commonly known as 'Duros' (the hard ones), would be contacted daily by the brokers, in order to ascertain the amount of United States dollars available in the United States for brokering on the Colombian black market. The broker would ask who got 'crowned' that day. The term is from the game of 'checkers,' where a piece moves across the board, gets crowned, and starts moving back to his own side. This represents

13. Grosse, *supra* note 2, at 1197.

14. In fact BMPE exchange rates are even published in some Colombian newspapers. See Grosse, *supra* note 2, at 22.

15. This section is based upon information obtained by the author while conducting investigations involving the Black Market Peso Exchange.

the narcotics going across the board, being sold in the United States, and the profits being returned to Colombia. Brokers wanted to know who got 'crowned,' or who owned the money, so that they would know who in the cartel they would be responsible to in the event of loss or seizure. Often, the broker would be told who crowned the deal, whether or not they asked, to instill the fear of reprisal into the broker, so they would not steal or misappropriate funds.¹⁶

The BMPE process begins when the cartel financial manager is contacted by his cartel representative in the United States, and advised that a particular trafficking organization in Miami is ready to turn over monies owed to the cartel (in this example we will use the figure of \$1 million). The cartel financial manager will advise money brokers in Colombia of the \$1 million available in Miami. A money broker may purchase the \$1 million at a discounted rate of exchange of 1500 pesos to the dollar (given an official exchange rate of 1800 pesos to the dollar),¹⁷ and is given thirty days after delivery to remit the 1.5 billion pesos to the cartel financial manager.

The money broker then will advise money exchangers in Colombia of the \$1 million available in Miami. Four different money exchangers may individually purchase \$250,000 each of the \$1 million dollar lot at a discounted rate of exchange of 1600 pesos to the dollar (compared to the official exchange rate of 1800 pesos to the dollar). The money exchangers are given one to two weeks to repay the broker after the delivery of the dollars in Miami has been confirmed.

The money exchangers then advise their clients, Colombian businessmen, tourists, or people seeking flight capital, that they have dollars available in Miami. Five different customers may individually purchase \$50,000 each of the money exchanger's \$250,000 lot at a discounted rate of 1700 pesos to the dollar (compared to the official rate of 1800 pesos to the dollar). The customer when placing his order with the money exchanger specifies the manner of delivery (wire transfer, cash, checks, or money orders; destination; bank account, business, or person). The customer will pay the money exchanger in pesos when the delivery has been confirmed.

The pesos received, minus the money exchanger's and money broker's premium on the exchange rate, are then forwarded to the cartel family financial manager. In this method the cartel family receives the proceeds of their cocaine distribution activities without the dollars ever leaving the United States.

16. Nissman, *supra* note 7, at 32. Testimony from former money broker before the Subcommittee on General Oversight and Investigations, Committee on Banking and Financial Services, and United States House of Representatives, October 22, 1997.

17. The official exchange rate at the time of this writing is approximately 1950 pesos to the dollar. Therefore, related numbers should be adjusted accordingly.

2. The Delivery of the Dollars in Miami¹⁸

Once the \$1 million dollars available in Miami has been sold, it is necessary to deliver the \$1 million dollars from the hands of the drug trafficker to its new owner, the money exchanger and his "associate" in Miami. How does the drug trafficker know who to deliver this money to? Can any person approach the drug trafficker and say "show me the money?" No. The drug trafficker is extremely cautious about revealing any identifying information, because he does not want to get robbed or arrested. Therefore, a secretive system of code words, fake names, forwarding of beeper numbers, and covert meetings between unknown parties occur which conclude with the delivery of money to the money exchanger's associate in Miami.

First, when the money exchanger purchases his lot of \$250,000 from the money broker, he forwards the beeper number of his associate in Miami, who will receive the money. The money broker forwards this beeper number to the cartel financial manager, who passes it on to his representative in Miami, and then to the trafficker who is advised to deliver \$250,000 of the \$1 million to whoever responds to the beeper number and gives the correct code word.

Next, the trafficker in Miami will contact the associate in Miami via the beeper number, placing the number of a payphone and a numerical code into the beeper. The associate will recognize the numerical code as belonging to an anticipated money delivery and will know with which code word to respond. He will call the number in his pager and have a cryptic conversation with the trafficker. Once the correct code word is given by the associate, the trafficker will confirm the amount of the delivery [*i.e.* "250 dresses"]. The trafficker, without revealing any information about himself, will arrange a meeting with the associate, usually in front of a public place such as a restaurant, business, supermarket, or shopping mall. The trafficker will also obtain a clothing and physical description of the associate in order to identify him at the meeting location. The associate is usually at the mercy of the trafficker since the rules of the transaction are that the trafficker is responsible for the money until he makes an actual delivery to the associate. If he loses the money, he is held responsible for its repayment. Sometimes family members are even kidnapped by cartel members to ensure repayment. If he is unable to repay the debt, the cartel may take his life and/or the life of family members as a lesson to others. In light of this, the trafficker takes the utmost care to ensure that he is not the target of government surveillance or even worse, the target of a "rip-off" or robbery.

18. This section is based upon information obtained by the author while conducting investigations involving the Black Market Peso Exchange.

At the meeting location, once the trafficker has identified the associate, he may approach him with a bag, box, or suitcase of money in hand. At this point the trafficker may verify the associate by asking his name and password; and upon proper verification turn the money directly over to him, and depart the area, never to meet again.

An alternative scenario may consist of the trafficker approaching the associate and asking for the associate's vehicle. The trafficker takes the associate's vehicle to a nearby location where the \$250,000 is placed into the associate's vehicle and returned to him. Immediately after the delivery has been made the trafficker will contact the cartel representative to confirm delivery, and the associate will contact the money exchanger to do the same. The cartel representative and the money exchanger will then confirm delivery with the cartel financial manager.

a. Placement

Placement has been called "the most difficult step for would-be money launderers."¹⁹ Once the money exchanger's associate has received the box, bag, or suitcase full of money, the placement or initial laundering of the money begins. Through the placement phase, the associate further conceals the illegal source of the money by placing it into the stream of commerce in the manner requested by the money exchanger's client.

*b. Destinations and Manner of Delivery*²⁰

One of the benefits to utilizing a particular money exchanger is the manner in which the client (or his recipient) may receive dollars in United States currency, checks, wire transfers, or money orders.

Cash

The payment of purchased dollars in cash may be the easiest method for the associate, since he only has to count the \$250,000 received and separate it into the five sections of \$50,000 for each individual client. The associate will follow the client's instructions which may direct that cash dollars delivered to a United States business which is holding an account payable owed by the client; placed in the client's United States bank accounts; or delivered to a client's associate in the United States.

19. Scott Sultzer, *Money Laundering: The Scope of the Problem and Attempts to Combat It*, 63 TENN. L. REV. 143, 235 (1995).

20. This section is based upon information obtained by the author while conducting investigations involving the Black Market Peso Exchange.

Checks

Some money exchangers maintain a coterie of bank accounts in the United States under nominees' names. Rather than delivering cash to the client's destinations, they will deliver United States checks drawn on their bank accounts. This method requires that a money exchanger control many different accounts; so that deposits can be spread to different banks and branches to avoid suspicion.

'An account smurfer,' who is a person acting for a foreign money broker opens numerous checking accounts in the United States using real and fictitious names. . . . Once the accounts are opened, the account smurfer signs the newly issued checks in blank, leaving the payee, date and amount lines blank. He sends the signed blank checks to the money broker in the foreign country, usually by courier. . . . An account smurfer may open as many as two dozen checking accounts in this fashion. It is not uncommon . . . for brokers to have 'more than 20' of these United States checking accounts available at any given time.²¹

In this laundering scheme, when the associate receives the \$250,000 in Miami; he may break that money up and deposit \$7,000.00 the first day in each of the ten checking accounts he controls. When ten accounts are used and \$7,000.00 is deposited in each account, the amount placed will total \$70,000.00. The next day he can deposit \$6,000.00 in each of these accounts in order to dispose of another \$60,000.00. The following day he can deposit \$5,000.00 in each of these accounts and dispose of another \$50,000.00. In the end a total of \$250,000.00 will be disposed of in this manner in only a short length of time.²²

The reason that the exchanger would risk depositing funds in United States bank accounts, relates to the fact that such activities mean greater profit for him. When the money broker could only deliver cash dollars to his client's United States destinations, he was limited to only clients that needed that particular service. By placing the \$250,000 in American bank accounts, the money broker can now sell checks drawn on these accounts to clients who prefer transactions in checks. Utilizing checks has several advantages, including allowing the client to receive his checks in Colombia, and then negotiating the checks whenever he is in the United States. In addition, paying for account payables or making bank deposits in the United States by checks

21. 'Ms. Doe' Explains Ease of 'Account Smurfing' Under Bank's Nose, 9 Money Laundering Alert No. 2, at 7 (Nov. 1997).

22. In this scenario, the money launderer keeps the amount of each daily deposit into each account under ten thousand dollars, due to the currency transaction report requirement which will be discussed later in this paper.

creates less suspicion about the source of monies compared to using large amounts of cash.

Wire Transfers

Wire transfers are also utilized to deliver money to clients and their recipients, after the money has been deposited into bank accounts. The simplest form of wire transfer requires the associate to issue wiring instructions to the bank where his account is located. The client can direct the wire transfer to the account of an industrial company in the United States or to his own flight account.

Money Orders

Another manner in which money brokers provide negotiable instruments to their clients in Colombia is through the purchase of money orders. In a similar scenario as mentioned above, the associate receives \$250,000.00 in Miami. The associate, instead of delivering cash or depositing the money into checking accounts, converts the \$250,000.00 in cash to money orders. It is a very labor intensive endeavor, traveling to dozens of post offices, banks, and other vendors of money orders, but it is one of the prevalent ways that drug dollars are laundered. The money orders that are purchased in amounts from \$300.00 to \$2,000.00 each (depending on the vendor), are then shipped to the money broker in Colombia, who sells them at a premium to his clients.

II. A TYPICAL SCENARIO REGARDING GOVERNMENT SEIZURE OF BMPE MONEY²³

Federal agents receive information referring to the possibility of a certain subject being involved in money laundering activities. An investigative technique used by agents is to survey the subject to confirm or disprove the information, and take any enforcement action necessary. During the surveillance, government agents look for activity that is consistent with the actions of a money launderer as noted above. The activities include: 1) the use of payphones (especially if the subject has a cellular phone); 2) the meeting with subjects who have been identified as traffickers from other investigations; 3) the delivery or receipt of packages (boxes, bags, or suitcases); 4) the exchange of vehicles with other subjects; 5) the making of deposits at several different banks daily (including leaving the bank and then making a deposit at the drive-through); and 6) the purchase of large quantities of money orders.

23. See generally, Reyes, *supra* note 5, at 66.

With these activities in mind, we will join a task force of agents as they survey our money-laundering subject. The surveillance begins as the subject exits his residence carrying two small boxes and a briefcase, enters his vehicle with the items, and travels to a business which exports machinery parts to South America. The subject carries one of the small boxes into the business, spends ten minutes inside the business, and then departs empty-handed. Next, he travels two blocks away to a business that exports computers to South America. He carries another one of the small boxes into the business, spends ten minutes inside the business, and leaves without the box. The individual then travels to four different banks, and when he enters each bank with his briefcase, he makes two deposits inside, and then makes an additional deposit with the drive-through teller. He then uses several different payphones (even though he was observed using a cellular phone earlier), and meets with a second individual in front of a restaurant. The second individual meets with the first for approximately two minutes, obtains the first subject's keys and takes his vehicle to a parking lot two blocks away. At the parking lot agents observe the second individual retrieve a suitcase from the trunk of another vehicle and place it inside the trunk of the first subject's vehicle. The second individual returns the vehicle to the first individual. The second individual leaves the area and is lost by the surveillance units. Surveillance units subsequently conduct a vehicle stop on the first individual and receive consent from him to search his vehicle.

In the trunk compartment of the subject's vehicle a suitcase containing \$250,000.00 in United States currency is discovered. In the subject's briefcase are deposit receipts for twelve different bank accounts, each receipt indicating that a cash deposit of \$8,000.00 was made. In the briefcase are also three separate bundles of money, each wrapped with rubber bands, and each bundle containing a deposit slip indicating an \$8,000.00 deposit. The deposit slips belong to three different accounts at a bank that differ from the other banks visited earlier.

During an interview, the individual denies any knowledge of the suitcase of money in his trunk, advising he never saw it before, and has no idea where it came from. The individual also denies knowledge of the deposit receipts and planned deposits in his briefcase; as well as denies visiting any banks or meeting with any other persons, or delivering boxes to any businesses.

Interviews of employees at the machinery parts business and the computer business advise agents that the individual brought in a box of money containing \$50,000.00 in United States currency to be applied to an account of a Colombian businessman who had ordered goods for export to Colombia.

A police narcotics detection dog called to the different seizure locations reacts positively to the presence of narcotics to each box, briefcase, and suitcase containing money. The agents seize the two boxes of money advising the employees of the business that they are seizing the money as proceeds from

illegal drug trafficking. The suitcase and briefcase containing the money and deposit slips are seized by the agents for the same reason.

III. THE AUTHORITY TO FORFEIT MONEY AND ARREST MONEY LAUNDERERS

Unlike some tee-shirts, when it comes to money laundering enforcement, "one size (or law) does not fit all." There are a variety of money laundering schemes that exist, and even when dealing with the narrow issue of BMPE monies, a single law stating that BMPE transactions are illegal does not exist. The government derives its authority to seize money and arrest money launderers based upon the anti-money laundering law that best applies to the set of facts of each case. The government may even seek to forfeit money using more than just one statute, under the belief that if the court does not agree with the government's grounds to forfeit under one statute, they may on the other.²⁴ We need to examine the different anti-money laundering laws in order to determine how and when they can be applied to BMPE transactions.

A. *Civil Forfeitures:*

21 U.S.C. § 881 states:

(a) Subject Property-The following shall be subject to forfeiture to the United States and no property right shall exist in them: . . . 6) all moneys, negotiable instruments, securities, or other things of value furnished by any person in exchange for a controlled substance, . . . all proceeds traceable to such an exchange. . . .²⁵

18 U.S.C. § 981 states:

(a)(2) the following property is subject to forfeiture in the United States: (A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5313(a) or 5324(a) of Title 31, or of section 1956 or 1957 of this title, or any property traceable to such property.²⁶

Based upon the above statutory law, the United States government can seize BMPE monies when they are traceable to an exchange of a controlled substance, used in structuring activities (31 U.S.C. § 5324(a)), and/or involved

24. Telephone Interview with William H. Beckerleg Jr., Ass't U.S. Att'y, Asset Forfeiture Div., So. Dist. of Fla. (Sept. 14, 1999).

25. 21 U.S.C. § 881(a)(6) (1994).

26. 18 U.S.C. § 981(a)(2)(A) (1994).

in money laundering (18 U.S.C. § 1956). What is meant by traceable to an exchange of a controlled substance? Does the government have to trace seized proceeds to a specific narcotics transaction? No, courts have held that seized proceeds do not have to be traceable to a specific narcotics transaction.²⁷ Instead, the government must show only that there was probable cause to believe that the proceeds are traceable to an exchange of a controlled substance.

1. Issues in BMPE Forfeiture Cases

a. *Standing in Check Cases*

In our hypothetical, the government would usually move to forfeit the fifteen bank accounts involved in the seizure. If you are the client who purchased checks on the BMPE, do you have standing to petition for the seized monies? Do check holders have standing to petition for seized monies? The courts have held that such check holders have no standing. In *United States v. \$500,000*,²⁸ the court held that a claimant must demonstrate "an ownership or possessory interest in the property seized."²⁹ Even attempts to argue that such checks were an assignment of funds have been in vain. In *United States v. \$4,255,000*,³⁰ the court relying on the Uniform Commercial Code and the Florida Statutes Annotated stated that "[a] check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee . . . and the drawee is not liable on the instrument until he accepts it."³¹ Since a possessory interest is required to have standing to petition for the seized monies, and the courts have held that checks are not even mere assignments, such a client check holder would not have the necessary standing to petition for the seized monies.

b. *Burden of Proof*

In a civil forfeiture the government has a great advantage. Once the government establishes probable cause for the seizure, the burden is shifted to the claimant to overcome the government's claim. In *United States v. All Funds On Deposit in any Account Maintained at Merrill Lynch, Pierce, Fenner & Smith*,³² the court referring to 19 U.S.C. § 1615 stated, "the burden of proof is on the claimant, [p]rovided that probable cause shall be first shown for the

27. *United States v. Blackman*, 904 F.2d 1250, 1257 (8th Cir. 1990).

28. *United States v. \$500,000*, 730 F.2d 1437 (11th Cir. 1984).

29. *Id.* at 439.

30. *United States v. \$4,255,000*, 762 F.2d 895 (11th Cir. 1985).

31. *Id.* at 907.

32. *United States v. All Funds On Deposit in any Account Maintained at Merrill Lynch, Pierce, Fenner & Smith*, 801 F. Supp. 984 (E.D.N.Y. 1992).

institution of such suit or action, to be judged . . . by the court."³³ Therefore, if the court rules that the government has sufficient probable cause to establish that the seized monies are traceable to narcotics trafficking, the burden is then on the claimant to prove that the money came from another source, or that the claimant is an innocent owner.

Making the Government's Burden

In order to forfeit seized monies, the government must establish probable cause that the seized monies are traceable to an exchange of a controlled substance. The government is not required, however, to connect the seized monies to a specific narcotics transaction.³⁴ To establish probable cause, the government is allowed to use witness statements, circumstantial evidence, and even hearsay.³⁵

The Use of Circumstantial Evidence

The types of circumstantial evidence that can be introduced are almost unlimited, as long as it is related to establishing probable cause. In *United States v. Fifty Seven Thousand, Four Hundred and Forty-Three Dollars (\$57,443.00)*,³⁶ the government used the following circumstantial evidence to establish probable cause:

(1) the surreptitious nature of the meeting (when the monies were retrieved); (2) the small denominations involved; (3) the airtight packaging of the money; (4) the fact that a dog alerted to the trace presence of illegal narcotics on money . . . (5) the fact that Ms. Neyla-Dunlap originally lied to police when she claimed not to have any large amounts of cash at her home; and (6) the fact that Ms. Neyla-Dunlap immediately went home after being questioned by federal agents.³⁷

Other examples of circumstantial evidence that courts have allowed to be introduced can be found in the following cases. *United States v. U.S. Currency, \$83,310.78*, held that possession of large amounts of cash "is strong evidence that the money was furnished in return for drugs" and may be used to show

33. *Id.* at 989.

34. *Blackman*, 904 F.2d at 1257.

35. *United States v. \$2,500 in United States Currency*, 689 F.2d 10, 16 (2d Cir. 1982).

36. *United States v. Fifty Seven Thousand, Four Hundred and Forty-Three Dollars (\$57,443.00)*, 42 F. Supp. 2d 1293 (S.D. Fla. 1999).

37. *Id.* at 1301.

probable cause in support of forfeiture.³⁸ *United States v. Thirteen Thousand Seven Hundred & Fifteen Dollars in U.S. Currency*,³⁹ held that "the fact that a claimant lied to federal officers during the seizure of cash may show probable cause that the money was derived from illegal drug transactions."⁴⁰

It must be recognized that in most cases involving the seizure of large quantities of United States currency; the government will have the upper hand once it has established probable cause for the seizure. Unless the petitioner can prove that the monies are not from drug trafficking, or otherwise contradict the government's assertion; a potential claimant may be wise to choose to agree to some type of settlement, or to forgo a claim.

c. Defenses- Legitimate Source and Innocent Owner

Does the client of a money exchanger have any defense when the government has seized his BMPE money? In the above scenario, the clients who had their money delivered to the machinery parts business and the computer export business may suffer the loss of the money. The client cannot look for remuneration from his money exchanger since the unwritten rules of the BMPE are that once delivery has been made, the money exchanger is no longer responsible for the client's money. In the scenario, the owners of the businesses would probably not credit the customers' accounts, since the government seized the money from them. The client, therefore, takes the loss except for his claim to the seized monies.

The claimant, by a preponderance of evidence must overcome the government's claim that the money derived from drug trafficking. The claimant must prove either the money did not come from drug trafficking or other specified unlawful activity; or the claimant was an innocent owner; not knowing that the money came from drug trafficking.

Other Sources of BMPE Money

Are there any legal sources of BMPE money? Professor Robert Grosse in his article *Colombia's Black Market in Foreign Exchange*, advised that during the late 1980s and early 1990s, drug trafficking provided approximately 60% of the money used on the Colombian Black Market⁴¹ (of which the BMPE was the major component). According to Professor Grosse, other sources of black market funds were from the sale of coffee, gold, and emeralds in the United

38. *United States v. U.S. Currency* \$83,310.78, 851 F.2d 1231, 1236 (9th Cir. 1988).

39. *United States v. Thirteen Thousand Seven Hundred & Fifteen Dollars in U.S. Currency*, 736 F. Supp. 135 (E.D. Mich. 1990).

40. *Id.* at 137.

41. Grosse, *supra* note 2, at 1198.

States which include 10% of the market,⁴² the sale of cattle in border areas with Venezuela and Ecuador (10%),⁴³ the transfer of funds by Colombians living abroad to their families (10%),⁴⁴ and the return of capital by Colombian businessmen (10%).⁴⁵ Professor Grosse also cited several other sources that agree with the sixty-percent figure, including one money exchanger ("cambista") who also made a distinction between black market monies inside of Colombia and the BMPE. This "cambista" estimated that about 60% of the supply of black market dollars come from narcotraffic-and virtually all of that (85%) is dollars delivered outside of Colombia.⁴⁶ Unless the claimant can prove that his money exchanger obtained the dollars from a legitimate source, his claim will fail.

Innocent Owner

Should courts accept an argument that the claimant did not know the BMPE money came from drug trafficking? One author stated:

To prove innocent ownership a claimant must credibly testify only that he did not know his cambista had any involvement in money laundering. The claimant must do no more. Requiring a claimant to have asked the cambista where he purchased his dollars would be an exercise in futility If he reveals his source of funds he runs the risk that his customers will deal directly with each other.⁴⁷

Courts should not accept the argument that the claimant did not know the BMPE money came from drug trafficking. The fact that BMPE money comes from drug trafficking is common knowledge in Colombia. In *United States v. Basler-Turbo-67*,⁴⁸ the court held that the "person who knows property was purchased with funds traceable to the black market in Colombia is not an innocent owner; that black market funds come from drug dealers is common knowledge in that country."⁴⁹

42. Grosse, *supra* note 2, at 1197.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 1197.

47. Alan S. Fine, *Of Forfeiture, Facilitation, and Foreign Innocent Owners: Is a Bank Account Containing Parallel Market Funds Fair Game?*, 16 NOVA L. REV. 1158, 1159 (1991-1992).

48. *United States v. Basler-Turbo-67*, 906 F. Supp. 1332 (D. Ariz. 1995).

49. *Cases Interpreting the Federal Money Laundering Statutes and Related Forfeiture Provisions* 18 U.S.C. §§ 1956-57 and 18 U.S.C. §§ 981-82, U.S. Dep't of Justice, *Federal Money Laundering Cases*, II-19 (January 1999)[hereinafter *Cases*].

During October 1997, one money exchanger gave the following testimony as to the prevalence of the BMPE in Colombia, before a United States congressional committee:

[u]pon my introduction to the business, I was amazed at the large number of brokers. In Colombia, brokers often operated in what can best be described as a flea market atmosphere. In Medellin, a shopping mall housed dozens of small offices, each occupied by a money broker. Importers shopped for United States dollars at the mall, traveling from office to office to get the best black market exchange rate.⁵⁰

Therefore, unless a claimant demonstrates some unique situation, which should exclude him from the application of this rule, client/claimants of seized BMPE money should not be able to assert an innocent owner defense.⁵¹

An Innocent Owner; The Rare Exception

One case in which a defendant was able to successfully counter the government's claim was *United States v. Funds Seized From Account Number 20548408 At Baybank, N. A.*⁵² In this forfeiture proceeding, the court recognized that the petitioner, who purchased \$100,000 in money orders in Colombia from a broker, was too young and unsophisticated to really understand the structuring activity. The court also observed that the law the petitioner had knowledge of, the declaration of monetary instruments over \$10,000 when brought into the country; was complied with by the petitioner.

The author finds that Caicedo, who had no prior experience in such matters, was unaware at the time of the concept of structuring and, reasonably relying on the advice of . . . a longtime family friend and respected member of the community who had previously purchased dollars from Ordonez, did not in fact believe or have knowledge that the money orders he purchased resulted from structuring transactions or that their initial purchase by the payors was illegal under the laws of the United States. The author credits Caicedo's testimony that at the time of these transactions he was unaware of the existence of . . . statutes that require currency reporting and forbid structuring, respec-

50. Nissman, *supra* note 7, at 32.

51. It should be noted that using the above rules, BMPE money sold as checks and traceable to other bank accounts (flight accounts) or purchases of property could result in the seizure of those accounts or property purchased.

52. *United States v. Funds Seized From Account Number 20548408*, 1995 WL 381659 at *1 D. Mass.).

tively, and find that he was therefore "without knowledge" within the meaning of 18 U.S.C. § 981(a)(2).⁵³

B. *Criminal Sanctions and Imprisonment*

The two principal weapons in the United States government's arsenal against the BMPE are the federal statutes 31 U.S.C. § 5324 and 18 U.S.C. § 1956, dealing respectively with structuring and money laundering.

1. Reporting Requirements and Structuring

31 U.S.C. § 5324 Structuring transactions to evade reporting requirement, states:

(a) Domestic coin and currency transactions-No person shall for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section-(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.⁵⁴

During the 1980s, drug traffickers would bring boxes and suitcases of drug dollars directly into banks. To deter this activity the government began to require that any deposit of cash over ten thousand dollars needed to be accompanied by a currency transaction report (CTR). This report identifies the depositor of the cash by name, address, account number, and it also identifies the source of the cash to be deposited.⁵⁵ To avoid the reporting requirement and preserve their anonymity, drug traffickers and money launderers began to structure their cash deposits into amounts under the ten thousand-dollar threshold. 31 U.S.C. § 5324 (a)(3) makes this structuring activity illegal.

In the government surveillance, the individual violated section 3 of this statute by structuring his transactions to avoid the currency-reporting requirement. The individual possessed \$120,000 in cash, of which \$96,000 was deposited into twelve different accounts at three different banks. Found in the subject's briefcase was the remaining \$24,000 with deposit slips indicating that the money was to be deposited into three separate accounts at different banks than those visited earlier in the day. The subject's use of so many accounts in an organized manner demonstrates his willful intent to avoid the reporting requirement. His use of the drive-thru teller after making two deposits inside

53. *Id.* at 7.

54. 31 U.S.C. § 5324(a)(3) (1994).

55. 31 U.S.C. § 5313(a) (1994).

each bank demonstrates the subject's willful intent to avoid drawing suspicion to his activities. He further avoided the reporting requirement by structuring each deposit into an amount below the \$10,000 reporting threshold.

The individual's conduct during these transactions was willful and with the intent to avoid the currency reporting requirement. By contrast in *Ratzlaf v. United States*,⁵⁶ the court found that the defendant's conduct in avoiding the reporting requirement was not willful, since he lacked knowledge that an attempt to structure a financial transaction was illegal.

A violation also occurs when the money exchanger's associate converts the currency received into structured purchases of money orders. Whether the scheme is to avoid the currency reporting requirement by structuring transactions of cash deposits into checking accounts or through the purchase of money orders (or any other negotiable instrument); such a transaction is a violation of this statute. Besides subjecting the monetary instruments to forfeiture, the violation is also punishable by a prison term of not more than five years. A violation involving more than \$100,000 in a twelve month period, enhances the penalty to a period of not more than ten years.⁵⁷

2. Money Laundering

18 U.S.C. § 1956 Laundering of monetary instruments, states:

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity - (A)(i) with the intent to promote the carrying on of specified unlawful activity; . . . (B) knowing that the transaction is designed in whole or in part - (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or (ii) to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than \$500,000 . . . or imprisonment for not more than twenty years.⁵⁸

An analysis of 18 U.S.C. § 1956 reveals that several elements are required to establish a violation. The first requirement relates to knowledge that the property involved in a financial transaction comes from a specified unlawful activity. Second, property involved is the proceeds of a specified unlawful activity, and third, the occurrence of a financial transaction. Along with these

56. *Ratzlaf v. United States*, 114 S. Ct. 655 (1994).

57. 31 U.S.C. §§ 5324(c)(1) & (2) (1994).

58. 18 U.S.C. § 1956(a) (1994).

requirements, a prohibited activity must also occur. These prohibited activities include that: 1) the transaction will promote the carrying on of the specified unlawful activity; 2) the transaction is designed to conceal or disguise the nature, location, source, control, or ownership of the proceeds; or 3) the transaction is designed to avoid a transaction reporting requirement.⁵⁹

a. Knowledge

The subject in the above scenario had the necessary knowledge to know that the money seized came from drug trafficking. "Knowledge may be shown by proof of willful blindness, deliberate ignorance, or conscious avoidance."⁶⁰ In *United States v. Rockson*,⁶¹ it was determined that "the money transmitter must have been deliberately ignorant of the source of the money that was delivered as large quantities of cash in paper bags at night by people who did not ask that it be counted."⁶² "Circumstantial evidence may be sufficient to establish the defendant's knowledge of the illegal source of the money where defendant is not the perpetrator of the underlying offense."⁶³ In *United States v. Ortiz*,⁶⁴ the defendant's pager contacts, associations, and criminal history were sufficient to show that defendant knew the \$60,000 he turned over to a third party in a parking lot were criminal proceeds.⁶⁵ In *United States v. Hurley*,⁶⁶ even underlings who never dealt with drug dealers knew that money they were laundering was drug proceeds because no other cash-generating business would require the laundering of such huge quantities of cash.⁶⁷

In the above scenario, the subject possessed \$100,000 in cash in the boxes, \$120,000 in cash in the bank deposits, and \$250,000 cash in the trunk of his vehicle. The individual's conduct was consistent with subjects involved in the BMPE: 1) delivery of money to businesses in the United States for goods to be exported to Colombia, on the behalf of Colombians in Colombia; 2) the structuring of bank deposits into accounts, opened in different nominees' names, at several different banks, into amounts avoiding the currency reporting requirement, and in an organized manner (all \$8,000 amounts); 3) the covert nature of the meeting with the second person; 4) his use of payphones instead

59. *Id.*

60. Cases, *supra* note 49, at I-12.

61. *United States v. Rockson*, 1996 WL 733945 at *1 (4th Cir. Dec. 24, 1996) (unpublished).

62. Cases, *supra* note 49, at I-13.

63. *Id.* at I-14.

64. *United States v. Ortiz*, 127 F.3d 829 (9th Cir. 1997).

65. Cases, *supra* note 49, at I-14.

66. *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995).

67. Cases, *supra* note 49, at I-14.

of his cellular phone; 5) the delivery and return of his vehicle; and 6) his subsequent lies to agents reference his activities. All these activities taken in their totality establish the subject's knowledge that the monies involved were the proceeds of drug trafficking.

b. Proceeds are From a Specified Unlawful Activity (SUA)

"[T]he property in the financial transaction must in fact be the proceeds of an offense constituting 'specified unlawful activity,' or SUA. . . . [P]roving the property is SUA proceeds is easy, if the prosecutor can trace the money to a particular offense. It is not, however, necessary to do this. The courts unanimously hold that showing the specified unlawful activity generated the money or other property without identifying the date and place of the offense is sufficient. . . . [P]rosecutors commonly establish proof that the property is SUA proceeds with circumstantial evidence."⁶⁸

c. Financial Transaction

The next test is whether the seized money was involved in a transaction or attempted transaction. A "transaction" is defined in federal statute 18 U.S.C. § 1956(c)(3) as "a purchase, sale, loan, gift, transfer, delivery, or other disposition."⁶⁹ Were each of the scenarios involving the seizure of money a transaction or attempted transaction?

Delivery of the boxes of money to the two businesses constitutes a transaction under the statute's inclusion of the term "delivery." The deposit of money into a bank account is a transaction as determined by *United States v. Li*,⁷⁰ "[t]he transfer of property from one person to another is a transaction."⁷¹ The receipt of the money in the suitcase (the \$250,000), therefore is a transaction as determined by *United States v. Abrego*,⁷² *United States v. Otis*,⁷³ and *United States v. Gallo*.⁷⁴

68. Stefan D. Casella, *The Money Laundering Statutes* (18 U.S.C. §§ 1956-57), 47 U.S. Atty's Bulletin No.3, at 11 (June 1999).

69. 18 U.S.C. § 1956(c)(3) (1994).

70. *United States v. Li*, 55 F.3d 325, 330 (7th Cir. 1995).

71. Cases, *supra* note 49, at I-2.

72. *United States v. Abrego*, 141 F.3d 142 (5th Cir. 1998).

73. *United States v. Otis*, 127 F.3d 829 (9th Cir. 1997).

74. *United States v. Gallo*, 927 F.2d 815, 822 (5th Cir. 1991).

d. Prohibited Activities

Promotion of Activity

The subject in the above scenario acted in a way to promote the carrying on of the activity of drug trafficking. "Using proceeds to keep scheme going 'promotes' specified unlawful activity."⁷⁵ In *United States v. Savage*,⁷⁶ "money transfers provided defendants with resources to travel and continue contacting victims, thus promoting fraud scheme."⁷⁷ The purpose of the BMPE is to allow that the cartels' United States drug proceeds be made available to the cartels in Colombia in pesos. By the subject taking receipt of the suitcase of drug dollars, placing drug dollars into banks, and distributing purchased dollars pursuant to client's requests; the subject and his money exchanger partner are aiding the cartels in recovering the proceeds of their illegal activities. These proceeds are then used to process more cocaine for export to the United States, thus promoting their illegal activities.

Transaction Designed to Conceal Nature, Location, Source, Control, or Ownership of Proceeds, or to Avoid the Transaction Reporting Requirement.

The individual in the above scenario was involved in transactions designed to conceal or disguise the nature, source, control, and ownership of the proceeds, as well as to avoid the transaction reporting requirement. By delivering the two boxes of money to the businesses, the subject represented the money as belonging to the clients who ordered it, instead of its true source deriving from drug proceeds. By structuring the deposits into nominee accounts, the subject placed the funds into the stream of commerce and concealed their former nature as drug proceeds, as well as avoided the transaction-reporting requirement. By taking receipt of the suitcase of money, the subject entered into a transaction which if successful would eventually have concealed the source of the money as drug proceeds.

3. Application of Statute to Purchase of BMPE Money

Does the purchase of BMPE money by the client constitute a violation of 18 U.S.C. § 1956? In this note we have already stated that people in Colombia know that the source of BMPE money is drug trafficking, and that locations to purchase BMPE money are commonplace in Colombia; thereby generally satisfying the knowledge and illegal proceeds requirement. When Colombians purchase dollars from the BMPE, the financial transaction requirement is also

75. Cases, *supra* note 49, at I-33.

76. *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995).

77. Cases, *supra* note 49, at I-33.

fulfilled. When Colombians purchase dollars from the BMPE however, is there an intent to promote the carrying on of the illegal activity of drug trafficking?

a. Lack of Intent Among Colombians to Support Drug Trafficking

They see the capital coming in. They see the building going up. Yet, they know that behind the building is a dangerous gangster, and behind the money the bank is lending, there may be another dangerous gangster or a cartel of gangsters. They see the immediate benefits and not the danger to their economic system. Soon their banking system is controlled by shadowy underworld figures and the corruption it brings. The international community, led in large part by the United States, has hammered home the message worldwide that you cannot have a 'gangsterocracy' running your economy. Money laundering can present a threat to political stability, which is not just a criminal problem.⁷⁸

Colombian cartels have blown up airplanes in flight, killing 108 people, including ten children . . . assassinated a Colombian presidential candidate and scores of Colombian Supreme Court Justices, and murdered hundreds of innocent Colombian civilians and over 500 Colombian police officers. The cartels have paid for this carnage with billions of laundered dollars from drug sales in the United States.⁷⁹

The vast majority of Colombians who use the BMPE are decent, law abiding people who would abhor the thought that their use of the BMPE assists the drug cartels with these heinous activities. The Colombians who use the BMPE are for the most part businesspeople, who need the United States dollars to purchase the equipment necessary to promote their legitimate businesses. Other Colombians use the BMPE to stash away emergency monies in the United States, or to purchase technologies not available domestically. These are not bad people, or are they? One author has taken the following stance:

The courts have held that those who knowingly deal with drug traffickers do so at their own risk. A drug money broker with knowledge that he is aiding and abetting a drug trafficker is just as guilty as the drug trafficker. A money exchanger who knowingly aids and abets a drug money broker is just as guilty as the drug trafficker. A customer of a money exchanger who knowingly aids and abets a drug money broker by purchasing drug dollars through a

78. *Interview with Gerald E. McDowell*, 47 U.S. Atty's USA Bulletin No. 3, at 2 (June 1999).

79. Scott Sultzer, *Money Laundering: The Scope of the Problem and Attempts to Combat It*, 63 TENN. L. REV. 143, 235 (1995), quoting The Federal Government's Response to Money Laundering: Hearings Before the Committee on Banking, Finance, & Urban Affairs, 103d Cong., 1st Sess. 200-01 (1993) at 458 (statement of John J. Coleman, Assistant Administrator for Operations, DEA).

parallel market exchange with a cambio is just as guilty as the drug trafficker.⁸⁰

Is the customer of the money broker just as guilty as the drug trafficker? Will the United States continue to allow gangsters to enslave our people, mock our laws, and undermine our economy? The previous author gave this warning, which will be repeated here:

Those who choose to obtain dollars from the black or parallel market face an increased risk of litigation against the United States government. This risk if quantified, may prove to outweigh the differences in the original exchange rate and the parallel market rate. A prudent businessperson would be wise to choose the less risky method of purchasing dollars.⁸¹

Can the system be changed so that these people do not need the BMPE? The American and Colombian governments must look into ways currency laws restricting access to United States dollars may be changed to encourage the abandonment of the BMPE.

IV. CONCLUSION

Thirty-two years ago the belief was that an open market of dollars would result in the departure of capital from the country, immediately followed by inflation and economic chaos.⁸² A greater threat now looms: "[T]he threat is from cartels accumulating war chests of billions of dollars each year from the sale of drugs in the United States. This equates to power and their base of power continues to expand because it has been difficult to stem the flow of monies to them."⁸³

The cartels are able to hire armies of terrorists; resulting in the Colombian government ceding whole areas of the country to the cartels and their terrorists.⁸⁴ The invasion has started, it is time for the American and Colombian governments to act to dismantle the BMPE. Without the cartel's billions of dollars arriving so easily, the cartels will be hard pressed to finance any further battles.

80. Wilmer Parker, III, *Black/Parallel Markets: When is a Money Exchanger a Money Launderer?*, DICK. J. INT'L L., 423, 439 (Spring 1995).

81. *Id.*

82. Grosse, *supra* note 2, at 1193.

83. Sultzer, *supra* note 79, at 235.

84. Alastair Forsyth Hoxne, *A Nation at Bay*, *The Independent* (London), July 20, 1999, at 2.