PROBLEMS ENCOUNTERED IN

MONEY LAUNDERING INVESTIGATIONS

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The purpose of this study is to identify how the U.S. is responding to money laundering and what kind of problems arise while countering it, beginning with a detailed description of money laundering, its stages, typologies, impacts, and complications.

Due to the broad nature of this subject only three main issues form the focal point of this study: problems concerning the banking industry and other financial organizations, problems resulting from the limitations of law enforcement agencies, and problems arising from the lack of cooperation between and within financial institutions and law enforcement agencies.

Several probable solutions to the above problems are identified: Considering the financial industry, there are loopholes in the Bank Secrecy Act (BSA) and in other regulations that apply to the industry. Thus, there is a comparison of the Subjective Model vs. Objective Model in terms of reporting systems for financial organizations. On the law enforcement side, the priority is the need to update and upgrade their technology and investigation mechanisms in order not to fall behind the criminals. Finally, cooperation is something that can be achieved through mutual respect and understanding of the priorities of each side, which can be achieved by the creation of an upper agency of whose members represent both sides of the combat efforts.

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CHAPTER 1

INTRODUCTION

For the majority of crimes, the primary motive is money, as individuals and even states are differentially treated depending upon their economic power. Coupled with the peaceful atmosphere of the post-Cold War era, financial liberalization and globalization of countries has resulted in economic power replacing military and demographic power. In other words, money has become the unique criteria of power in the modern age. The power of money has penetrated every aspect of human life. Thus, within the crime world, it can be argued that money laundering is the pre-eminent crime.

Mackrell (1996) argued that money laundering is the process that makes crime worthwhile. It has the ability to give legitimacy and respectability to people who do not legitimately posses these qualities on a regular basis, and it unfairly transfers economic power from law-abiding taxpayers to criminals. This abuse of economic power surfaces in numerous social and equity issues, which, in turn, hamper the social structure. Most simply, it is a shift of income from the good to the bad. Predictably, this leads to the perception by some that crime does pay in spite of its predominantly negative consequences. Indeed, the real consequences of money laundering are more social than economic, and are very serious.

Quickstad (1996) noted, "money can change form as smoothly as water turns to ice. It can be converted to merchandise or real estate, moved overseas, laundered through dummy corporations, or put in a relative's name. These endless permutations make

following the money trail difficult but they are crucial"(p.51). On the other hand, in contrast with criminals who are limited only by their imagination, local and national law enforcement agencies are limited to combating crime within the confines of the law and their particular geographic jurisdiction. This raises the idea that where jurisdiction is confined, perspective is proportionally confined (Richards, 1999).

Purpose of the Study and Questions

Money laundering is a serious challenge to the maintenance of law and order within countries, and it threatens the integrity, reliability, and stability of governments, financial institutions, and economic life. Fueled by the development of high-tech telecommunications and financial liberalization and globalization, the entire world now experiences the threat of money laundering more than ever. This thesis is an attempt to identify solutions to the problems that law enforcement agencies encounter while investigating money-laundering operations.

This thesis provides a broad view of the problems surrounding money-laundering investigations, and proposes reliable and pragmatic solutions for each of the problems identified, in order to provoke the policy makers as they are formulating and standardizing the total combat of money laundering.

The five main questions answered in this study are:

What is the real scope of money laundering criminality? The real dimensions of the money laundering problem are far beyond conceptualization. Since the big picture is universally vague, it would be optimistic to expect concrete and reliable data concerning

money laundering. Therefore, one can only make relative estimates, which depend upon the data that is available.

How is the U.S. dealing with the money-laundering problem? How has the U.S. arranged anti-money laundering roles and responsibilities within itself? What kind of tools does the U.S. have? The U.S. is in the unique position of being the nation that developed both the first and the most powerful anti-money laundering laws and enforcement mechanisms.

What are the variables of money laundering investigation problems? Due to the broad nature of this subject, for the purposes of this study, only three main issues form the focal point: problems concerning the banking industry and other financial organizations, problems resulting from the limitations of law enforcement agencies, and problems arising from the lack of cooperation between and within financial institutions and law enforcement agencies.

What are the probable solutions to the problems that are identified? Considering the financial industry, there are loopholes in the Bank Secrecy Act (BSA) and in other regulations that apply to the industry. Thus, there is a comparison of the Subjective Model vs. Objective Model in terms of reporting systems for financial organizations. On the law enforcement side, the priority is the need to update and upgrade themselves technically and personally in order not to fall behind the criminals. Finally, cooperation is something that can be achieved through mutual respect and understanding of the priorities of each side.

What can be offered at the international level? Since the diabolical nature of money laundering crime carries the battle outside conventional borders, law enforcement must develop new strategies and policies in order to successfully tackle money-laundering criminality.

Methodology

As a review of the U.S.' anti-money laundering strategies, this study can be described as a "policy analysis". Beginning with a detailed description of money laundering, its stages, typologies, impacts, and complications, I concentrate on how the U.S. is responding to this crime and what kind of problems arise while countering it. This required conducting comprehensive policy research.

After completing the policy research, the next step is analyzing the results of the research. The problems of money laundering investigations are identified and evaluated. Finally, solution recommendations are made for these problems in light of the data gathered.

(1) The data for this paper encompasses five categories:

(2) Citations from books,

(3) Citations from journals and articles,

(4) Citations from published reports

(5) Citations from Internet sites,

After pointing out the data resources in general, it is useful to make another detailed classification, as follows:

First, data gathered from international organizations: There are some international organizations which regulate and combat international money laundering, such as the United Nations (UN), Interpol, the Financial Action Task Force (FATF), and the European Union (EU). The publications of such organizations are quite reliable and favorable because they present a comprehensive and objective perspective of all countries.

Second, governmental and national data: Since the United States is the first nation to develop extensive anti-money laundering laws and enforcement mechanisms reaching across its borders, it is generally easy to obtain U.S.-published resources. In this particular study, books and journals are the primary resources. Aside from books and journals, governmental reports have been particularly useful in terms of capturing the perspective of the U.S. Government. These reports, mainly published by the Federal Bureau of Investigation (FBI), the Drug Enforcement Agency (DEA), the Financial Enforcement Network (FinCEN), and the General Accounting Office (GAO), are quite beneficial, as they let researchers grasp the U.S.' national and international policies in combating money laundering criminality.

Finally, the Internet is an outstanding research tool with its unique accessibility to innumerable sources of data.

Limitations of the Study

Definitions of money laundering that differ from nation to nation create some limitations for this particular research, which is aimed at diagnosing the money-

laundering problem and making a number of specific solution recommendations. While nations with strong economies proclaim that money laundering is detrimental for both society and the economies of states, the perception of underdeveloped or developing countries is entirely different; they seem to be convinced that irrespective of its legality, it is still money, and, for the sake of their national economy, the flow of dirty money and its practioners should be attracted and encouraged. Thus, such nations provide fertile soil in which dirty money can easily grow and be laundered. Such misconceptions of the money-laundering problem prevent us from making valid academic generalizations.

Secondly, since this study is a review of money laundering investigation problems that U.S. law enforcement agencies encounter, it is noted that privacy and confidentiality issues are important variables that must be taken into account when addressing aspects of the problem. For law enforcement agencies, U.S. law requires certain prerequisites in order to check and trace accounts and transactions when customers are involved. Such procedures unsurprisingly create a natural immunity for criminals. In addition, Fedwire, one of the major electronic money transfer mechanisms in the U.S., is responsible for an incredible $800 billion per day of transferred funds. Accompanied by privacy barriers, it is considered that the $110 billion involved annually in money laundering is trivial when compared with the figure above. Thus, investigators seem to be ‘looking for a needle in a haystack’. This, in turn, prevents the conceptualization of the real picture of the money-laundering problem. Essentially, what we are trying to describe is the tip of iceberg, and the figures at hand are not entirely reliable or dependable.

Another limitation is that during the literature review, it was determined that while United States was the first nation to develop powerful anti-money laundering laws and enforcement mechanisms, it is still on the top of money laundering criminality, representing $110 billion of the annual world wide total of $300 billion. This individual controversy, in and of itself, creates a significant limitation for the study.

Fourth, in order to conduct efficient research in a field encompassing the federal and international perspectives of the U.S., one needs to have access to federal and other governmental agencies. Partly due to national security concerns, the governmental agencies relevant to this study provide such access to only U.S. citizens. As an international student at a U.S. university, I personally have encountered several negative incidents while attempting to access government information, which, in turn, hamper the quality of this study.

Finally, as the author of this paper, my lack of an Accounting and Finance background also limits the reliability of this study. The deeper I got in my research, the more I came to believe that it is crucial to have some acquaintance with finance and accounting, owing to the financial aspects of this particular subject.

Definitions

Money laundering

It is believed that the term "money laundering" was first coined in the United States in the 1920s because of the need to find a legal excuse for the sources of money that gangs were making illegally (United Nations Office for Drug Control and Crime

Prevention [UNDCP], 1998). At the time, money laundering was believed to be the 'Crime of 1900s'. With its escalating popularity, however, money laundering has proven to be the 'Crime of 21st Century' (Madinger & Zalopany, 1999).

Strandberg (1997) defined money laundering as "the process by which sums derived from illegal enterprises are transformed through one or more exchanges into apparently legitimate sums"(p.28). According to Richards (1999), "money laundering is the process by which one conceals the existence, illegal source, or illegal application of income and then disguises the income to make it appear legitimate" (p.43). Strandberg (1997) interpreted his definition by arguing that, "it means that criminals who commit crimes that result in big bucks have to do something with that money. They have to launder it, to make the money appear to be legitimate, so they can use or invest it without calling attention to themselves"(p.28).

Instead of wrestling endlessly with abstract definitions, it would be wise to address the main theme of money laundering: the primary goal, as clarified so far, is to hide the underlying criminal activity and to decrease the risk for the proceeds to be forfeited. Simply put, all such efforts are based on the principle 'to make dirty money appear clean'. Appearance is a crucial word because, according to American law, dirty money keeps its form irrespective of how many times it goes through the laundering cycle (Madinger & Zalopany, 1999). Thus, the question to be asked, as Bernasconi (1997) implied, is "what does a money launderer dread and try to avoid? Transparency. What is he looking for? Mechanisms of disguise and sealing off" (p.249). Complexity in the financial stage of the crime allows more proceeds to be laundered and keeps the

momentum going without being disturbed (Savona & Feo, 1997). Because launderers use a variety of monetary tools, and the quantity of laundered proceeds are enormous, it is far beyond the ability of investigators to easily trace and identify the total amount in question (United States General Accounting Office [GAO], 1991).

Another reality that seems to be neglected most of the time is that money laundering has two main components--the underlying crime, and the illegal gains--each of which deserves equal attention in order to successfully fight the problem. Due to a major misperception of the problem, law enforcement agencies historically identified money laundering as occurring only when the illegal gains were obtained through the underlying crime of drug trafficking. As a result, combating money laundering has remained restricted to the narcotics level, until now.

In contrast with the historical drug-derived sources perception, it is estimated that non-drug proceeds constitute a third to almost a half of the total illegal gains integrated to the U.S. financial system. Non-drug related crimes might be categorized as: gambling, smuggling, pornography, loan sharking, fraud, corruption, and criminal tax evasion (Savona & Feo, 1997). Likewise, governments, while trying to deal with terrorism, illegal firearms, securities fraud, and other types of international crime, have encountered a number of difficulties, most as a result of, so called ‘mistaken identity’. This key issue seems to have been caused by a misunderstanding of both money laundering and the business of criminals—namely the underground economy (Quickstad, 1996).

Recently, money laundering has evolved into an international and very complicated process, with the involvement of highly developed computers and

telecommunication devices, alternative financial services, the globalization of trade, and amplified travel opportunities. While exploring what has turned money laundering from a local and national crime to a complicated international one, Richards (1999) reached the conclusion that several events have coincided with this particular shift, such as “the creation of free trade zones like the European Union and 1986 North American Free Trade Agreement (NAFTA); the advent of the World Wide Web beginning in 1990; the collapse of the Soviet Union in 1991; and the commercialization of China”(p. III).

Rapid changes in international trade and banking have resulted in money circulating around the world. Within the U.S., one of the primary electronic funds transfer services for banks is Fedwire, which is based through the U.S. Federal Reserve Board (FRB). The volumes that are transferred electronically are outstanding; for Fedwire alone, the average amount is $800 billion a day. On the other hand, the Clearing House of Interbank Payments System (CHIPS)’s figure in 1992 was $437 trillion; in 1993 it was more than $450 trillion. Within these outstanding amounts circling the globe, criminal money can seem insignificant and quite demanding to trace (Fooner, 1994). Aside from this, numerous crime groups use specialists from related professions in order for their money laundering operations to be more complicated and successful. These specialists have been recognized as ‘money laundering experts’ such as lawyers and accountants who intentionally give their professional inputs to money laundering operations (Evans, 1997).

Assets

Madinger & Zalopany (1999) briefly defined assets as "items of value owned by a business or individual" (p. 409).

Cash

Madinger & Zalopany (1999) argued that the term cash has a variety of meanings. Cash can be coin or currency, as on the Currency Transaction Report (CTR) form. It can also be any form of direct payment other than credit, as at a car dealership. Generally, assets are coin or negotiable paper.

Clearing House Interbank Payments System CHIPS

According to (Madinger & Zalopany, 1999) Clearing House Interbank Payments System (CHIPS), processes electronic funds transfers. Operated by the New York Clearinghouse System, "95% of international interbank transfers go through CHIPS" (p. 410).

Cyberpayment

Wahlert (1996) defined cyberpayment as financial payments and transfers of monetary value conducted either over the Internet and/or through the use of so-called "smart cards".

Electronic Cash

According to Welling & Rickman (1998), electronic cash is "a claim on a party, usually the issuer, stored as a computer code on a plastic card or on the hard drive of a personal computer. In other words, electronic cash is basically a little speck of value in digital form that a computer can read"(p.3).

Monetary Transaction

As defined in the U.S. Constitution, “monetary transaction means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce of funds or a monetary instrument by, through, or to a financial institution” (Department of Justice, 2001).

Offshore

Madinger & Zalopany (1999) simplified the definition of offshore to “anywhere other than the United States (or the country you are in)” (p. 414).

Organized Crime

According to Albanese (1996), the most agreed upon definition of organized crime is “a continuing criminal enterprise that rationally works to profit from illicit activities that are often in great public demand. Its continuing existence is maintained through the use of force, threats, monopoly control, and/or the corruption of public officials” (p.3).

Specified unlawful activity (SUA)

According to Madinger & Zalopany (1999), SAU is “the listed crimes which form the basis for a money laundering prosecution under Title 18 USC, 1956” (p. 415). In this paper, the term *underlying crime* mostly is going to stand for SUA.

The Society for Worldwide Interbank Financial Telecommunications *(SWIFT)*

The Society for Worldwide Interbank Financial Telecommunications, located in Belgium, consists of 2,600 member institutions, and functions as a communications service to start funds transfers (Madinger & Zalopany, 1999).

Money Laundering Stages

As discussed previously, money laundering is typified as a cycle, aimed at providing clean appearing money in the end. As illustrated in Figure 1, FinCEN depicts the money-laundering cycle in three stages: placement, layering, and integration (Madinger, & Zalopany, 1999).

Placement is the first step of the money laundering cycle. Placement is the phase in which ill-gotten funds are converted to a more convenient and less suspicious form in order to be easily inserted into the financial system (Richards, 1999). Typically, placement techniques include a change of currency to a different form, or physical relocation of it (Madinger & Zalopany, 1999).

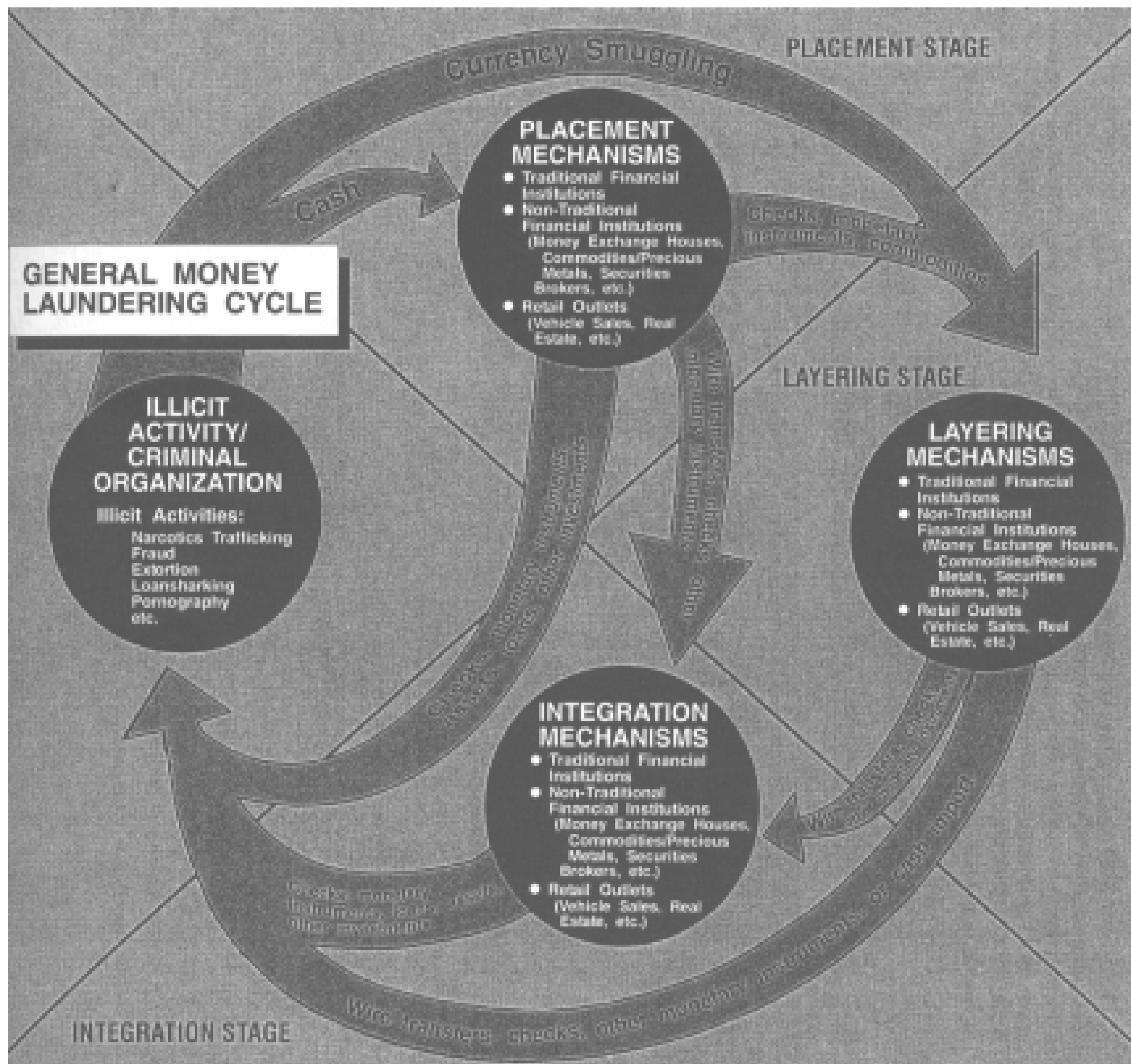

FIGURE 1.1. Money laundering cycle. From: Madinger, J. & Zalopany, S.A.1999. Money Laundering: A Guide for Criminal Investigators. Boca Raton, FL: CRC Press LLC, p. 17. Copyright 1999 by CRC Press LLC.

Predictably, for the launderers, placement is the hardest and the weakest stage due to the fact that most financial crime initially produces a large amount of cash, which is difficult to cover up, and attracts the attention of financial institutions. Because 450 U.S.

paper bills weigh 1 pound, it is difficult to conceal and transfer large volumes. The Department of Justice has determined that the cash gained from the street sale of heroin is approximately ten times heavier than the substance itself (Richards, 1999). Hence, placement of illegal funds depends on both businesses with heavy cash traffic and all other kinds of financial institutions (Madinger & Zalopany, 1999).

Once placement has been accomplished, the next step of money laundering is layering. The purpose of layering is to separate illegal gains from their origins by generating a number of layers of financial transactions, thus minimizing the impact of a paper trail (Savona & Feo, 1997). Layering consists of conducting a chain of financial transactions, which are typically similar to legitimate ones. The most common technique of layering is wire transferring the proceeds to offshore-banking nations, which supposedly have strict bank secrecy regulations. Once they leave one nation, it becomes very difficult to trace the ill-gotten funds. The success of layering is directly proportional to one's success at transferring the funds through several countries either electronically, or in cash (Richards, 1999).

Integration is the third step, involving the adaptation of illicit gains into the financial system with a mask of legitimate origin (Savona & Feo, 1997). In this stage, the launderers are attempting to make the source of the proceeds seem to be legal, which forces them engage in creative schemes (Madinger & Zalopany, 1999). The schemes in the integration phase make laundered funds appear like normal investments, loans or reinvestment of earnings. After a successful process of placement and layering, the revealing and identification of laundered proceeds in this stage is only possible by

undercover penetration into the scheme, or with the help of a source acquainted with the real form of the funds (Savona & Feo, 1997). Savona & Feo (1997) argued that "the market of money laundering services is thus, demand driven. The combination of supply and demand factors influences the selection of the preferred laundering strategy, schemes, methods, and mechanisms" (p.46).

Money Laundering Typologies

Smuggling

Smuggling has been the most favored method of money laundering. Smuggling is achieved by moving bulk cash out from the U.S., which has strict bank reporting laws, to other nations, which typically have strict bank secrecy regulations. Smuggling is thus a manipulation of cash-reporting regulations that occurs at the U.S. border. After the placement and layering stages are completed, the funds are returned to the U.S. in the form of non-cash financial instruments. The DEA and U.S. Customs believe that $50 billion of illegal money is smuggled out of the U.S. each year (Richards, 1999).

Launderers have an inclination to trade small denomination bills for larger ones or to deposit cash and buy financial instruments because large amounts of cash attracts attention and involves the risk of theft and seizure (Savona & Feo, 1997). Considering recently enacted laws concerning the banking industry, this old but time-honored method seems to remain as a large problem for law enforcement.

Structuring or Smurfing

Structuring or Smurfing -named after the cartoon show The Smurfs- is a very typical money laundering method initiated to escape from the regulatory requirement that transactions exceeding a specific defined amount should be recorded or in some cases reported (Savona & Feo, 1997). In order for criminals to easily transfer funds out of the country, smurfs are used to divide large sums into smaller transactions that fall below reporting requirement thresholds. Therefore, practically, the transactions conducted by Smurfs should never exceed the $10,000 reporting amount (Richards, 1999).

The Use of Front Companies or International Business Corporations (IBCs)

The use of front companies or International Business Corporations (IBCs) is another money laundering technique. Any kind of heavy cash business is attractive as a front company, including jewelry stores, check-cashing businesses, travel agencies, import/export companies, insurance companies, liquor stores, racetracks, and restaurants. In addition, businesses dealing with goods that have unpredictable values, such as antiques and precious metals, are also preferable (Richards, 1999). Because they are generally exempt from currency reporting requirements, front companies are attractive to launderers and therefore are often used to intermingle illegal proceeds with funds from legitimate businesses (Alford, 1994).

IBCs, considered exempt companies, are entities operating primarily outside the country in which they are incorporated. They are effective avenues for money laundering because they offer fast formation, secrecy, low cost, low or no taxation, and minimal reporting procedures (The Bureau for International Narcotics and Law Enforcement

Affairs [BINLEA], 1999a). To exemplify, the most notorious money laundering case in which an international corporation was involved was the Bank of Credit and Commerce International (BCCI) Affair. BCCI, founded by Agha Hasan Abed, was an elaborate corporate spider-web aimed at evading regulation and control by governments. Richards (1999) noted that BCCI was unanimously identified as an "impenetrable series of holding companies, affiliates, subsidiaries, banks-within-banks, insider dealings and nominee relationships operating in 73 countries and free of governmental and regulatory control" (p. 93). It functioned in this manner in order to prevent a full understanding of BCCI's affairs. As Kerry & Brown (1992) noted, BCCI's criminality included:

> fraud by BCCI and BCCI customers involving billions of dollars; money laundering in Europe, Africa, Asia, and the Americas; BCCI's bribery of officials in most of those locations; support of terrorism, arms trafficking, and the sale of nuclear technologies; management of prostitution; the commission and facilitation of income tax evasion, smuggling, and illegal immigration; illicit purchases of banks and real estate; and a panoply of financial crimes limited only by the imagination of its officers and customers.

The techniques that BCCI used in the United States had previously been experienced and successfully performed in numerous Third World countries and in Europe. These included buying banks with the help of nominees, and getting their activities covered by reputable lawyers, accountants, and politically well-connected individuals. These techniques were vital to BCCI's success in the United States because it let BCCI overcome regulators (Kerry & Brown, 1992).

ABSCAM, on the other hand, was a case involving a dummy international corporation created by the Federal Bureau of Investigation in 1978 in order to identify and trap members of Congress who accepted bribes from Arabic businessmen in return for political favors. The FBI videotaped public officials receiving bribes. One senator and four members of Congress were eventually found guilty of bribery and conspiracy. A fifth member of Congress received other minor convictions (North Carolina State University, 2001).

Offshore Banks

Offshore banks, located in financial havens, have business relations primarily with foreigners. Offshore banks are exempt from many of the regulations that "onshore" financial institutions are subject to, such as taxes, capital reserve requirements, and governmental supervision. The main appeal of offshore banks is secrecy. Offshore banks carry out their business activities behind the wall of secrecy that money launderers need (BINLEA, 1999a).

Colombian Black Market Peso Exchange

Money is considered a commodity. Therefore, as a commodity, money can be bought, sold or traded. As the major currency worldwide, the U.S. dollar is in high demand in the mainstream financial world. In this regard, a criminal's ability to buy, sell, and trade U.S. dollars allows them to make outstanding profits from their illegal proceeds (Richards, 1999).

The Colombian black market peso exchange technique of money laundering is primarily used by Colombian drug traffickers, as a result of smuggling drugs into the

U.S. and the resultant need to return dirty money to Colombia. Because the Colombian Government restricts the exchange of the U.S. Dollar, drug traffickers recruit people who perform the Colombian market peso exchange on their behalf. It is believed that 30 to 50% of U.S. drug proceeds are laundered in this way (Richards, 1999).

The system works as follows:

(1) A Colombian drug cartel conveys drugs to the United States;

(2) The drugs are sold normally on the U.S. market and in the U.S. currency;

(3) The cartel sells its U.S. Dollars to the Colombian black market peso broker's agent. The U.S. currency is generally sold in a lower price that its value due to the fact that the broker is going to assume the risk of taking care of the legal reporting procedures until the dollars merge into the U.S. financial system;

(4) After the dollars are handed over to the peso broker in the U.S., the Colombia-based peso broker deposits an equivalent amount in Colombian pesos into the Cartel's account in Colombia. Practically, this is the moment that the Cartel has laundered its money because it has been able to transform its illicit dollars into legitimate-appearing pesos;

(5) In order to introduce the laundered drug dollars into the U.S. banking system, the Colombian broker and his agent perform numerous risky transactions;

The Colombian black market peso broker ends up with legal-appearing illegitimate U.S. Dollars to sell to Colombian importers who use these laundered dollars to purchase goods from the U.S. or other markets. Typically, those goods are conveyed to Colombia through smuggling in order to avoid Colombian law (BINLEA, 1999a).

Loanback

Known also as counter balancing loans, loanbacks have appeared as a new trend that is used in numerous countries in conjunction with cash smuggling. Basically, the launderer sends the illegitimate funds to another country through an associate, and then deposits them as a security or guarantee for a bank loan which eventually ends up in the launderer's country. This technique not only provides a launderer with a genuine appearing loan, but also offers favorable tax profits (Financial Action Task Force [FATF], 1997). The loanback technique will likely continue to be popular for the near future as it offers a mask of legitimacy for trafficker's proceeds, as well as security that is supported by legally processed payments derived from the hypothetical loan (Canada. Royal Canadian, 1997). Richards (1999) noted that "counterbalancing loans were commonly used by the related companies and banks controlled by the BCCI in its 18-year money laundering run" (p.57).

Conclusion

To conclude, money laundering is an inescapable fact of the modern age and regardless of its usual scope being complicated and reaching across conventional borders, it is still something that is controllable. While the solution for the problem seems to be unusual compared with traditional crime prevention applications, but the mission, in total, is not far beyond the existing capabilities of governmental agencies, depending on a proper diagnosis of the problem.

Above all, in order to successfully fight money laundering, a general understanding of its corroding impacts on society and the economy should be planted into people's minds. To begin with, powerful economies have always attracted dirty money to flow into their territories. Typically, large amounts of illegitimate proceeds merge into the economies of such countries, which subsequently endanger their national economy and national security (Canada. Department of Justice, 1998). The pollution effect of illegitimate funds on mainstream economies can be easily viewed once illicit proceeds are integrated into a legitimate economy, as criminal organizations escalate their harm on economic and social life. Their activities might appear in different forms. For example, they can transport illicit goods by disguising them as legal merchandise, or they can generate new markets for the distribution of illegal drugs. Through such newly established networks, they can recycle their illegitimate proceeds and extend their sovereignty on social and economic platforms. Apart from the direct penetration of illegal proceeds into national economies, the money-laundering problem can also impact a State's capacity to comply with its financial and monetary policy (Giacomelli, 1997). Because money laundering keeps a considerable amount of funds out of governmental control, it has the capacity to destabilize financial life. The outstanding amount of illegal money in criminal hands also raises the issue that corruption is also unavoidably elevated. Another indirect impact of money laundering is that laundered proceeds decrease tax revenues and thus abuse honest taxpayers and jeopardize legitimate job opportunities because the proceeds remain out of governmental control (Canada. Department of Justice, 1998). From the criminals' point of view, money laundering makes crime pay. It

lets drug traffickers, smugglers, and other criminals who end up with bulk cash enlarge their role in the crime field, which, in turn, escalates expenses for law enforcement and health care (Canada. Department of Justice, 1998).

The focal point of this study, how the U.S. is responding to the problem of money laundering, is examined in the second chapter. Following an exploration of the U.S.' anti-money laundering system, the basic elements of money laundering investigation are discussed as a transition to the third chapter, which points out the problems of money laundering investigations. Due to the broad nature of the subject, the problems are restricted to three main areas; problems concerning financial institutions and banking industry where a particular crime takes place, problems arising from the limitations of law enforcement agencies, and problems resulting from the lack of cooperation between and within law enforcement agencies and financial institutions. After identifying the problems in the fields mentioned above, and in the light of the data gathered so far, the fourth chapter sets forth a number of probable solutions to the problems discussed in the third chapter. As a conclusion, the fifth chapter makes several recommendations for the future of anti-money laundering efforts.

CHAPTER 2

THE U.S.' RESPONSE TO MONEY LAUNDERING

Introduction

From an economic point of view, money laundering is the third largest 'business' in the world. According to the Financial Crimes Enforcement Network (FINCEN), $350 billion of dirty money is laundered throughout the world each year, and it is estimated that out of this amount, $110 billion is laundered in the U.S. (Richards, 1999). The question then arises as to why money laundering is so high in the U.S., despite having the world's first and most powerful money laundering laws and enforcement mechanisms. The primary reason is that the U.S. has a stable, strong, and sophisticated economy, which attracts the participation of other nation's economies and many of the world's private enterprises (BINLEA, 1998). Secondly, U.S. taxation law is so strict that it requires that all incomes are taxable. This law prevents criminals from reporting money that they gained through crime, such as drug trafficking, gambling, prostitution, embezzlement, and extortion (Brown, 1997). Finally, the U.S. Dollar is the predominant worldwide currency, especially within the mainstream financial world.

This issue must be addressed before examining the framework of the U.S.' anti-money laundering system, because it plays a crucial function in terms of providing the

direction that such an examination will take. Without clarifying the reasons behind the huge figure of funds being laundered in the U.S. each year, despite the powerful tools that are at hand, one could easily assume that the U.S. government is involved in money laundering criminality, which in turn may shadow the reliability of one's analysis. Therefore, for this examination of the U.S.' anti-money laundering system, the assumption is made that the U.S. government is trying to combat money laundering in good faith, and there are no factual conspiracy theories to the contrary.

The U.S. approach to combating money laundering includes both criminal enforcement and civil regulation systems. Numerous U.S. agencies are involved in fighting money laundering, each of which plays a different but complementary role. Law enforcement agencies within the Department of Justice and the Treasury have the lead role in domestic and international money laundering investigations. The Federal Reserve Board (FRB) and Office of the Comptroller of the Currency (OCC) are the chief federal agencies for examining and monitoring the overseas branches of U.S. banks to certify the sufficiency of their anti-money laundering applications. The FinCEN, a Treasury agency, delivers government-wide intelligence and analysis to all federal, state, local, and foreign law enforcement agencies for them to use in their efforts to combat domestic and international money laundering criminality. The Department of State works with governmental agencies and multilateral organizations to achieve a measure of global anti-money laundering control (GAO, 1996). Finally, a number of other U.S. agencies, many of which will be discussed later, make additional contributions to the U.S.' money laundering control efforts.

In order to understand the framework of participants in the U.S.' anti-money laundering system, an overview of the agencies in charge of money laundering control efforts follows. After this overview is a detailed discussion of the anti-money laundering roles of various U.S. federal agencies and international agencies that the U.S. is a part of, as well as a discussion of the legal tools used by such agencies in their efforts to combat money laundering.

Anti-Money Laundering

Roles and Responsibilities in the U.S.

In the U.S., almost 5,000 personnel within nearly 75 agencies are assigned at the federal and state level to combat money laundering and enforce anti-money laundering laws and regulations. U.S. money laundering control policy mostly rests on the assumption that money laundering prevention efforts are more efficient when the agencies in charge work in cooperation with each other as opposed to each working independently. This, normally, requires joint investigations and cooperative relationships between agencies (BINLEA, 1998).

Justice Department

The Justice Department is one of the primary federal government agencies engaged in combating money laundering. The Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and the Organized Crime Drug Enforcement Task Force (OCDETF), all of which are established under the Justice Department, play a crucial role in money laundering prevention.

Drug Enforcement Administration (DEA)

Principally, the DEA is in charge of drugs-related money laundering investigations. With a $1 billion annual budget, the DEA actively operates from 21 nationwide regional offices and 70 international branches in 55 countries all over the world (Richards, 1999). Not surprisingly, the DEA considers money laundering as a part of an overall drug problem. According to the DEA, all drug transactions are cash transactions; so, all drug cases have the potential for money laundering involvement. In this regard, the DEA depicts and counters drug trafficking and money laundering as a single interconnected issue. Since drug crimes are sophisticated and interrelated, it would not be rational to tackle each part (production, transportation, distribution, money laundering, and investment of the profits) of drug crimes independently. The DEA investigates the financial dimension of drug trafficking through all of its national and international bases of operation. The DEA is also a member agency of the Organized Crime Drug Enforcement Task Force (OCDETF) program. In addition to its operational level, with its efficient financial intelligence program, the DEA is successfully discouraging drug traffickers by blocking their ability to engage in money laundering (GAO, 1991). Therefore, Intelligence-wise, the DEA is reinforced by its El Paso Intelligence Center (EPIC), which maintains a database on drug cartels, transportation systems, money laundering, and other aspects of drug-based crimes (Richards, 1999).

Federal Bureau of Investigation (FBI)

The FBI is the investigative branch of the Justice Department and its main mission is to investigate violations of federal statutes. The Bureau also cooperates with

the DEA once it is determined that a money laundering case also involves drugs. The FBI has designated five major areas that they deal with: counter-terrorism, drugs and organized crime, foreign intelligence, violent crime, and white-collar crime. In order to fight drug smuggling and money laundering at the international level, the FBI founded an international police training academy in Budapest, Hungary. In addition, it has also opened offices in Moscow and Denmark to be able to monitor money laundering originating from or through the Eastern Bloc (Richards, 1999).

Like the DEA, the FBI does not regard money laundering as a separate issue; instead it similarly categorizes money laundering as a part of drug and white-collar crimes. In a broader perspective, the FBI identifies money laundering as a supporting mechanism of serious crimes like drug trafficking, organized crime, and terrorism. The FBI, too, is a member of OCDETF, and it plays a chief role in investigating international money laundering cases (GAO, 1991).

Organized Crime Drug Enforcement Task Force (OCDETF)

Established under the Department of Justice in order to keep harmony between and within federal agencies and local law enforcement, OCDETF is now the nation's major money laundering investigative agency. Having completed more than 5,000 operations since it was established, OCDETF has proven to be a dynamic and efficient agency in money laundering control (Richards, 1999). With the help of an effective multi-agency network, OCDETF coordinates investigations, prosecution efforts, and the distribution of information to combat money laundering (GAO, 1991).

Department of the Treasury

The Department of the Treasury is one of the chief actors among the numerous federal agencies in charge of combating money laundering. Although the Treasury Department encompasses 12 bureaus and 11 offices, its money laundering mission is allocated to only seven bureaus (Richards, 1999).

In order to appropriately visualize the anti-money laundering roles of the Treasury Department, one should examine its annual Strategy Reports. The Department's 1999 Strategy Report, for instance, calls for identifying high-risk money laundering areas in which to intensify law enforcement efforts, and developing strategies for responding to the suspicious activities of financial institutions. The report also emphasizes coordinating domestic and international enforcement agencies in order to deal with international crimes, with the goal of producing U.S. money laundering prosecutions. It also proposes a 90-day review of provisions before taking action against offshore institutions, which are willing to have correspondent accounts in the U.S. In addition, the report proposes placing increased attention on nations falling behind other countries in responding to money laundering (Internal Revenue Service, 2000).

Financial Crimes Enforcement Network (FinCEN)

FinCEN, founded in 1990, was designed to support federal, state, and local agencies in charge of combating money laundering and to develop cooperation within national agencies and with other governments at the international level. Its contribution to the national and international policymaking process is incomparable and is fulfilled through providing strategic analyses of domestic and international money laundering

typologies trends, and forms. In contrast with its chief role in combating money laundering, FinCEN has a small staff, most of whom are analysts and experts in finance and technology. In addition to its staff, for efficient collaboration purposes, numerous federal agencies and law enforcement units assign personnel to FinCEN as liaisons (Sloan, 2000).

The Treasury Department designates FinCEN as a network, which links law enforcement, financial, and regulatory units in order to maintain an effective anti-money laundering system. In addition to this, FinCEN is responsible for training law enforcement personnel to ensure that they are capable of obtaining and analyzing data through both FinCEN resources and their own resources (GAO, 1998). FinCEN uses information reported by banks and other financial institutions under the Bank Secrecy Act (BSA), including Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs), to serve as the nation's primary clearinghouse for money laundering information sharing and intelligence liaisons (Sloan, 2000). This service helps law enforcement officials identify and follow the financial trails that criminals and their assets utilize.

Another accomplishment of FinCEN has been “Project Gateway”, which supports state and local law enforcement by providing direct electronic access to FinCEN’s databases, which consist of more than 100 million BSA reports. A comprehensive audit system makes Gateway secure because it carefully monitors the system, coordinates queries, and lets users know who has made queries on the same suspect (Richards, 1999).

Internationally speaking, FinCEN plays a leading role in fostering global cooperation and developing international policies against money laundering and other financial crimes. What FinCEN does at the global level is cooperate with international organizations to develop efficient anti-money laundering strategies, and help other governments improve their own financial intelligence units (BINLEA, 1999b).

United States Customs Service (USCS)

The USCS is responsible for protecting the nation's borders; borders which are open to the flow of large amounts of illegal money. The USCS is literally the Treasury Department's front line in the fight against drug trafficking and money laundering (Richards, 1999). In terms of money laundering control, the USCS' focal point is asset identification and forfeiture situations that are accomplished through intensive training and the appropriate use of newly designed computer software. The USCS' approach to co-operation and information sharing with other agencies engaged in anti-money laundering efforts is to interact with them through training their personnel. The USCS also delivers information to related agencies by cross-border reporting and information exchange programs with respect to the movement of monetary instruments (Oversight Hearings on, 1998).

Internal Revenue Service (IRS)

The IRS Criminal Investigation Unit's mission is to follow the money. According to the IRS, all income, irrespective of whether it appears to be legal or illegal, has the possibility of having been involved in crime. Therefore, the IRS is responsible for investigating currency and money laundering offenders and pursuing the assets of those

offenders for the purposes of criminal tax evasion prosecution and asset forfeiture, whether within or outside of the country. As an anti-money laundering agency, the IRS is highly powerful because its special agents are quite experienced in in-depth financial investigations that mostly concern lifestyle, habits, business transactions and business associates (Internal Revenue Service, 2000). The IRS has developed financial investigative units across the country, collaborating exclusively with the Customs Service. These groups are basically responsible for bringing drug traffickers and money launderers to light by tracking money flows and suspicious transactions (GAO, 1991).

Because the tax evasion issue is embedded in money laundering criminality, the function of the IRS, in this regard, becomes evident. As Richard (1999) stated, the main thesis of the IRS is that "all income is taxable" (p.121). Thus, the agency is supposed to have a significant role in investigating and controlling money laundering. Thus, as the Criminal Investigation Division (CID) conducts the investigation of all financial crimes, the Examination Division has the responsibility for overseeing the BSA compliance of all non-banking institutions. In addition to this, the IRS is the agency to whom all Form 8300s are submitted.

<u>Office of the Comptroller of the Currency (OCC)</u>

The OCC plays a crucial role against money laundering as it is responsible for coordinating, regulating, and monitoring more than 3,600 national banks. The OCC also supervises the BSA compliance of all of these national banks (Richards, 1999). Moreover, the OCC examines the competence of bank personnel and whether or not they meet the BSA standards; if not, it offers training for appropriate personnel, and requires

assigning individuals responsible for coordinating and monitoring compliance on a daily basis (Money Laundering Alert [MLA], June 2000). In addition to its primary missions, the OCC publishes Advisory Letters in order to grant the demands of member banks.

Because banks are the front lines for controlling money laundering, the OCC is the focal point in terms of creating efficient anti-money laundering policies, which rest on the expanding functions of the OCC.

Office of Foreign Assets Control (OFAC)

The Office of Foreign Assets Control is responsible for administering and executing financial sanctions against targeted foreign countries, terrorism related organizations and international drug traffickers that are subject to U.S. foreign policy and for national security purposes. The OFAC has the right to enact controls on transactions and freeze foreign assets that are under U.S. jurisdiction (Department of Treasury, 2000).

The OFAC is an excellent model for other nations that are willing to eliminate money laundering. A global consortium of national-level OFAC's, acting simultaneously and in good faith to enforce comprehensive anti-money laundering regulations, could be highly successful in reducing money laundering worldwide. Without such widespread cooperation, however, such an agency, restricted to only a few developed countries, would be largely nonfunctional because criminals would always be able to find a safe harbor in which to anchor.

Federal Reserve Board (FRB)

The FRB, administering the annual BSA compliance inspections of all state banks, is another one of the main federal agencies combating money laundering. It is

basically responsible for the state banks that are members of the Federal Reserve. The Board also cooperates with the Department of the Treasury to analyze wire transfers of funds in order to control money laundering performed through wire transfers (GAO, 1991). In this regard, the FRB has improved its Fedwire technology so that the FRB is able to electronically monitor the most recent three months of international wire transfers, in order to control the activities of customers that are reported as being suspicious (GAO, 1996).

Office of National Drug Control Policy (ONDCP)

The White House Office of National Drug Control Policy (ONDCP) Drug Policy Information Clearinghouse is a primary source of the statistics, data, and research needed for developing and enacting drug policy. The Office's staff supplies drug policy information to federal, state, and local policymakers, researchers, academicians, and the media (Office of National Drug Control Policy [ONDCP], 2000). The ONDCP governs the federal High Intensity Drug Trafficking Area Program (HIDTA), which is a deterrent tool for countering money laundering. This program categorizes drug problem areas and coordinates local, state, and federal agencies to combat them (Richards, 1999). ONDCP is similar to a high level consortium, involving high-level representatives from several agencies. The Drug-Related Financial Crimes Policy Group, under ONDCP, develops policies to prevent the illegal flow of funds into and out of the United States. The group also coordinates drug related federal counter-money laundering policies. ONDCP's January 1990 strategy recommends establishing a national drug intelligence center, which would cooperate with FinCEN (GAO, 1991). Such a recommendation is an indication of

the realization that money laundering and its underlying crimes are components of a bigger issue and should be countered together.

Central Intelligence Agency (CIA)

The CIA's primary function is to support the President, The National Security Council, and federal officials who are in charge of implementing national security policy. The CIA has several units, including counter-terrorism, counterintelligence, international organized crime and narcotics trafficking, and arms control intelligence (Richards, 1999). Because intelligence is essential for a productive anti-money laundering efforts, as the best intelligence agency in the world, the CIA is expected to play a leading role in the prevention and detection of money laundering.

International Anti-Money Laundering Organizations

The U.S. government has begun to emphasize the foreign aspects of money laundering. The U.S. continues to attempt to make money laundering more difficult for individuals within its territories (GAO, 1996). At the same time, however, due to their recognition of the transnational and international scope of money laundering criminality, U.S. national agencies and their foreign counterparts have begun to cooperate more than ever before and this, in turn, has made international anti-money laundering organizations more functional (Richards, 1999).

The United Nations (UN) Convention

The UN, with its 185 member nations, is often envisioned as the primary organization through which to solve any kind of issue related to the international community (Richards, 1999). Founded on this global image, 1988's U.N. (Vienna) Convention Against Illicit Traffic in Narcotics and Psychotropic Substances introduced a set of international money laundering regulations. The Convention requires that participant countries define money laundering as an offence and, if and when necessary, cooperate with other member countries. Apart from this, the Convention mandates that signatory nations help in identifying, tracing, and forfeiting of the gains of drug trafficking and money laundering. In addition, the Convention requires signatory nations to design law enforcement regulations that relate to drug trafficking and related offences in accordance with the policies of the U.N. (GAO, 1991).

The Financial Action Task Force (FATF)

Instituted by the G-7 nations in 1989, the FATF has become the chief organization to prevent and detect international money laundering among its 28 member countries. FATF's *Task Force Report* has since become the primary and most effective declaration on money laundering, because the member countries comprise 80% of the world's 500 largest banks.

FATF's April 1990 *Task Force Report* contained forty recommendations on combating money laundering. Although carrying no statutory obligations themselves, the recommendations basically foresee legislation by the member countries to criminalize money laundering, and the introduction of regulatory standards in accordance with this

legislation. Despite this, the report is still quite beneficial in terms of formulating anti-money laundering efforts (Savona & Feo, 1997), particularly through its proposed changes to systems of customer identification and obligations to report suspicious activity. Not surprisingly, the recommendations also place a heavy emphasis on international co-operation (Britain. Cabinet Office, 2000). FATF's recommendations were revised in 1996 and have been used as a basic universal tool against money laundering. According to the Britain Cabinet Office (2000), the FATF is a functional organization because it has twice completed evaluations of the signatory countries' compliance level with the 40 recommendations twice. It is now emphasizing efforts to generalize these standards globally and to initiate a network of countries around the world.

European Union (EU): EU Activity and Europol

In its efforts to combat international money laundering, the EU has successfully implemented a number of initiatives that have fostered judicial cooperation and operational assistance. These initiatives include developing a system of mutual recognition of judicial decisions, with a particular emphasis on restraint and confiscation orders. Policy-wise, the EU updated their 1991 Money Laundering Directive through the issuance of a draft of a second EU Directive on money laundering in August 1999. The revised draft imposes obligations on a wide range of institutions, including those beyond the scope of current regulations. The EU has also instituted a mandate of helping non-EU nations (especially applicant countries) develop their anti-money laundering systems. According to the Britain Cabinet Office (2000), the EU is willing to accomplish this

through giving priority to these efforts within the TACIS and Phare assistance programs both of which attempt to provide grant-financed technical assistance to 13 countries of Eastern Europe and Central Asia, as well as to applicant countries. The EU is also trying to facilitate the analysis and exchange of information between member states' Financial Intelligence Units (FIUs), and to extend Europol's competence to cover money laundering as a whole, irrespective of the underlying crime.

INTERPOL

One of the main functions of the Interpol General Secretariat is to combat money laundering. As a result of this function, the Fonds Provenant D'Activist Criminales (FOPAC) was founded to tackle the money laundering problem. In this regard, FOPAC has prepared the Financial Assets Programme Encyclopaedia for the use of member states. The FOPAC Group also runs a computerized financial database in order to provide information related to proceeds derived from illegal activities in general money laundering operations. Cooperating with similar organizations, the FOPAC Group maintains an international teaching program involving financial investigation techniques for police and customs officials (UNDCP, 1992).

Anti-Money Laundering Tools:

Money Laundering Control Titles and Acts

Statutes Overview

Title 18

The U.S. became the first country in the world to criminalize money laundering when it enacted its federal money laundering law, Title 18, USC Sec. 1956, in 1986. Subsequently, as problems with the law have surfaced, "the U.S. Congress has increased its coverage, reach and scope, making it the broadest, strongest and most far-reaching money laundering law in the world" (MLA, October 2000d, p.11). Section 1956, titled Laundering of Monetary Instruments, forbids transactions that involve illegal funds. The law only regulates transactions that involve proceeds founded on a Specified Unlawful Activity (SUA). SUAs including federal, state, and foreign criminal activities; listed in the law is a continuum from terrorism to health care fraud (MLA, October 2000d, p.11).

Title 26

Title 26 regulates returns relating to cash received in trade or business. Section 6050 requires any person engaged in trade or business that receives more than $10,000 in cash to file IRS Form 8300 (Criminal Justice Institute, 2000).

Title 31

Title 31 regulates the currency information reporting requirements that the *Bank Secrecy Act* (BSA) was subsequently founded on. It basically prohibits structuring transactions to evade reporting requirements. Sections 5313 through 5324 of Title 31 regulate banking officials, requiring them to file certain reports, and containing provisions for situations in which they cause or attempt to cause a domestic financial institution to fail to file certain reports. These sections also define other related reporting offences (Criminal Justice Institute, 2000).

Bank Secrecy Act (BSA)

The BSA, enacted in 1970, has provided effective regulations for the prevention of money laundering. Aside from comprehensive initiatives concerning the banking industry that it successfully implemented, the BSA has a distinguished place as being the world's first such set of regulations. Its primary objective was to fill the loopholes encountered in the banking industry that arose from the exploitation of bank-customer confidentiality, lack of identification, and transaction recording. Since the inception of the BSA, the U.S. has attempted to prevent money laundering operated through its banks and the use of secret foreign bank accounts. To accomplish this, the BSA offers an appropriate initiative: creating an investigative 'paper trail' for large financial transactions by developing regulatory reporting standards and requirements. In order to assure compliance of banks at the maximum level, the BSA contains civil and criminal penalties for negligence of the reporting requirements. In addition, the BSA also foresees a mechanism to develop a means of investigating regulatory violations (Comptroller of the Currency, 2000).

Because money laundering had traditionally mainly been conducted by the use of legal financial tools, it was determined that in order to create a larger deterrent to launderers, financial transactions should be taken under control. The BSA rests on the theory that the money laundering process is most vulnerable during the placement stage. Therefore, cash should be tracked through a paper trail from the moment it enters the banking system; in this way, the money laundering cycle may successfully be tackled (Meltzer, 1991).

In summary, U.S. anti-money laundering strategies under the BSA rest largely on reporting regulations in which financial institutions are mandated to inform governmental agencies about large currency transactions through a variety of reports (GAO, 1996).

The Cash Transaction Reporting (CTR) System

CTR must be conducted by financial organizations when customers make cash transactions, withdrawals, deposits, or exchanges of currency exceeding $10,000. These reports are utilized to trace the flow of huge amounts of cash, as well as the specific movements of the money. The practical uses of CTR have been gradually increasing since CTR was initiated. Unfortunately, however, the bottom line is that filing CTRs creates an overwhelming cost for both financial institutions and the federal government (GAO, 1998).

The Report of International Transportation of Currency or Monetary Instruments (CMIR)

Each individual who physically transports, ships, or deposits currency or other forms of proceeds exceeding $10,000 at one time, into or out of the United States, is subject to a CMIR report. U.S. Customs officers are required to file CMIRs at any port, whether during entry or departure. If the proceeds are not physically with the individual during entry or departure, the CMIR may also be filed before the activity or through the mail (Meltzer, 1991). Authorities have been able to prosecute significant drug and money laundering operations through the data provided by CMIRs. Likewise, Customs has developed effective intelligence information and revealed a number of money laundering cases with the help of CMIR data. However, CMIR data alone is not sufficient to address the real figure of money laundering. Moreover, a strict CMIR policy would

make it easier to reveal the differences between inbound and outbound currency movement, and this, in turn, may reflect ‘leakage’ derived from laundering illegal money (GAO, 1991).

The Report of Foreign Bank and Financial Account (FBAR)

The FBAR is required for customers who have foreign accounts exceeding $10,000 (GAO, 1991), which is a typical characteristic of money laundering operations. Apparently, it is an attempt to prevent international money laundering.

The IRS Form 8300

The Internal Revenue Code mandates that trades or businesses report cash payments in excess of $10,000 (GAO, 1991). One of the major objectives of money laundering control efforts is to move these illegal gains under the government’s control and enforce taxation. Once one realizes the prominence of the tax evasion aspect of money laundering, the necessity of this form becomes evident.

Suspicious Activity Reporting (SAR) Requirements

SAR, initially mandated in 1992, has become a major tool in the anti-money laundering reporting system. If an employee of a financial institution knows or suspects that a customer has done a suspicious transaction, he is required to file a SAR. The term *suspicious activity* is a key point that reflects the money laundering process. A financial institution is required to submit SARs to the appropriate governmental agency within 30 days after the first detection of suspicious activity, and to retain the SAR for five years. Once an ongoing situation is visualized, the financial institution is obligated to inform its regulator and appropriate law enforcement agencies. Failure to file a SAR requires that

the institution and the officers that caused the problem be subject to a supervisory action, which primarily consists of civil monetary penalties (Richards, 1999). Richards remarked that he benefits of SARs to the law enforcement community are countless. For example, there have been 82,000 SARs filed since 1996, and nearly 40% of these are thought to have been subjects of ongoing money laundering operations.

<u>Racketeer Influence and Corrupt Organizations (RICO) statute</u>

RICO is the most significant legislative work ever passed against crime organizations. Enacted as a part of the Organized Crime Control Act of 1970, RICO has provided a broad list of offences, some of which are not otherwise subject to any federal statute on a regular basis. Such offenses include “any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than a year” (Abadinsky, 1997, p.458). Abadinsky (1997) argued, “RICO has provided federal government with jurisdiction that heretofore had been exclusively that of state and local law enforcement, which is often ineffective in dealing with organized crime” (p.458). Additionally, RICO includes a list of laundry offences identified as racketeering, which has broadened the scope of RICO to allow it to control money laundering criminality as well.

The primary function of RICO is to make it possible to deal with all of the offenses of a multi-defendant criminal group through a single prosecution. Until RICO was ratified, guilt was an individualized notion, in that in a crime group case each defendant was separately prosecuted depending on his personal criminality (Ryan, 1994).

Considering the organized nature of money laundering schemes, RICO has provided outstanding input for prevention efforts.

Drug Trafficking Offences Act of 1986

The Drug Trafficking Offences Act has served as a cornerstone in the U.S.' anti-money laundering history. In addition to its strict measures emphasizing the confiscation of ill-gotten gains, it triggered the Criminal Justice Act of 1990 to put more focus on money laundering criminality and to categorize money laundering offences. The Act was unique because it was the first regulation that contained provisions to confiscate the gains of drug related crimes. The Act was intensified by further regulation, the Criminal Justice Act of 1990, that defined five major money laundering offences (Jason-Lloyd, 1997).

Money Laundering Control Act of 1986 (MLCA)

The MLCA was implemented as an extension of the Anti-Drug Abuse Act of 1986. The Act was designed to include three major sections: (1) the Money Laundering Control Act of 1986, (2) regulations for the seizure of gains acquired through money laundering, and (3) making Customs eligible to legitimately interfere in the traffic of currency exceeding $10,000. Apart from this, it helped to encourage and develop foreign collaboration to prevent international drug trafficking. Because the MLCA was instituted due to limitations of the BSA, it was designed to both mandate financial institutions to file money laundering reports, and to provide necessary precautions for combating money laundering. Excluding the sections mentioned above, the MLCA falls in two parts: (1) Laundering of Monetary Instruments, and (2) Engaging in Monetary Transactions in

Property Derived from Specified Unlawful Activity. It was in this act that the term "knowing acceptance" of illegal gains was coined for the first time. The MLCA has given rights to a number of U.S. federal agencies to extend their anti-money laundering efforts outside national borders in order to deal with both American and non-American individuals who are targeting the U.S. (Richards, 1999). Richards concluded that as an initiative, the MLCA has been used quite successfully: in 1987, only 17 people were prosecuted for money laundering and only one was convicted, but the figure elevated to 1,546 in 1993, with 857 convictions.

Anti-Drug Abuse Act of 1988

The Anti-Drug Abuse Act of 1988 contributed several preventative money laundering countermeasures as the limitations of previous regulations surfaced. Its major contribution in this regard is Section 4701, which let the Secretary of the Treasury collaborate with foreign Finance Ministers to institute an international currency control agency. Another way that the Act encourages international collaboration is by permitting the Secretary of the Treasury to reach an international agreement regarding currency transaction record-keeping regulations, and to arrange for the use of this data as needed by signatory countries. The Act also strengthened asset forfeiture regulations and made some improvements to the BSA. For example, the definition of "covered financial institutions" was extended to embrace the U.S. Postal Service and businesses engaged in boat, automobile, or airplane sales, and real estate closing. In emergency situations involving identified money launderers, the Act gives the Secretary of the Treasury the right to require financial institutions to release information regarding all of the

individual's transactions, including those under the normal reporting limit of $10,000 (GAO, 1991). In addition, the Act required financial institutions to ensure identification of their customers, and to report cash transactions involving certain monetary instruments. Finally, the Act broadened the criminal sanctions for tax evasion when illegal proceeds were involved (ONDCP, 2000).

Crime Control Act of 1990

This Act was created chiefly to overcome illegal cash transactions. Hence, it required the Secretary of Treasury to assign a task force to research the most practical ways of printing serial numbers on U.S. currency notes at minimal costs in order to make it convenient for electronic scanning. Moreover, the Act made the Treasury responsible for developing currency transaction reporting mechanisms and informing Congress of the results of the reports on a regular basis (GAO, 1991). Thus, as a result of the dynamic nature of money laundering crime, the focal point of the Crime Control Act was encouraging research and development for the sake of money laundering prevention.

Amnunzio-Wylie Anti-Money Laundering Act of 1992

In 1992, as limitations of the previous anti-money laundering Acts arose, the Amnunzio-Wylie Anti-Money Laundering Act was created, offering more deterrent initiatives against launderers. Through this Act, the efficiency of the BSA gained strength, with a particular emphasis on financial institutions' suspicious transactions reporting mechanisms. Another unique initiative concerned banks with criminal records; the Act sanctioned cancellation of the licenses of banks convicted of money laundering crime. If a domestic bank is convicted of money laundering, the Act requires a

discussion as to whether or not to cancel the license of the bank or to assign an officer to investigate the case in-depth in order to examine the bank's involvement in the crime. If the bank is a foreign bank, then the regulations mandate that the Federal Reserve Board halt transactions through that particular bank. If a bank employee is convicted of money laundering, he may easily be removed from banking industry services through this initiative. In addition, the Act enhanced the BSA through requiring training officials of financial institutions in suspicious transaction reporting requirements (Richards, 1999).

Money Laundering Suppression Act of 1994 (MLSA)

Once it was recognized that financial institutions constitute the first line of defense against money laundering criminality, the Treasury began to intensify its efforts on developing more cooperation between federal agencies and banks. The BSA Advisory Group, guiding the Treasury's anti-money laundering programs and regulatory provisions, was appointed to foster cooperation between both sides. As a result, in October 1994, the Treasury Department's Office of Financial Enforcement (OFE) merged with FinCEN. This merger created a single anti-money laundering agency that could unify regulation, intelligence, and enforcement missions. On one hand, this unification let FinCEN focus on facilitating the BSA's requirements for financial institutions; on the other, it let FinCEN identify ways to make the reporting system data more convenient for law enforcement. In addition, this Act regulated casinos, which, although basically cash-oriented businesses, had been excluded from money laundering regulations. The Act obligated casinos to design and maintain written BSA compliance programs, and to follow the same regulations that banks and other financial institutions had been subject

to. For example, casinos became required to ask customers for identification when deposit or credit accounts were opened at casinos (Money Laundering Act, 1994).

Methods of Investigating
Money Laundering Schemes

According to Britain Cabinet Office (2000), financial investigation is a powerful tool in countering crime because it is the gateway to efficient asset forfeiture, and it provides law enforcement officials with effective tools to deter criminals by removing their profit motivation. Traditionally, financial investigation is underused, undervalued, and underresourced. This assumption is based on the fact that the portion of law enforcement budgets dedicated to financial investigations have historically been very low. Likewise, in a survey conducted in the UK, only one third of the police forces gave a positive response to the question of whether they had a special budget for financial investigation. Quite amazingly, the sums allocated for these special budgets were very small, typically somewhere between 0.05 percent and 0.30 percent of a force's total budget (Britain. Cabinet Office, 2000).

Financial investigation is important because it gives criminals the message that crime does not pay, and it strengthens confidence in a healthy society. It also helps to remove negative role models from society, and terminate networks and markets of the crime world, which eventually lets government control all crime. From a proactive policing standpoint, an efficient financial investigation deters people from committing crime by reducing the gains that crime might offer on a regular basis. An effective

financial investigation, on top of all else, lets law enforcement grasp the vision of being capable of detecting crime through understanding the mentality of criminal markets and the harm that they create (Britain. Cabinet Office, 2000).

According to Madinger & Zalopany (1999), money laundering investigation cases, as with every other criminal investigation case, seem to exist as series of decisions, made by the investigator upon evaluating the financial evidence. It is important that the abundance of techniques that the launderers use not discourage law enforcement, because launderers are also restrained when it comes to alternative methods that they are capable of using. Another factor that investigators should keep in mind is that every money laundering investigation is going to be different from the last one.

Although each money laundering case is unique, money laundering schemes in general have a number of common elements that law enforcement officials should pay attention to. As a result of this reality, money laundering investigations tend to be very similar in how they proceed (Madinger & Zalopany, 1999). Financial investigations, such as those used for investigating money laundering schemes, require special financial expertise on the part of the investigators. Generally speaking, criminal investigators perform six basic investigative techniques:

(1) The development of informants,

(2) Use of undercover agents,

(3) Laboratory examination of physical evidence,

(4) Physical and electronic surveillance,

(5) Interrogation, and

(6) Wiretapping. (p. 377).

When it comes to financial investigation, a seventh investigative technique is used: financial analysis. While financial investigation techniques and financial analysis play a major role in money laundering investigation, other basic investigation techniques need to be used as well. Law enforcement needs to utilize an integrated approach to tackle money laundering cases. An integrated approach is needed because money laundering operations typically have two major components that have to be proved beyond a reasonable doubt, and it is evident that investigations cannot be completed successfully without the simultaneous use of those both sets of investigative techniques (Madinger & Zalopany, 1999).

Developing an Investigative Plan

A good plan will carry an investigator to success, and any plan is going to be shaped by the type of case at hand and the charges that are expected to be brought forth at the end of the investigation. With this in mind, Madinger & Zalopany (1999) remarked, "each money laundering case is planned with its two tracks in mind: proving the Specified Unlawful Activity (SUA) and the financial activity" (p.384).

Madinger & Zalopany (1999) also noted that the order in which investigative activities take place is the most crucial part of the plan. Since criminal investigations are evidence-oriented, the case can only be carried further as the evidence appears.

Patterns of Investigation

Principally, money laundering cases should be conducted in two parallel tracks, one focusing on the specified unlawful activity, and one focusing on the money

laundering itself, while showing the interrelation of the criminal activity with the financial activity. The importance of the *integrated approach* becomes apparent when one realizes that in order to have a successful investigation, information developed in one track should be used to support the other (Madinger & Zalopany, 1999).

A key limitation of money laundering investigations, whether controlled deliveries, stings, or the more conventional trail-following investigation, is that they are very resource-intensive. Surveillance, financial transaction identification, and following a trail of transactions to an organization's leader require the use of significant resources (Pinner, 1996).

Case Initiation

The success of an investigation fundamentally depends upon where one starts and what kinds of decisions are made throughout the case. Beginning by examining the source of initial information, one tries to find answers to a number of case-specific questions. The initial source of information determines which path will be followed: tracing money back to the SUA, or tracing the SUA to the assets or transactions. The second question is whether the activity is ongoing or historical. The answer to this question is crucial. If the SUA is ongoing, techniques to detect the SUA should be used, including physical surveillance, undercover contact, pen registers, wiretaps, and search warrants. Conversely, if the group is not active anymore, one would rather collect financial data and find witnesses who can prove the SUA with regard to the past (Madinger & Zalopany, 1999).

Evidence Analysis

Once a considerable amount of evidence is gathered, it would be logical to start using it for practical purposes. Existing evidence leads to further evidence, which allows investigators to obtain a comprehensive view of the overall scheme in question. Once the financial evidence emerges, the investigator will make decisions regarding which technique is the most appropriate for a particular case. Financial records should also be checked and analyzed, as they may provide information about other accounts, supplementary transactions, and links to the SUA (Madinger & Zalopany, 1999).

Money Laundering Undercover Operations

Not surprisingly, money laundering is very vulnerable to undercover operations. As a result, many undercover operations have been completed with success up to now. Since the most vulnerable points of money laundering schemes are the placing and layering stages, undercover agents generally participate in these stages. According to Madinger & Zalopany (1999), the purpose of undercover operations is to identify the bank accounts or other destinations of illegal funds, and to identify the participants of a particular criminal operation. Identification of bank accounts lets investigators identify other launderers who use the same channels in depositing their illegal money. The money that is being laundered is derived from an SUA, and the intent of the criminals is to keep the funds away from reporting requirements, to evade taxes, to continue the SUA, and to cover up the ownership of the proceeds.

Criminal prosecution

Madinger & Zalopany (1999) argued that before prosecution is pursued in money laundering investigation cases, it should be clarified as to whether or not all the elements of the crime have been met and all the transactions have been revealed. In addition, it must be determined if the SUA is proven and all the linkages are complete. Another significant issue to be determined is how much money is involved.

In conclusion, money laundering investigation should be given particular priority by law enforcement in order to tackle criminals. Britain Cabinet Office (2000) remarked that although the use of financial investigation is highly variable, law enforcement should be encouraged to use it as a basic tool in the fight against crime. As a first step in this regard, law enforcement agencies should undergo training that includes awareness of money laundering investigation techniques and information on how to reach the resources available in this field.

Conclusion

After examining the U.S. anti-money laundering regulatory model and reviewing the pillars of financial investigation, it it is apparent that money laundering investigations are surrounded by numerous difficulties. To begin with, money laundering investigation demands the analysis of financial records, which requires expertise and patience. These long-term investigations, which are quite typical for money laundering cases, tend to frustrate law enforcement officials. This single reason is probably why money laundering investigations usually remain at the street narcotics level, ignoring the money laundering

aspects of the case. Not having enough knowledge about money laundering and its corroding impact, law enforcement officials have chosen to deal with the problem with a simplistic approach, adopting the attitude that a little amount of dope or a few guns resulting in arrests on a daily basis are more distinctive and satisfying than abstract long term money laundering investigations. Partly owing to such a mentality, there exist many misconceptions about money laundering, including that it is complex, that money laundering is only part of big cases, and that money laundering equals drug trafficking. Such attitudes and comments mislead the efforts of law enforcement agencies and often result in the real target being missed (Criminal Justice Institute, 2000).

Another primary limitation for law enforcement is that it is usually impossible to get bank records on time. Considering the existence of rapid-fire transactions, the importance of timing issues becomes evident. In addition to time delays, there are costs involved in acquiring bank records (Criminal Justice Institute, 2000).

There are also some legal limitations surrounding money laundering investigations. Arising from the dynamic nature of money laundering, investigations often use circumstantial evidence in order to prove gains from illegal activity. Furthermore, efforts in this regard are usually impeded by bank or company secrecy or privacy issues (Criminal Justice Institute, 2000).

Unlike the freedom, flexibility and effectiveness shown by launderers in the international arena, governments are limited in their anti-money laundering efforts by jurisdictional and investigative issues (Savona & Feo, 1997). In addition, the involvement of multiple agencies in an investigation, each of which has a different mission and

authority, leads to agencies "stepping on each others' toes" while fighting money (GAO, 1991). This conflicted and competitive atmosphere jeopardizes the investigations.

At this point, while discussing the negative aspects of money laundering investigation, it would be unfair not to touch upon some of the positive elements that law enforcement encounters. Without exploring both sides of the issue, it would be easy to adopt a pessimistic attitude about money laundering investigation, which would serve to hinder the desire and ability of law enforcement and financial institutions to effectively attack money laundering. While presenting how to investigate money laundering schemes, it was argued that money laundering investigators have the advantage in fighting money laundering, providing that they are taught what to do. First of all, financial transaction records are retained for a long time after the crime itself takes place; legally, all financial institutions are required to keep records of transactions done through them for five years. Another promising tool that assists law enforcement is the paper trail, which is undoubtedly a key element for exposing transactions, and which remains in existence for a long time after the crime has been committed. Apart from such record keeping mechanisms, law enforcement itself has some powerful tools at its disposal, one of which is the forfeiture of assets that were involved in money laundering. Sooner or later, the criminal will spend the funds that he has acquired through unlawful activity. At that point, forfeiture seems to be effective, because it deters criminals by eradicating their economic power. Heavy federal penalties, on the other hand, prove to be quite effective against potential criminals because they seem to force those people to reconsider the risks and rewards of the crime, and many decide not to commit it (Criminal Justice Institute,

2000). In addition to the tools mentioned above, highly developed surveillance techniques allow law enforcement agencies to observe criminals with a minimal use of labor.

To conclude, this chapter has attempted to present a general view of money laundering investigation with the help of the U.S. model. By drawing on the example of the U.S.' anti-money laundering efforts, and examining the foundation of money laundering investigation, one is able to develop a general understanding of the difficulties encountered in money laundering investigation, which are dealt with on a more in-depth level in the following chapter.

CHAPTER 3

ANALYSIS OF MONEY LAUNDERING PROBLEMS

Introduction

"Money is money", Giacomelli (1997, p.308) argued, despite the prevalent use within the criminal justice field of "qualifiers like 'dirty', 'illicit' and 'illegal' [that] often precede the word 'money'…". Indeed, money has no color or smell, and whether derived from legitimate or illegitimate sources, sooner or later, it merges into the same mainstream financial world (Bassioni & Gualtieri, 1997). While there is no methodologically certain way to estimate the extent of illegal funds, the figure is high and increasing over time (Evans, 1997).

Once money gained from illegitimate sources merges into international financial pipelines, it becomes very difficult to distinguish from legitimate funds. Thus, the points of entry to and exit from the economic world are the most vulnerable parts in terms of controlling the crime and the ultimate seizure of illegitimate proceeds. International financial interests cannot handle restrictions at the entry and exit channels of the world's financial pipelines; moreover, efficient detection at these critical points is difficult. Because of broad economic benefits, governments are also in favor of keeping the world's financial pipelines open and confidential. Therefore, combating money

laundering is selective, sporadic and has little impact on drug trafficking and other criminality (Bassiouni & Guiltier, 1997).

Giacomelli (1997) argued that, "learly, in the context, we are not confronted with a purely criminal issue in the traditional sense, but rather, one, which spans the horizon of concerns for public welfare" (p.308). Current policies and procedures related to money laundering have been criticized as being broad-based and far-reaching, but not yet properly addressing the problem. National and international law enforcement authorities have realized that the financial components of criminal activity should be the main focus of law enforcement investigations. Unfortunately, success depends on whether or not governments supply the resources needed to make such efforts effective (Bassiouni & Gualtieri, 1997).

Efforts to control the problem must also place an emphasis on the actors responsible for the crime. Unfortunately, applying such a focus in practice is difficult due to secretive banking laws, which create safe money havens (Giacomelli, 1997). One of the major problems with criminalizing money laundering is that, as an activity, it is identical to the normal commercial activities of law-abiding persons, such as depositing and transferring funds for legal reasons (Levi, 1997). So, unlike underlying crimes such as drug trafficking, armed robbery, illegal toxic waste dumping, or extortion, money laundering is a set of actions, each of which seems to be legitimate by itself. It is behind this apparent legitimacy that the money launderer can hide in an attempt to conceal the true nature of the proceeds of their crimes. Unfortunately, it is hard to plant an understanding in the minds of people outside law enforcement that money laundering has

harmful effects on both society and the financial world (UNDCP, 1998). The distinctive feature of money laundering is that since the activities generating the funds are criminal, then, for law enforcement purposes, transactions involving the funds must also be considered illegal (Levi, 1997).

From the criminals' point of view, the need to engage in money laundering activities is determined by:

(a) the level of liquidity and the amount of funds generated from criminal actions,

(b) the need to penetrate legal activities through a dynamic process, in which criminals want the flexibility to insert crime proceeds into economic markets that target the best earnings and security;

(c) the need to reduce the risk of being caught through a money trail; and

(d) the need to decrease 'seizure risk' for the proceeds of crime.

The first two factors are associated with the structure, activities, income and extent of criminal organizations, while the third and the fourth factors are associated with evading money laundering legislative and investigative activities based on the money trail (Savona, & Feo, 1997). The Britain Cabinet Office (2000) echoed these sentiments, arguing that a rational cost-benefit analysis is conducted by many criminals engaging in crimes that are financially-motivated. Most financially-motivated crimes occur when the criminal's perception that the benefits of the crime outweigh the costs and risks is combined with the opportunity to commit the crime and the conclusion that the net benefits of obtaining funds through illegal means is greater than the net benefits of obtaining funds through legal means (Britain. Cabinet Office).

As anti-money laundering efforts have developed, so too have the criminals' methods. In a never-ending cycle, as financial investigative and prosecutorial activity becomes more efficient, criminal organizations have a tendency to allocate more resources to reduce the risk of being traced and caught through the money trail, and they attempt to minimize the risk of losing their illegitimate proceeds. Therefore, they search for alternative ways to develop their money laundering techniques, which automatically attract a response from law enforcement and regulatory authorities (Savona & Feo, 1997). As a result, successful criminals, like successful people in every other field of life, are doing their best to discover new techniques for their profession. Despite having good laundering tools at hand, they are unsatisfied and thus continually searching for better tools (Madinger & Zalopany, 1999). One new tool that money launderers often take advantage of is the electronic transfer of funds. Advances in electronic and communications technology means that funds transfers can be conducted within 24 hours, even across international borders.

The sophisticated nature of the global economy makes separating legitimate and illegitimate funds very difficult, a fact that is often exploited by the money launderers. The UNDCP (1998) noted that this complex structure of economy creates some additional problems for money laundering control: when the legality or illegality of economic activity cannot be distinguished, and stretching the rules is tolerable to a certain extent, there is a tendency to go further and violate other laws. To complicate matters, the greater the mixture of legal and illegal, formal and informal, underground and above ground activities, the lower the probability of revealing the real source of proceeds.

Thus, there are three major problem areas that can be identified: in the banking industry and other financial institutions where money is circulated nationally and internationally until it appears to be legitimate, enforcement problems which mostly surface in international cases, and a lack of cooperation between both sides of the first two problems.

Problems Concerning the Banking Industry and Other Financial Institutions

Having identified the stages of the money laundering cycle, it can easily be understood how essential financial institutions are for money launderers, as every single laundering scheme, from very simple ones to the diabolically sophisticated, rely on these institutions to make crime proceeds appear clean. Loosely regulated international financial institutions pose the highest risk for facilitating money laundering, as they have little incentive or desire to regulate their own staff (Levi, 1996).

To further complicate the issue, there is a worldwide tendency for countries to engage in internal and external financial deregulation. Internal deregulation is aimed at offering full financial services from one institution to customers. Although such developments lower consumer prices, they also create another obstacle to detection. Simultaneously, in the international arena, financial industries are being gradually deregulated. Countries are terminating the barriers to domestic activities for international companies. This, in turn, increases international money movements. Likewise, increased

money movements have forced countries to liberalize the convertibility of currencies and lower their border financial control procedures (UNDCP, 1998).

UNDCP (1998) argued that an illustration of the effects of liberalization and economic deregulation can be seen in Europe, where they have united European countries around one market and one currency-the ‘Euro’. In response to these events, there has been the development of an offshore sector operating in the Euro-currency.

Recently, fueled by the economic growth of the United States, black markets have increasingly begun to operate on the U.S. Dollar. UNDCP (1998) noted that although most domestic transactions are conducted in the local currency of the country where the activities take place, there is a new worldwide trend that sees large amounts of disguised transactions being conducted in U.S. high denomination banknotes. This growth of Dollarization in the black markets has resulted in the flow of dirty money to the U.S. in order to successfully integrate it to the mainstream economy.

Bank Secrecy

The issue of bank secrecy deserves special attention because countries often harden their secrecy laws in order to exploit another country that has a powerful economy and deterrent money laundering control tools. It should be stressed, however, that bank secrecy is a necessary regulation for a healthy banking industry and economy. Further, money laundering can be carried out without the cover of bank secrecy; indeed, money launderers initially avoid it due to the fact that it is a potential red flag against them. UNDCP (1998) remarked that according to professional launderers, the state of the art secrecy for launderers is keeping their mouths shut. Furthermore, bank secrecy is merely

an obstacle if the trail has already revealed the participation of a particular institution. On a regular basis, no single jurisdiction will accept absolute access to financial institution information, but once criminal activity is revealed, even offshore countries become voluntarily cooperative with law enforcement agencies.

A major misperception is that combating money laundering by regulatory means has been considered as deploying the banks and bank regulatory institutions in the fight against drugs and other criminality. On the contrary, leaders of the banking industry argue that they are not equipped to be criminal investigators and that neither they nor the bank regulatory agencies want to assume that role. Besides, it is hard to motivate bankers due to their imperatives, which are financial rather than bureaucratic. Apart from this, effective money laundering regulation has internal costs (training time, record creation, and maintenance costs) and some external costs (Savona & Feo, 1997-p.57).

Five factors that act as barriers to overcoming banking secrecy are identified by Levi (1991). Levi argues that the first barrier is the ideological attachment of bankers to the concept of maximizing the confidentiality of their customers. This attachment is enhanced by a combination of the culture and the commercial interests of bankers. The types of funds involved and customer values and expectations all have an effect on the specific impact of these factors. Three of Levi's barriers arise out of the police-banker relationship itself. Police agencies are often unaware of the legal rules concerning when and what information may or must be released by the banks. Additionally, poorly trained money laundering investigators are often confused regarding the appropriate means of communication with banks due to differences between banks and organizational

complexity within banks. The final factor that Levi identified is poor interpersonal relationships between the police and bankers, which are often complicated by organization rivalries. The pervasiveness of these factors makes overcoming banking secrecy a difficult task.

Problems with tracing the cash: Currency Transactions Reports (CTR)

Documentary and other kinds of evidence play a crucial role in crime investigation. Moreover, there are some cases in which the absence of documentation forms is an offence itself. Since successful money laundering investigations and prosecution typically rest on some kind of paper trail, the offence of failing to keep appropriate accounting books makes sense. Unfortunately, obtaining such a paper trail is typically very difficult because potential key information for the case is generally kept by the suspect himself or by the organization that profits from the suspect while maintaining a confidentiality agreement. In addition, it is difficult to overcome commercial privacy concerns, as doing so requires some previous investigation of the case and some proof at hand that is specifically related to the suspect (Levi, 1991).

Another difficulty that surfaces is that the effectiveness of identification procedures has possibly been exaggerated. Levi (1997) noted that there is a growing black market in false and stolen passports, as well as document fraud among organized criminals. Although identification requirements may be effective against the opportunist, casual check thief, and the user of stolen and burgled checks and credit cards, it is insufficient for deterring the serious fraudster.

Suspicious Activity Reports (SAR) deficiencies

The SAR regulations that were created in cooperation with regulatory agencies in February 1996 require banks and other *depository institutions* to report suspicious activity to FinCEN through the use of SAR forms (MLA, March 2000f). What constitutes suspicious activity, however, is problematic. Banks must report transactions that they suspect or know constitute drug funds-derived money laundering, and may voluntarily report transactions whose funds are derived from other types of crime. Differentiating between these two sets of funds is often impossible for banks, however. Fundamentally, all the bank sees is a suspicious amount of money or series of transactions, and they rarely have sufficient information to prove the source of the funds in question. In compiling the SAR, bankers are supposed to apply reasonable judgment and use sophisticated account opening and suspicious activity-monitoring controls on high-risk accounts. Whether or not bankers are able to accomplish this task is questionable (Pinner, 1996; Levi, 1996).

It has been revealed that banks lack the adequate systems and controls to provide timely suspicious activity reporting. Principally, money laundering through financial institutions would be prevented if they followed SAR regulation requirements. However, SAR does have some deficiencies. In general, SAR violations detected by Office of the Comptroller and Currency (OCC) examiners are based on a failure to adequately:

(a) document 'high-risk' accounts and assess them for probable money laundering,

(b) observe high-risk accounts for money laundering,

(c) perform sufficient independent testing of high-risk accounts for potential money laundering,

(d) teach employees to detect suspicious activity in high-risk areas,

(e) initiate "controls and review procedures" for high-risk professions

(f) review Currency Transaction Report (CTR) filing models for suspicious activity (MLA, June 2000, p.7).

Such pointers seem perfect on paper, but implementing them on a practical basis is difficult. Because overseas branches of banks mostly deal with clients who operate using large volumes of cash, the question arises as to when they are expected to require examination of the origins of funds. It is possible that a client might displace his funds to a rival institution and the senior official might be fired (Levi, 1991). Such a dilemma leads us to question the level of feedback satisfaction for SARs. The SAR system has been harshly criticized in the national and international arena for not providing filers with the ability to receive feedback on their reports. In its 1996-1997 annual report, the FATF reminded the U.S. law enforcement communityof the need to increase efforts to provide feedback on the utility of SARs to FinCEN and thus to financial institutions. Bankers themselves have been complaining about the lack of feedback on how investigations triggered by SARs are proceeding (MLA, October 2000a). When feedback does occur, it does not occur in a timely manner, and is often of low quality, leading banks to loose confidence in the value of reporting (Britain. Cabinet Office, 2000). The Britain Cabinet Office argued that inconsistent reporting by banks is partially a result of the lack of feedback that banks receive.

Another weak point of SAR is that *securities dealers* and *money services businesses* do not have a set form. Instead, they may use SAR voluntarily to report suspicious activity, yet with no liability for not using SARs (MLA, March 2000f).

The lack of compulsory suspicious transaction reporting regulations for broker-dealers, on the other hand, seems to be unfair. Ironically, the securities industry, in the aggregate, handles far more money for its customers than banks do for theirs. Therefore, as the MLA (March 2000b) reported, the banking industry calls the money laundering regulatory arena an uneven playing field. The bankers believe that no good reason exists to exempt broker-dealers from mandatory suspicious activity reporting. It is evident that money launderers know the weak points in the system and they are undoubtedly using non-banks for their criminal activities when they appear to be more appropriate.

On the law enforcement side, state and local law enforcement agencies are making little use of SARs. Authorities fear that the lack of federal controls on the dissemination of information that financial institutions include in their SARs may result in crucial crime intelligence falling into the wrong hands (MLA, October 2000b). MLA noted that this argument might be an exaggeration to some extent, as statistics have shown that state and local law enforcement agencies are not accessing the SAR data as much as the U.S. Treasury Department wishes. In fact, in 1999, state and local agencies used Currency Transaction Reports 17 times more frequently than SARs. Treasury's Financial Crimes Enforcement Network (FinCEN), which administers the U.S. Suspicious Activity Reporting System, pictures SAR data as an invaluable weapon against money laundering.

Know Your Customer (KYC)

Know Your Customer rules were originally implemented under the Bank Secrecy Act, which requires banks to keep accurate records regarding the identity of their clients (MLA, April 2000e). The lack of mandatory KYC reporting for the private banking industry seems to be another money laundering control loophole. The MLA (January 2000) reported that the Citibank case in the U.S. has demonstrated how the private banking industry may facilitate the laundering of dirty money with an array of corrupt foreign officials. It should be stressed that private banking is not a side issue in the money-laundering field. Private banking is a $15 trillion, extremely profitable, competitive, and worldwide industry that has been the focus of most major money laundering cases in recent years. It provides highly personalized and confidential products and services to clients at fees that are often based on the assets under management. In conclusion, without comprehensive controls and effective enforcement, private banking services have been and will continue to be used by those intending to launder illegal money.

Alternative Remittance Systems

Criminals are increasingly using informal banking systems, which include the Colombian *Black Market Peso Exchange*, Indian *Hawala*, and Chinese *Flying Money*, to move illegitimate funds. MLA (April 2000e) argued that these systems are attractive because they are cheap, convenient, and reliable in moving value from one location to another outside of national financial regulatory systems, and, more importantly, without the physical movement of currency. The informal nature of these systems, which often

require little paperwork, foils efforts to track the flow of illegal proceeds across international borders. Nearly all FATF members have cited alternative remittance activity within their jurisdictions.

As mentioned in the SAR section, the securities sector is an attractive target for money launderers. The FATF noted the need for improved money laundering controls for the securities sector in its money laundering typologies report, which is based on the views of money laundering control experts. As with any financial product, the ways in which securities products can be used for money laundering are limited only by the launderer's imagination. Normally, brokerage firms appear to be international, with offices in cities around the world that make international transactions possible. Typically, securities transactions involve wire transfers from, to or through several jurisdictions. The international nature of money laundering makes this sector attractive to criminals in preparation for moving illegitimate funds internationally without attracting attention. Securities trades can be made in a very short time, and funds can be moved around the globe in rapid transactions. They also provide an effective cover for launderers attempting to hide the source of criminal proceeds. Many countries let securities accounts remain as nominees or trustees, which allows the beneficiaries' identities to be concealed. This, in turn, allows money launderers anonymous access to the legitimate financial system. Securities accounts are attractive because, in contrast with bank accounts, they let launderers move large volumes of proceeds without drawing attention. Securities brokers have often disregarded the source of client funds because their compensation often comes from sales commissions (MLA, October 2000c).

The MLA (March 2000b) asserted that the U.S. insurance industry is another sector subject to money laundering. Insurance companies, which are defined as financial institutions under the BSA, are amazingly untouched by money laundering regulation.

Evolving technology: Cyberlaundering

The globalization of the financial industry is one of the most significant aspects of the overall globalization process. Powered by developments in technology and communications, the financial system has developed to the extent that it connects nations, banks and other financial institutions in a global exchange mechanism that is active 24 hours a day. Simultaneously, the development of e-money (money that exists electronically in the form of symbols on computer screens; variously called electronic money, megabyte money, cybermoney, e-cash, digicash, cybercash, etc.) has facilitated the movement of funds throughout the world with ease and real-time speed. Today, a considerable proportion of the world's money moves around through electronic rather than cash transactions (UNDCP, 1998). Additionally, e-money can be used over computer networks such as the Internet or through the use of smart cards, factors which currently serve as a driving force for the further development of e-money technology (Wahlert, 1996).

The Financial Action Task Force (FATF)*'s 1999-2000 Money Laundering Typologies Report* lists Internet banking among the top four "major money laundering issues" in need of global attention. The report argues that because Internet banking permits indirect access to accounts, financial institutions have no way to confirm that the individuals who access accounts on-line are the accountholders on record with the bank.

This, coupled with the global availability of the Internet, allows anonymous and open on-line access to bank accounts from any location (MLA, April 2000e).

MLA (March 2000a) argued that the BONY Case is the first known investigation to document the use of cyberbanking products in a laundering scheme. With the help of *micro/CASH-Register* software, criminals wire-transferred billions of dollars through a number of accounts. The software let the launderers initiate wire transfers through the accounts from their own computers based in Russia. This case reveals how correspondent accounts held by foreign banks in U.S. banks can create laundering problems. Several Russian banks with correspondent accounts at BONY were used to transfer funds out of Russia. In the end, the Russian banks concealed the source of the funds they moved through their correspondent accounts by listing one of several South Pacific shell banks they controlled as the primary responsible for whole case.

The exploitation of e-money by money launderers may become a significant problem in the future because e-money systems will be attractive to money launderers for several reasons: transactions may become untraceable, have very high liquidity, can occur person-to-person, and are simple and convenient (Canada Department of Justice, 1998; Wahlert, 1996). Routing of e-money between multiple international destinations can be accomplished in seconds, making tracing difficult. Emerging technologies, such as smart cards and peer-to-peer payment facilities, provide both speed and the possibility for near anonymity due to reduced or non-existent audit trails (Wahlert). Wahlert argued that e-money facilitates large-scale money laundering by allowing funds to be transferred between countries undetected. These transfers can also occur outside the regulated

banking industry, thus providing a means to circumvent the anti-money laundering regulations and regulators that are in already place, and the ability to evade taxation.

Wahlert (1996) identified several questions that remain unanswered with respect to e-money: who may issue e-money and how can they be regulated, how can e-money be taxed given the lack of physical boundaries in cyberspace, how can money laundering and counterfeiting on private networks be regulated, and how can governments control and regulate e-money when it is stateless?

Shell and Shelf Companies

UNDCP (1998) argued that the best guise for money laundering is a business conducting legal retail trade that produces large amounts of cash on daily basis. It is easy to obscure the audit trail through such a business primarily because it offers legality to the criminal activities in terms of financial and tax regulations. Due to the local character and limited capacity of legitimate businesses, money launderers conducting international operations have been using shell or shelf companies, which only exist on paper and theoretically are located in financial havens.

Company formation agents, who professionally provide shell company services, are very popular among international launderers. Such agents are used by criminals in the global laundering economy as a key player in their sophisticated laundering schemes. Money launderers also use company formation agents to set up judicial persons or legal units in countries that do not require identification of the true owner of the entity or do not allow controls on company information. The launderers then use these companies to move illegal funds through different company accounts. Agents help clients to establish a

company in the jurisdiction that best meets their needs. They also provide services such as, mail and fax receipt and forwarding, telephone answering, and opening and administration of bank accounts, all of which can give front companies an image of legitimacy (MLA, April 2000e).

What makes shell companies highly successful is that international trade mechanisms remain almost unchecked with regard to the movement of illegitimate funds. The MLA (April 2000e) revealed that launderers exploit the lack of sufficient training among Customs authorities in many countries, thus evading detection of their suspicious international trade transactions. Presumably, criminals who launder illegal proceeds through international trade are ready to pay the necessary duties so as not to focus attention on their operation.

Aid to the Launderers from the Financial Sector and Professional Help

Levi (1991) argued that as long as the customer thinks he is safe from any kind of loss, money would flow where regulation is weakest. Needless to say, all financial institutions are aware of this fact and, depending on their perception, some of them may tolerate the criminal activities or even, in some cases be a part of them.

According to MLA (March 2000e), the primary danger in the money-laundering field occurs when a financial institution is found to have conducted transactions with money derived from criminal activity. As cited by Levi (1991), May noted that negligence by a bank is not adequate to make it an ideal trustee, as a launderer does require some integrity on the part of their financial institution. It should be stressed that the banks' duty is not limited to simply examining the fraud after it occurs and

concluding that it was due to bank negligence, as any sensible cashier would not pay a doubtful check without asking his superior, and a reasonable superior would not authorize such a payment unless an inquiry was done (Levi).

Institutions whose higher-ranking executives of legitimate banks are corrupt or which were founded specifically for illegal purposes, are often in favor of limited co-operation with the police due to the danger of their illegality being revealed. In countries where such institutions thrive, the motives of the police are also questionable as the information that they gather is typically not used for law enforcement purposes but instead is often used for personal or political blackmail (Levi, 1991).

According to Levi (1991), another major problem that banks face in terms of criminal liability is that outsiders such as the police, the press and the courts are usually not aware of the complexity of the decision making process within banks, nor are they aware of the conflicts within institutions among the financial and security personnel that might affect the official policy.

Professional Help

Evans (1997) argued that sophisticated criminal operations are frequently run by practitioners who themselves are very skilled, or who are able to hire skilled help. Evans' argument is in partial agreement with Levi’s (1996), which argued that many criminals are incapable of independently creating sophisticated criminal schemes; instead, they must rely on hired experts and professionals, or, in some limited cases, on information obtained from experts during incarceration. Levi also suggested that economic downturns and reduced job security among bankers and other professionals has led to an increase in

the direct or peripheral involvement of such professionals in criminal activity (including money laundering and internal fraud). As cited by Levi, Millet (1991) argued that launderers use the help of professional bankers because bankers know what they are doing. They are able to instruct their clients to ensure concealment of the true nature of the money. Millet added that, "secrecy is the badge of fraud" (p. 43).

Money laundering appears to be gaining in its professionalism, as seen through a number of elements. To begin with, it is getting more difficult to differentiate underlying criminal activities and money laundering activities as two different existences. More professional launderers such as accountants, lawyers, and private bankers are being hired, as partially reflected in the growing nature of money laundering services involving a wide range of criminals and criminal organizations. Criminal organizations now get assistance from dependent experts for laundering investment options and services (Savona, 1997). Levi (1991) remarked, " where we have corruption, or the need of a bank to act as a money laundry to survive in what is becoming a highly competitive financial services market, universal voluntary or compulsory disclosure seems a goal unlikely to succeed" (p. 48).

Lack of Cooperation & Participation

Co-operation, Information Sharing, and Communication

As Evans (1997) identified, investigators face a number of problems including co-operation with the police, other authorities, and bank secrecy laws. There are two

important aspects of this problem; lack of cooperation among law enforcement agencies and with financial institutions.

Interagency conflicts, miscommunication, and inertia have resulted in investigations to be compartmentalized in a way that the larger picture of systematic criminality is likely to be missing (Fisse, 1997). Conventionally, numerous agencies, each with a different mission and authority, are involved in combating criminal activities. All participant agencies have their own policies and procedures, which let them act as separate entities. This separation often surfaces as cooperation problems. Needless to say, the effectiveness of investigating complicated money laundering operations is impeded because of independently acting agencies. Furthermore, lack of coordination among leading anti-money laundering agencies negatively affects both jurisdictional issues, and the level of information sharing. In short, agencies are sometimes “stepping on each others’ toes” (GAO, 1991, pp. 4, 43), which in turn impacts anti-money laundering efforts. Consistent and effective cooperation between law enforcement agencies requires knowledge, trust, understanding, and the long-term commitment of scarce resources to projects whose outcomes may be uncertain (Broome, 1996). That this must be accomplished in the face of growing public and political expectations and scrutiny further reduces the likelihood of effective cooperation and information sharing. Castle (1999) remarked that with state-of-the-art FIUs, FinCEN has improved the flow of essential transaction information to investigative and prosecutorial authorities, but has not yet removed the bureaucratic burdens that the private and public sector actors confront.

Another crucial issue is the economic interests of organizations and institutions cooperating to combat money laundering. Savona & Feo (1997) argued that effective cooperation requires collective gain in accordance with individual benefits. When addressing the issue of public-private cooperation, a fundamental question arises: 'why should bankers co-operate with the police?' The grounds that the relationship relies on can be placed on a hypothetical continuum between positive (in which both parties of the relationship get what they expect out of the relationship), and negative (the relationship simply depends on fear or the threat that presumably something bad is going to happen to either or both parties at the end). In practice, police-bank relationships are a mixture of both positive and negative elements (Levi, 1991). There are three dimensions of police bank relationships that influence money laundering investigations: the reporting of laundering against the bank, the investigation of laundering and other serious crimes concerning a bank's customers, and tracing and confiscating illegal funds (Levi, 1991).

Even the most reputable banks are naturally concerned about customer sensitivity regarding the confidentiality of their activities. This stems from a social value of discretion in financial affairs as well as the fear of displacing business to other banks or jurisdictions, which typically "have both trustworthy bankers and higher standards of confidentiality" (Levi, 1991, p.4). Thus, as Levi (1991) noted, if the banks treat every customer as a potential money launderer, they will just lose both legitimate and illegitimate customers to rival financial institutions. This displacement impacts the bank at least locally, but in the case of offshore banks and foreign countries, there are international impacts.

What do the police expect from the banks? Essentially, they want information related to the case at hand for probable future convictions. Ideally, they expect bankers to voluntarily provide information about people and activities that they cannot acquire through other channels. As opposed to the local and routine character of policing, the internationalization and growth of drug trafficking, fraud, terrorism, and other kinds of organized crime have changed the nature of investigation in which the main focus is now the network that lies behind criminal enterprise. This, in the first place, requires a perfect police-bank relationship (Levi, 1991).

According to Levi (1991), in some cases, the police hesitate to request information from banks that are suspected of being involved laundering because of the risk that corrupted bankers could easily inform their customers that the police are planning to investigate them. To complicate the issue, banks have the power to be obstructive without actually doing something illegal. For example, they can send branch officials from the branch to give an oral statement instead of preparing written statements at the Head Office, and they can choose to not forthcoming in informally giving information.

Cultural factors should be the main focus in understanding the non-cooperative attitudes of bankers. Levi (1991) remarked that this is because confidentiality is one of the banking industry’s most indoctrinated principles. Therefore, aside from being in the interests of the bank, revealing information about customers creates a serious trust problem involving banking mores.

Specialization and Qualified Personnel

Many police organizations are not adequately equipped to investigate complicated criminal operations. Typically, their training, funding and rewards are concentrated on operations against more mainstream criminal offenses: violent crime, street-level drug dealing, and property crime (Britain. Cabinet Office, 2000). According to the Britain Cabinet Office, money laundering cases are predominantly seen as being secondary to the underlying crime, despite the fact that money laundering plays an important role in some types of crime, and often causes significant loss to individual businesses and the overall economy. In the UK, an estimated 30% of money laundering cases eventually sent for prosecution would have been sent up to a year earlier had the cases been considered from the money laundering perspective from the beginning (Britain. Cabinet Office). The negative impact of this prevalent attitude can be seen when examining UK drug conviction statistics from 1994 to 1998: for every 165 drug convictions, there was one money laundering prosecution, for a total of 33,775 drug trafficking convictions and only 204 money laundering prosecutions (Britain. Cabinet Office).

Generally speaking, police organizations do not have the resources to either employ or buy the forensic accounting, financial analysis, computer skills, and ongoing legal advice needed to reveal complicated criminal systems. Considering the vitality of timing in such operations, if a transaction in question hasn't been detected, and the proceeds of crime are moved around even within the domestic sphere, there will be little chance of a successful prosecution resulting in convictions and the forfeiture of proceeds (Evans, 1997). Further, as Levi (1991) argued, when law enforcement personnel conduct

limited transaction analysis, information cannot be gathered that would allow the police to act in a proactive rather than a reactive manner.

Another problem confronting the police is that they may not know exactly where to look for the documents that they suspect exist. According to Levi (1991), the irony in this is that they cannot ask for an order demanding the information until they figure out where exactly it exists. This is also a major problem in seizing a subject during a search; the material the officer seizes must be evidence related to the offence, otherwise it may easily be rendered inadmissible at trial.

From the bankers' point of view, the training, quality, and guidance of branch staff is always a problem. The contradiction is that the countries or the branches which are ideal for money laundering are typically small ones that potentially include not highly qualified staff. This lack of qualifications is why those personnel are not in major branches (Levi, 1991).

It is optimistic to consider that complete integrity is possible through the bank with a set of instructions. Likewise, such a conscience at all levels from director to assistant cashier cannot be accomplished without manipulating the nature of regular banking activities with policing provisions. Levi (1991) concluded that most police agencies therefore prefer to ask bankers to use their initiative when organizational communication problems surface. This is associated with not only the ethics but also the nature of that branch in question.

Problems Concerning Enforcement Issues

Jurisdiction

Moving proceeds through various jurisdictions' financial channels or other markets is a preferred method of providing increased complexity for an operation. This method impedes the investigation and lets criminals abuse the loopholes in the national laws of the state in question. Indeed, many countries do not require a precise identification of the source and ownership of illicit proceeds (Castle, 1999).

The primary difficulty in combating money laundering rests on the existence of conflicting interests and competition between agents, sectors, geographical areas and governments. According to Dini (1997), "since criminal organizations operate at the international level the fragmentation of legal arrangements represents a major impediment for the institutions in the face of the extreme flexibility of maneuver enjoyed by operations" (p.7). This, theoretically strengthens the idea of avoiding investigating international cases unless there is considerable national self interest and a set of conditions that supply the following combination of factors: "good intelligence, likely involving an inside informant, cooperation from all the relevant authorities, the right personal contacts, the appropriate Mutual Legal Assistance Treaty (MLAT), extradition agreements, appropriate budgets, and management willing to authorize international investigations and travel" (Evans, 1997, p.205).

Evans (1997) argued that investigators frequently face some difficulties that are nearly impossible to deal with, even if they get co-operation from their opposite numbers

in other jurisdictions subject to the operation. Fortunately, not all laundering operations involve multiple jurisdictions.

Law and Legal Problems

MLA (October 2000d) argued that the U.S.' criminal money laundering law is the most powerful in the world, and that the law can also be a powerful tool in civil cases in which the government is not a party. Unfortunately, a law is only as powerful as its implementation. Levi (1996) identified a number of fundamental issues that arise when looking at the worldwide reality of money laundering regulation implementation. The first issue is that there is inadequate communication between regulators in different countries. The second is that regulators fail to adequately deal with all potential domestic launderers. Third, the staff of financial institutions is often not effectively communicated with by the institution's compliance officials, especially in a manner which would affect their behavior. Finally, customers engaging in money laundering often fail to be identified by a financial institution's front line staff; or, if identified, that information is often not communicated to supervisory personnel, thus removing the institution's ability to prevent further laundering.

For banks, the major problems result from the time period between initiating the process on a suspicious client and granting the restraint order. The main concern of the police is failing to obtain the evidence due to delays arising from such procedures. Quite alarmingly, in such cases, the police often make their request for restraint orders to a judge and it takes a week for the judge give approval. According to Levi (1991), the dilemma is that it is still difficult to be sure where the main fault lies. It should be

stressed that this is not a police bank cooperation problem, despite the fact that some police may prefer to blame the bank for refusing to informally give them what they wanted. Levi (1991) concluded, “in other words, the banks may be scapegoated for the organizational deficiencies in the criminal justice process or for due process rights that are built in by Parliament to protect bankers and/or customers” (pp. 54, 55).

Another aspect of the problem is the economic and political power that such criminals hold and in turn their potential influence on legal procedures. As cited by Levi (1997), Agha Hasan Abedi, founder of BCCI, stated, “the only laws that are permanent are the laws of nature. Everything else is flexible. We can always work in and around the laws. The laws change” (p. 259). General corruption in society may ease other activities, such as making side payments to officials responsible for investigation, prosecution, regulation or other oversight capacities. Illegal payments or influence may also be used in some cases to affect decisions made in terms of legislative, judicial or enforcement activities concerning money laundering (Castle, 1999). The current focus by international law enforcement and governments on the laundering of drug-derived funds creates further difficulties in dealing with the whole of money laundering. The difficulties exist because of differences, often significant, between drugs and non-drugs law (Britain. Cabinet Office, 2000), and the respective political and social emphasis placed on enforcing such laws.

The global political reality assumes that countries have different stages of economic and social development. Therefore, it is natural for them to have differing views about the willingness to control money laundering and create different forms of

regulation systems. In addition, some cases have shown that some of these reservations about the desirability of control are unfounded (Levi, 1997).

Fisse (1997) argued that "secrecy provisions in many national banking and tax laws and the difficulties of extraterritorial enforcement were an effective last line of defense for the launderers" (p.3). Even with highly developed tools, law enforcement is not going to be able to investigate a considerable percentage of international commerce. Thus, a momentous likelihood of punishment is still going to be missing (Evans, 1997).

Another problem, identified as a result of the BCCI case, is that accountability for corporate crime needs to be regulated in such a way that the courts may pursue the issue of responsibility in complex cases. Unless efforts towards preconceiving and restructuring the role of the courts in this area are accomplished, it will be difficult to see how international control strategies against money laundering can be enforced in the worst corporate cases of non-compliance where effective enforcement is required (Fisse, 1997).

Politics, Offshore Countries and Corruption: Third World

According to UNDCP (1998), financial havens have a history that is as old as money laundering itself. Remembering the pirates' era when there were territories that welcomed those criminals due to the money that they would spend there, the image of such jurisdictions seems to be pretty much consistent. Third World countries, with a shortage of hard currency needed to pay for crucial imports, are most likely to tend not to examine either the bona fides of bank purchasers, or their clients. This tendency arises

partly from commercial interests, partly from corruption, and partly from unqualified regulators who are unable to sufficiently deal with such criminals (Levi, 1991).

Founded on problems in their economic sectors, political authorities in offshore countries have unofficially supported the creation and strengthening of a financial sector that offers secrecy for the flow of dirty money, allowing them to overcome economic and national weakness (Bernasconi, 1997). Those countries achieve such objectives by liberalizing financial markets, removing trade barriers, privatizing state-owned industries, ending restrictions on foreign investments, and adopting full currency convertibility. They justify this welcoming of criminals by defining what they do as economic reform (Giacomelli, 1997), arguing that to do otherwise would hinder investment, slow financial sector development, and force them into a competitive disadvantage with other nations (Pinner, 1996).

Essentially, these countries offer launderers secrecy that assures immunity from investigation conducted by foreign authorities, and absolute exemption from responsibility for their activities involving offshore companies (Bernasconi, 1997). UNDCP (1998) remarked that some of those countries even give warrants to criminals in case they are abused for doing business in their jurisdictions.

Offshore banks offer the ability to conduct large numbers of transactions, generally denominated in dollars, from one bank to another. Presumably, they do not serve the general public, nor do they accept large amounts of cash. Their function is simply to diminish taxes and circumvent the regulations of other nations related to financial activities (UNDCP, 1998). Security from political instability, on the other hand,

is a crucial issue for criminals who have doubts about their long-term futures. It should be noted that to Americans, the UK is offshore, and vice versa (Levi, 1991).

How offshore countries impact the economies of developed countries is hidden under the fact that large volumes of financial transactions made in offshore jurisdictions are derived from the legal activities of multinational corporations searching for lower taxes while finding the best channels to distribute their proceeds (Levi, 1991).

With the influence of international organizations, financial haven countries have managed to pass some laws to show their willingness to take part in international efforts. Needless to say, those laws often only exist on paper. In practice, the authorities maintain inadequate control with regard to their laws that govern financial matters (Bernasconi, 1997).

Evidence Gathering and Analysis

The secret nature of money laundering criminality complicates the process of evidence gathering and analysis for law enforcement officials. As discussed in chapter two, a typical money laundering investigation should always be processed in two tracks: proving the *Specified Unlawful Activity (SUA)*, and investigating the financial activity and its links to the underlying crime (Madinger & Zalopany, 1999). Failure to follow this dual track process in money laundering investigations often results in a total fiasco with regard to evidence issues. Unfortunately, in cases where evidence of criminal money laundering is apparent, the first step of many investigators is to limit the case to a single drug or tax evasion case by excluding the other track. Simply put, because money

laundering often involves the interconnection of different forms of crime, it has a serious recognition problem through the eyes of law enforcement.

Inadequate Resources

There is a cost for the cooperation between police and financial institutions, but it is not yet clear who is responsible for paying the expenses. As cited by Levi (1991), Seldon argued that a conflict still exists in terms of paying the high costs of self-regulation in the financial services industry and is sometimes used as an excuse by some of them to justify their corruption. Giacomelli (1997), on the other hand, argued that the risks taken by governments for this purpose cannot easily be understood if the potential benefits were completely overshadowed by the costs to financial stability. The further an operation goes, the more expensive it becomes (Evans, 1997). Thus, an integrated investigation is overly expensive for most police agencies in most countries (Fisse, 1997).

Conclusion

Money-laundering investigation problems: therefore, basically arise from failing to picture the true nature of crime and failing to focus appropriately on areas of concern. Characteristically, money laundering has two major aspects. First, there always exists another serious crime that generates the illicit proceeds and that money laundering rests on, and, second, there is an attempt to create an illusion of separation between this particular crime and the dirty money at hand. In this way, money laundering is a secondary and a dependent crime. Thus, the main objective is that money laundering should not be depicted as a single issue. Instead, it is a multifaceted phenomenon that

requires an entire awareness of the crimes that generate it. Logic tells us that, since there are different forms of crime generating dirty money, then there should be different goals that launderers have in their minds. Therefore, addressing the issue from the standpoint of the launderer must be another priority of investigation.

The second handicap in money laundering investigation is that there seems to be a number of significant areas that deserve immediate attention. During an investigation, investigators face difficulties in tracing the money (especially after it has been intermingled in the system with legitimate proceeds), locating bank accounts and assets, and determining the true owner of assets. Such problems indicate that combating money laundering is not merely a police issue. It concerns both national and international banks and financial institutions, as well as national and international law enforcement agencies. Further, it entails ongoing coordination within and between all of them. In order to be successful both nationally and internationally in money laundering control, the willing participation of the financial world is inevitable. Evidentially, this seems to not be an easy goal to accomplish. Considered globally, there are conflicting economic and political interests, and technical and personnel disparities between countries. Plus, money has been used as a picklock, which is able to open almost every single door. Therefore, as Savona & Feo (1997) stated, the issue must be pictured from a broader perspective that includes economic, social, and political aspects. In essence, the process of addressing a crime and then enacting the required provisions does not work for financial criminality.

According to Levi (1991), some speculate that policing and reforming banking transactions is paradoxically a process of building barriers to entry into only one option

of the money laundering market which, then, escalates the price of corruption for the remaining few alternatives. Sophisticated crime organizations create business fronts that can serve to launder the proceeds without being monitored even by the most efficient surveillance techniques. This flexibility and the dynamic nature of money laundering also makes investigation a more difficult issue because law enforcement agencies must regularly update themselves and be more knowledgeable about new techniques and new indications of money laundering.

CHAPTER 4

ANALYSIS OF SOLUTIONS TO MONEY LAUNDERING PROBLEMS

Introduction

Profit motivates seventy percent of reported crime (Britain. Cabinet Office, 2000). It has therefore been argued by some that, when the proceeds of crime are traced and forfeited, criminals are deterred (Britain. Cabinet Office). The Britain Cabinet Office identified four law enforcement and societal objectives that can be met by tracing and forfeiting the proceeds of crime: the message is sent that crime does not pay, the funding of future criminality is prevented, a community's negative role models are removed, and the risk of financial market instability is reduced. In addition, law enforcement officials are better able to recognize that criminal organizations are simply profit-making businesses that use criminal means to achieve their profits. Thus, removing profits from criminal organizations is desirable in a just society (Britain. Cabinet Office).

Fighting all forms of crime presents not only social benefits but also social costs. Practically, societies implement measures depending on how seriously they depict an individual crime and, in turn, how intrusive and effective they consider the measures to be. Presumably, this relates to how crimes and significant preventive efforts correspondingly affect societies (Levi, 1991).

Despite the fact that money laundering is a sophisticated problem with an international dimension and destructive effects on public interests, the considerable

essentials of a national strategy to fight it are not difficult. However, they necessitate political will by governments, and administration resources, and technical personnel to make them successful. Hence, such initiatives are considered to be consistent with better regulation of financial institutions and the establishment of money laundering as a serious criminal offence (Bassiouni & Gualtieri, 1997).

While legislation and implementing regulations may cover money-laundering issues, “the legislation is little more than an important symbolic step” (Levi, 1997, p. 259). The real matter is how the legislation is implemented and enforced. Levi therefore argues that effective legislation has more symbolic than practical value against major crime organizations.

From the government point of view, both governmental and agency anti-money laundering policies can be identified in relation to their two major goals:

The first goal is attacking criminal activities by increasing the efficiency of law enforcement by arresting and convicting the criminals and forfeiting the proceeds of crime. The second goal is protecting the transparency and integrity of domestic and international financial systems. Money launderers have unfair competitive advantages over their legitimate rivals, whose money has been earned at a lower profit margin than is possible in illegal enterprises and on which taxes must be paid. Moreover, criminal money is also a potential threat to both political and financial systems due to the probability of being derived from corrupted officials and the capability to influence electoral systems (Savona & Feo, 1997).

In spite of the fact that complicated money laundering operations may effectively be untouchable through prosecution, there is still room for optimism. Laws have been strengthened and several states have had remarkable success in convicting criminal kingpins. Associated with the support of legislation and related laws, investigations are expected to be more comprehensive and detailed, including with respect to the underlying crime and its complications (Evans, 1997). Evans concluded, “there has been sufficient experience across many jurisdictions to show that well-prepared cases can succeed” (p.200).

The sources of money laundering problems, as discussed in the previous chapter, appear to be concentrated in some specific areas: banks and financial institutions operating on national and international bases, law enforcement agencies and problems arising from their shortages, and, eventually, cooperation problems between those sides. This chapter attempts to offer some solutions to these problems. Considering the financial industry, there are loopholes in the Bank Secrecy Act (BSA) and in other regulations thar apply to the industry. Thus, there will be a comparison of the Subjective Model vs. the Objective Model in terms of reporting systems and, for regulation purposes, there will be a discussion of the Regulation vs. Self-regulation approaches for financial organizations. On the law enforcement side, the emphasis is their need to update and upgrade themselves technically and in personnel quality in order not to fall behind the criminals. Finally, cooperation is something that can be achieved through mutual respect and understanding of the priorities of each side, which can be achieved by the creation of an upper agency whose members represent both sides of the combat effort.

Solutions to Problems Concerning The Banking Industry
And Other Financial Institutions

The banking industry plays a crucial role in almost every money laundering case; at any one of the stages of its processing, dirty money goes through the banking industry in order to be injected into the mainstream financial world. Some argue that the banking industry is very sensitive to practices that involve getting tough on dirty money, as such practices might scare legitimate customers and result in displacing the legitimate flow of money. Such practices might also threaten the privacy of innocent customers.

Bank Secrecy Act (BSA): Objective vs. Subjective Model

One of the major controversies in money laundering control efforts is whether reporting systems should be suspicion-based (Subjective Model) or transaction-based (Objective Model). In the Subjective Model, institutions are only required to report conduct that attracts their suspicions. In contrast, in the Objective Model, as is the case in the U.S., financial institutions are required to report all transactions exceeding a certain amount, irrespective of whether they are suspicious or not (Levi, 1997). Although the focal point of both models is the same--eliminating money laundering--they seem to be dissimilar when it comes to their combating mechanisms. The idea that both models share is that banks and other financial institutions create the environment for laundering illegitimate funds, and therefore these entities are vulnerable to money laundering schemes. As the first stage of converting dirty money to legitimate-appearing money, financial institutions themselves are crucial to efforts to effectively detect money

laundering schemes. Therefore, these institutions, which constitute so-called "choke points", are the main concern of money laundering control efforts (Noble & Golumbic, 1998).

Given this fact, the Subjective Model emphasizes that financial institutions should report suspicious or unusual transactions. This logically requires subjective assessments by financial institutions and their officials about their customers. It also necessitates that financial institutions be acquainted with the identities and businesses of their customers; a process based on *Know Your Customer* procedures and mandatory suspicious transaction reporting. Currently, almost all of the nations engaging in anti-money laundering efforts with respect to their banking industries use the Subjective Model in combating money laundering (Noble & Golumbic, 1998).

The Objective Model, on the other hand, places mandatory reporting and record keeping obligations on financial institutions. Under this model, financial institutions are required to report cash transactions exceeding a certain amount regardless of whether or not they are suspicious or unusual. Although the Objective Model was the first model in this arena, created and implemented by the U.S., other nations have not been attracted to it due to some of its pitfalls. First of all, it places an enormous economic cost on financial institutions because it requires providing large amounts of data to law enforcement. The second limitation is with regard to law enforcement; upon obtaining these devastating numbers of reports, it is almost impossible for investigators to appropriately analyze them and thus detect transactions worthy of further investigation. The third issue is that the Objective Model encourages financial institutions to keep themselves out of money

laundering control efforts by simply meeting the minimal statutory procedures. Institutions can thus abstain from taking responsibility in combating money laundering as long as they report the transactions taking place at their institutions on a regular basis (Noble & Golumbic, 1998). Noble & Golumbic (1998) argued that despite these limitations, the Objective Model also has undeniable advantages. The first advantage is that mandatory currency transaction reporting acts as an effective deterrent to money launderers; knowledge of the existence of a report that contains information related to their identities and activities creates fear among criminals. Currency transaction reporting also increases the cost of money laundering, as criminals seek often-costlier ways to avoid being the subject of such reports. Third, these reports increase launderers' risk of getting caught. Finally, the Objective Model provides a detailed trail for investigation and gives faster and near limitless access to information on unusual cash movements.

The Subjective Model also has its own pros and cons. The Subjective Model offers lower costs to financial institutions compared with the Objective Model. It also places financial institutions in an active role, combating money laundering on the front lines. The Subjective Model also lets financial institutions obtain adequate identification and business information about their customers to be able to judge whether or not their transactions are consistent with their claimed practices. Logic tells us that financial institutions are in the best position of determining if something unusual is going on within themselves. In addition to these advantages, it is more practical to only focus on a limited number of unusual or suspicious reports, as opposed to trying to find potential crime related transactions among the massive body of all transactions. More importantly,

the Subjective Model promotes an effective collaboration between financial institutions and law enforcement. In contrast with these advantages, the Subjective Model also has a number of pitfalls. The first is that it gives too much responsibility to financial institutions, which has the risk of violating customer privacy. Another limitation is that the Subjective Model requires sufficient personnel training in the first place, which is relatively difficult to achieve. The Subjective Model is also criticized for giving too much discretion to financial institutions, among which there exist different standards and values. Lack of uniformity within financial institutions, in terms of compliance with regulations, results in money launderers shifting their businesses to less vigilant financial institutions (Noble & Golumbic, 1998).

Another key element in this comparison, as Levi (1996) remarked, is that the increasing use of technology in banking, with its accompanying reduction in human involvement in transactions beyond over-the-counter deposits, means that suspicion-based techniques are becoming outdated. Thus, technology should be met with technology: neural networks, knowledge-based systems, and expert systems that electronically identify suspicious activity are all possible solutions to the developing divide between current methods and the technological advancement of the industry. Such technology is also a viable solution for the problem of adequately analyzing the sheer volume of transactions that occur; Citibank alone, for example, deals with some US$100 trillion per day. With such volumes of transactions, it can be argued that it is unreasonable to expect that human bankers are aware of the activities of their customers, especially those commercial customers who have little contact with their banker because

they merge crime proceeds into their business funds, thus eliminating the need to borrow bank funds. Levi also suggested that anti-money laundering agencies should investigate not only executives who steal from their companies by withdrawing large cash sums, but also companies who do not incur bank loans.

Such controversy is not a simple issue, as Subjective Models rest not only on legal regimes but also on cultural circumstances and the training that people receive. To illuminate some features of what suspicious transaction reports mean in practice, it would be wise to compare the periods that pre-date the implementation of 1993's Money Laundering Regulations, and periods after that time. According to Levi (1997), in the short term, there has been an increasing amount of transaction reporting, as wholesale markets, lawyers, and accountants have been required to report and have undergone training.

Levi (1996) identified a number of issues that remain unsolved. The first fundamentally questions how to create the resources that are needed to conduct appropriate follow-ups on reports that have been generated through implementation of Objective Model. Such follow-ups are necessary in order to determine whether suspected positives are true or false. The second issue that Levi identifies is how true positives can be derived from current negatives. Levi suggests the use of technology such as neural networks as one possible means to identify plausible suspicious activity from among inter-company transfers of funds. Another issue discussed by Levi is the desirability of regulating currently unregulated arenas, such as car dealers, casinos, and the accounts of solicitors' clients. Inherent with this issue, however, is the question of the likelihood that

large sums of money are laundered through these avenues. Finally, Levi wonders how the underground banking system can be regulated, or how its impact can be monitored.

Analysis of both models for combating money laundering has shown that each is lacking in certain aspects. Therefore, in order to efficiently fight money laundering, a mixed system must be pursued which captures the best sides of both models. Considering that rest of the world follows the suspicion-based approach, while electronic banking developments have increased the significance of the Objective Model, a mixed system is one that may best serve as a powerful tool to involve financial institutions in the overall anti-money laundering strategy (Levi, 1997).

Noble & Golumbic (1998) argued that through this new approach, an efficient partnership may be promoted between financial institutions and law enforcement, one which aims at working affirmatively to eliminate money laundering. This new approach is also expected to contribute a proactive self-policing mentality to financial institutions.

Suspicious Activity Report (SAR)

The main problem with SAR is that some business sectors have been unfairly regulated; yet others remain unregulated although they are conducting essentially the same business. In this regard, the MLA (April 2000b) formulated recent efforts attempting to expand obligatory SAR duties to the other sectors, such as the U.S. gaming, securities and money services industries, focusing on the following issues:

Activity with multiple suspects

If the activity includes more than one suspect, the institution should file multiple SARs while specifying the institution-related information on only one form.

Activity at multiple branches

If the suspicious activity occurs at multiple branches, each branch subject to activity should be mentioned with additional sheets.

Activity at foreign institutions

Foreign institutions that file SARs should declare the U.S. branch where the activity took place as the reporting financial institution.

Relationship to institution

The status of the suspect in terms of their relationship to the institution should be correctly declared. There are some proposed changes to SAR, which will demand that the agencies add new categories including ‘monetary instrument purchaser’ and ‘account applicant’. But, the agencies did not agree with these modifications.

Inaccurate or incomplete SARs

Institutions realizing that they have filed an erroneous or incomplete SAR should file a revised one.

Electronic filing

Financial Enforcement Network (FinCEN)’s SAR Software lets banks file SARs on a Windows-compatible PC and provide the information to FinCEN on a computer disk. The software, which can be downloaded from FinCEN’s Website, lessens the reporting burden by automatically inserting on each form the identifying information of the financial institution. The agencies’ concern about filing SARs electronically includes potential security and confidentiality problems (Apr. 2000b, p.2).

Apart from this, the final SAR regulation for Money Services Business (MSB) is designed to also cover money transmitters, issuers, sellers or redeemers of traveler's checks or money orders, and the Postal Service, all of which used to be neglected in anti-money laundering regulations. Other MSBs, on the other hand, may report suspicious activity voluntarily (MLA, April 2000c).

Wide disclosure of SAR data has been threatening the safety of witnesses, including financial institution employees and customers, who are publicly disclosed on the form. Rather than requiring witnesses report information they have, they should be able to provide all relevant documentation and witness information to government officials informally and confidentially (MLA, March 2000f).

As discussed earlier, SAR also has some feedback problems. There needs to be a model of a feedback system that illuminates how law enforcement makes use of SARs and which supplies information to the financial services industry as the main focal point of related government agencies. FinCEN as the major liaison agency of public-private sectors is planning to create a format *SAR Activity Report -Trends, Tips and Issues*, in order to overcome the SAR feedback deficiency. It will involve participation of regulatory agencies, private industry and federal, state and local enforcement agencies and will include documents such as *SAR Statistics, Trends and Analysis, Major Investigations, Tips, Frequently Asked Questions and Industry Forum*. This new format aims at developing regulatory and cooperative public-private money laundering control efforts by increasing the functions of reported information. Furthermore, there are also some recent advances in the SAR system that allows it to provide more feedback. The

first advance is data mining tools which have been formatted to analyze and link information in the system. The second tool involves designing a centralized process for electronically monitoring the use of SAR information by Treasury and Justice enforcement agencies (MLA, October 2000a).

Gold and Levi (1994), on the other hand, proposed that feedback to financial institutions should be in the form of general statistics stating the proportion of an institution's contributions through their disclosures for a certain period of time. In addition, Gold and Levi argued that for missing information, the responsible operators should be warned on a periodic basis.

Regulation vs. Self-Regulation Approaches

In light of the FATF recommendations, anti-money laundering regulations necessitate that financial institutions take action to impede money laundering. The controversy in regulatory design is whether the standards imposed under such control measures should be dictated in detail in the scheme of the regulation or left more to the institution to work out in terms of self-regulation (Fisse, 1997).

The enforced self-regulation model is an alternative direction to emphasize, in terms of anti-money laundering efforts. Fisse (1997) indicated that the first distinctive element of this model is that financial institutions differ so widely that global regulation standards are apparently inefficient for the majority of organizations. In other words, all banks are unlike. They have different types of clients and different corporate cultures. Plus, they have different histories of success and failure. It is anticipated that it is possible to avoid extremist practices through the self-regulation approach by giving the same

performance objectives to financial institutions and forcing each to have a specific plan for achieving those purposes efficiently. Therefore, if a bank comes up with a money-laundering control plan that meets the objectives or standards of the government, the government encourages the bank to implement it. The idea, in short, is privately written and publicly authorized rules. It is thus an attempt to improve on the inflexibilities and costs of regulation by leaving the discretion in the hands of the institutions in order to regulate itself.

According to Fisse (1997), although the enforced self-regulation model seems perfect in the abstract, in practice it can be difficult to precisely work it out. The dilemma is how much discretion should be left in the hands of institutions or more comprehensively if this approach is a practical option.

The enforced-self regulation model allows the bank to set its own rules, which not only conform to their corporate culture but also will impose minimum costs in doing business. Plus, tailor-made money laundering detection plans are more effective in preventing unnecessary invasions of privacy. Habitually, reporting all suspicious transactions to the government has resulted in unnecessarily listing huge numbers of citizens' affairs in criminal intelligence databases. Therefore, banks can form their own procedures for money laundering prevention by limiting the number of reportable cases to those which continue to be suspicious after the agreed upon in-house tests have been applied (Fisse, 1997).

Fisse (1997) remarked that a more essential question is whether suspect transaction reporting should be given such a key role. According to Fisse, it is difficult to

objectively differentiate suspect transactions from others. The second issue is that the suspect transaction test is a shortsighted model that may easily disregard highly useful intelligence obtained through unusual transactions. Besides, unusual transactions may provide crucial investigative connections, which to some extent explain why financial institutions should track unusual patterns of transactions. Third, there is a very low strike rate, so that out of every 200 suspect transaction reports, only one arrest of a suspected drug trafficker occurs. Fourth, considering the complete number of transactions conducted by financial institutions, any inspection of particular transactions is prone to unreliability.

In light of these factors, Levi (1997) proposed that the focal point should not be suspect transaction reporting but instead should be the use of knowledge-based systems; specifically, Levi proposes the use of neural networks and artificial intelligence against money laundering. Through this model, financial institutions will not be required to design their own regulation and self-assessment programs. On the contrary, they will be required to supply data in standard formats so that the information can easily be gathered and evaluated by a central agency. Fisse (1997) argued, “the more automated the banking and financial system becomes, the less face-to-face contact between clients and employees and the greater the holes in the detection net unless client information is electronically scanned for abnormal patterns and connections”(p.296). Such transformation from suspect transaction reporting towards cyberwatch systems seems to be inevitable.

Anti-money laundering efforts have been accompanied by the development of payment systems at the national and international level. There has been a gradual decrease in the use of cash and the implementation of funds transfer techniques that are more competent, more transparent, and that can help to minimize the areas that illegal operators can make use of (Dini, 1997). There appears to be some physical disincentives for cash transactions; one such disincentive is the non-convertibility of domestic currency. For example, the Colombian government does not allow any other kind of currency within its jurisdiction. In addition, the occasional recall and substitution of currency, and the elimination of large denomination bills (Savona & Feo, 1997) also play an important role.

Banks and other cash dealers are supposed to keep deposits and other transactions under control at all of their branches. A main national or international bank may have a sophisticated computer system, which makes the mission of aggregation a simple issue. However, a small finance company may not have such capabilities. Therefore, it is easy for a bank that has computer based tracking abilities to aggregate all deposits made at any branch within any 24-hour period. This, as a result, lets them to identify the customer whose purpose is to evade reporting requirements. Although banks are supposed to develop their aggregation capacity, it seems unfair to design penal provisions for those that cannot meet the standards. Moreover, it takes time to install new systems and to understand their necessity (Fisse, 1997).

As a potential solution, a system can be offered embracing both the banking and finance industries under which different aggregation periods are used by different

financial institutions for different periods, arranged on a secret schedule. Such a system lets banks and other financial institutions have the technical capacity to periodically adjust the time settings of their aggregation programs with minimal cost. It also assumes that the schedule arrangements could in fact be kept secret from the smurfing underworld. Another alternative is an enforced self-regulation system, in which each bank designs its own aggregation rules. In this system, money launderers would not be faced with a standard aggregation period; instead, there would be many unknown and different aggregations. In order to prevent leaks to launderers about aggregation periods, the most effective approach seems to be a centrally controlled system under which the aggregation periods of each financial institution is selected randomly by a computer program in such a way that no official has access to the random sequence. In short, it is much more about technology and software innovation than the regulation vs. self-regulation debate (Fisse, 1997).

The Know Your Customer (KYC) regulations

Despite, the lack of formal KYC obligations for U.S. institutions, many bankers believe that an efficient KYC program is one of the best security mechanisms against money laundering (MLA, April 2000d).

As for the banking sector, the best way of controlling money laundering for the securities sector is a KYC program that confirms the identity of clients and the legality of their funds and traces their account activity for unusual and potentially suspicious activity. You can reduce the risk of abuse through securities accounts by monitoring for and verifying the legitimacy of the types of transactions (MLA, October 2000c).

Similarly, there should be a worldwide standard for financial institutions to identify and keep records of their customers; anonymous accounts and transactions, in this regard, should be prohibited at all financial sectors in the first place (Britain. Cabinet Office, 2000).

Regulating Private Banking and Other Monetary Business Services

One of the areas open to money laundering seems to be the Private Banking sector. In order to control money laundering through private banking, the first step should be the adoption of the U.S. central bank required enhanced customer due diligence procedures, including KYC and suspicious activity detection and reporting. To achieve this goal, business personnel of the bank should understand the necessity of the program. The next step is that all appropriate personnel, such as private banking officers, lending officers, all customer contact personnel, and compliance and audit staff should be trained in the related issues of anti-laundering regulatory and domestic policies, procedures and compliance. Then, the sector should create its KYC procedures so as to identify himself and business activities, and the normal and expected transactions of the customer and facilitate the revealing and reporting of suspicious activity (MLA, August 2000a).

MLA (August 2000a) reported that the Levin Bill has been proposed in order to regulate all forms of banks by requiring them to institute due diligence procedures for opening and controlling private banking accounts, together with the confirmation of customer identity, and the financial background and funds of clients.

Private Investment Companies (PICs), also known as personal investment companies, are entities founded in offshore jurisdictions to handle assets. A General

Accounting Office (GAO) report in August 1998 found that billions of dollars in assets from unknown sources controlled by anonymous clients have gained access to the private banking industry through PICs. The Levin bill would limit the use of PICs by banning any financial institution or branch of a foreign bank from opening or continuing a U.S. account for a foreign entity or representative of a foreign entity (MLA, January 2000).

The documentation of hundreds of money laundering schemes in the U.S., has proven that the securities industry is still an open area to money launderers. Originating from their structure, securities products remain vulnerable to certain types of laundering activity that should be concentrated on by laundering regulation. The best laundering defense for the securities sector seems to be the KYC program that confirms the identity of clients and the legality of their proceeds and traces their account activity in case an unusual or potentially suspicious activity takes place. One can decrease the risk of laundering through securities accounts by monitoring for and confirming the legitimacy of the types of transactions that attract attention (MLA, October 2000c).

Levi (1997) identified the type of transactions which should attract the attention of financial services staff as indicating the likelihood of their institution becoming part of a money laundering scheme:

(a) large cash deposits made by an individual or firm whose regular business activities do not include considerable amounts of cash;

(b) significant increases in cash deposits performed by an individual or company in business without an evident reason, particularly if such deposits are

transferred out within a short period to a destination not normally connected with the individual or company;

(c) considerable increases in deposits of cash or *negotiable instruments* by a professional firm or company using client accounts and especially when transferring deposits between other client company and trust accounts;

(d) large cash deposits and withdrawals by an individual or company which seem to be unrelated to the account holder as regards a business,

(e) deposits and withdrawals mostly by cash that are made by an individual or company in a type of business that such activities would normally be fulfilled by checks and other kinds of instruments (p.275).

According to Levi (1997), there are also customers whose actions might direct a careful banker to suspect that they might be involved in money laundering. Examples include:

(a) customers who provide minimal or fake information about their identity while opening an account;

(b) customers who refuse to provide information that a normal customer would make them eligible for credit;

(c) customers who open a considerable number of accounts and pay in cash to each of them, which in total would be a very large sum;

(d) customers who pay in cash via numerous credit slips so that the total of each deposit is indifferent but the total of all the deposits is very large;

(e) customers who have accounts with numerous banks within the neighborhood, especially when these accounts are used in transmissions to another country,

(f) customers who pay by cash for negotiable and marketable money instruments, especially when such instruments are payable to the owner;

(g) customers who try to exchange low denomination notes for those of a higher denomination;

(h) customers whose deposit of cash includes a certain number of forged notes;

(i) customers who make large amounts of transactions with countries which are subject to the production, processing, or marketing of narcotics, or countries which have been known as being involved in the laundering of the proceeds of drug trafficking (pp. 275, 276).

While potential launderers consist of the clients of accountants, lawyers, trust companies, company administrators, brokers and agents for property and for financial instruments and contracts, the dilemma is that bankers will rarely be aware of professionals acting on behalf of clients, although they have the required knowledge of their financial dealings. Examples include:

(a) clients introduced by firms that tend to be "accident prone" in their selection of clients and business activities;

(b) clients who are unwilling to give adequate information regarding their existence and identity, or who supply information that is difficult to confirm or support;

(c) clients who set up and support their companies with large amounts of cash or cash instruments rather than other forms of payment accompanied by commercial money transfers;

(d) clients who search for fiduciary or cash management conveniences for large volumes of cash;

(e) clients who request the firm to act as their agent in obtaining high sum bankers' drafts, cashiers' checks, and other cash-equivalent or near cash monetary instruments or in making wire transfers to and from other banks and financial institutions;

(f) clients who start businesses which have no clear relationship with normal business-related activities, but which receive and give out large amounts of money for evident grounds;

(g) clients whose businesses are not usual cash-generators however who utilize large amounts of cash to be banked and accounted for;

(h) clients who refuse to give enough information to prepare their company for audit or tax reasons;

Some of these criteria for putting bankers on notice of laundering necessitate considerable banker knowledge of customer activities, but others require less knowledge (Levi, 1997).

Cyberbanking

Technology advances have created new ways for money to be used or targeted by criminals. Law enforcement must make the assumption that a variety of entities will

subject electronic funds to sustained attacks (Wahlert, 1996). Wahlert (1996) identified four categories of law enforcement concern regarding electronic funds: illicit funds transportation, counterfeiting, issuers that are non-bank entities, and the inability to trace the flow of money.

MLA (April 2000e) argued that in order to be successful in controlling cyber money-laundering, *Know Your Cyber-Customer* regulations should consist of measures that standardize cyberbanking, encourage technologic support to detect suspicious on-line transactions, and place limitations on the type and geographic accessibility of cyberbanking products and services.

KYC seems to be a good solution to minimize the threat of cyberlaundering if a number of measures are taken. The first measure is to implement globally stable Internet banking standards. The second measure is the use of technology to support customer identification and the detection of suspicious on-line activity. The third measure is to have KYC measures that comprise persistent observing of account activity. Finally, laws should be created to limit Internet banking operations to jurisdictions where the bank is licensed. Further expertise in the detection and investigation of potential cyberlaundering within the global law enforcement community (MLA, April 2000e) needs to be developed.

Solutions to Cooperation and Participation Problems

How to Improve Cooperation

Al Capone said that you could get further with a kind word and a gun than you could with a kind word alone. Metaphorically, even if we have a whole armory of legislative guns targeted at money laundering, it should always be remembered that police-community relationships come first in the long term means if they are designed on mutual civility and respect for the interests of others (Levi, 1991).

Money launderers now engage in progressively more complicated activities that include applications in a continuum between traditional banking practices and the use of advanced information technologies. Ideally, an extensive form of national anti-money laundering combating strategy requires the integration of public and private sector entities on the basis of information exchange, co-operation and compliance. Nevertheless, it is apparent that most of the world's wealthiest and most developed states still fail to comply with international standards (Castle, 1999).

According to Evans (1997), investigating financial institutions is a difficult matter because it is labor intensive and necessitates acquaintance with corporate culture and strategies, bookkeeping, accounting, computer science, and tax law. The expertise of forensic accountants and lawyers is essential to support police investigators. This is based on the fact that police agencies in most jurisdictions have more sophisticated issues than they can appropriately investigate. Therefore, the use of informants and intelligence to form a more competent targeting of scarce resources should be a main concern everywhere. Hopefully, accountants and other professionals hired by the launderers will

leave a trail that can easily be traced. It is important to recognize that money laundering is performed by people who know more about accounting systems and other practices than auditors or police investigators. It is unbelievable how many cases of fraud and money laundering have remained untouched after a series of audits and were revealed only through informants' leads, or accidents (Evans).

Levi (1991) noted that the leading concerns that frame the level of bankers' cooperation, including statute law, case law, and police access to confidential and legally privileged information, are the broader features of political economy and both national and international practices of the state.

There must be greater involvement from financial institutions and related professions in self-regulation and in taking part in broad anti money laundering efforts in order to prevent the violation of financial systems and other business sectors. Evans (1997) identified that although only a few participants complain that they are not the police, the main theme of the money laundering threat has not been sufficiently understood by most members of the financial industry. Once trust in financial systems disappears, then industry and other business sectors will pay for it by not actively participating to reduce money laundering.

Traditionally, police officers do not want to deal with what they call 'paper cases'. They are in favor of concrete operations that result in convictions of a few street dealers and low-level suppliers as opposed to attacking the proceeds and making use of the more powerful features of legislation (Evans, 1997). As a reflection of the police

subculture, they are in favor of little street operations while also keeping the momentum going.

Another key element for effective cooperation is that collective gain should be combined with individual benefits. To some extent, sanctions for non-compliance with obligations and prohibitions might be effective, but severe rules in and of themselves will rarely be a successful deterrent. It would be better to design rewards and penalties that are proportionate with the actual willingness for involvement or reluctance to co-operate. Such rewards and penalties might appear in numerous forms and vary with standards established by the business sectors (Dini, 1997).

Legal Exemptions or Administrative Assurances?

Another aspect of the cooperation issue is that financial institutions and their employees expect to not be prosecuted if they act in good faith; they expect legally effective immunity. In other words, one side of this conceptual cooperation is left in the hands of the other side. There is no guarantee that enforcement agencies won't change their policy or practice from time to time. So, the solution seems to give stable and legally effective guarantees of immunity from criminal liability through a clear and sufficient statutory definition of illegal conduct (Fisse, 1997).

Levi (1991) indicated that in order for cooperation to be improved, it seems to be advantageous for fewer police than at present to be tasked with the operations of financial institutions. For example, officers involved in obtaining information from financial institutions might be the same as those operating asset-confiscation, and they should be permitted to stay in their jobs for rational lengths of time rather than be rotated often, thus

wasting their expertise. It is more efficient to produce fewer and more consistent channels of communication.

It is difficult for police to generate trust with bankers and other financial institutions due to potential leaking and stability problems. From the perspective of police agencies, Levi (1991) argued, "the less they have to do with bankers in a co-operative context, the harder it is to overcome the cynicism barrier. Conversely, the more contact, that police and bankers have, the more likely it is that they will be sympathetic to each other's difficulties" (p. 85). According to Levi, this contact should not be limited to symbolic contact that concerns only high rank officials of two parties, but instead it must exist much more at the operational level.

Careful police handling of bankers is particularly important in order to maximize the benefits that the police can obtain from the police-banker relationship. High-handedness can result in passive compliance, which can seriously hinder police efforts. This is particularly the case when the police are not fully aware of the information that banks hold. Levi (1991) noted that while banks do assist the police in identifying those engaging in fraud, bankers also serve an important role in assisting the police with interpreting bank records. Thus, Levi argued, "bankers, more than most witnesses and similarly to non-criminal informants are repeat players whom the police have an interest in cultivating and over whom comparatively little leverage can be exercised" (p.115).

Close and informal relationships like those favored by civil people can lift the barriers between public and private sector institutions. As a result, informal approaches could easily discard and replace formal rules. If we do not have a general agreement that

the banking industry is an absolute private activity, policing practices with regard to banks will continue to increase. Once the banks make some provisions for the sake of the public, agencies will be supportive of cooperation as they have common interests and mutual benefits (Levi, 1991).

Levi (1991) argued that in order to prevent leaks from inside banks to account holders, the police should conduct the initial information gathering about the account holders subject to the investigation. This information should be gathered in oral rather than in written form.

In addition to fostering good relations between agencies and organizations that must cooperate with each other to be able to effectively fight money laundering, an efficient anti-money laundering tool might be the creation of an upper agency whose members consist of representatives from agencies involved in anti-money laundering efforts. Such an agency, the Performance and Innovation Unit (PIU), was established in the United Kingdom. The UK experience has shown that there are a number of considerations that must be taken into account when establishing such a unit, including the need for specialist skills, training, and a Center of Excellence (Britain. Cabinet Office, 2000).

Effective financial investigation requires the use of specialist skills, which requires the recruitment of specialist financial investigators. Sophisticated skills are needed to combat the myriad of techniques that individuals use to hide their money and its origins. Recognized qualifications, a law enforcement career structure for financial investigators, and a Center of Excellence to support financial investigation are all tools

should be employed to address the gap between the sophisticated techniques of criminals, and the skills of those tasked with investigating them (Britain. Cabinet Office, 2000).

The Britain Cabinet Office (2000) emphasized the importance of a Center of Excellence, arguing that in addition to being a resource for a number of FIUs, it would provide accreditation, training, and encouragement for sharing best practices and developing expertise. Such a Center should be given an operational context and be placed within a multi-disciplinary environment that has links to both the private sector and law enforcement. Although not a law enforcement entity itself, the Center would work closely with law enforcement, foster links with the private sector, and encourage civilians to enter the field of financial investigation. The Britain Cabinet Office argued that staffing requirements would be low, initially requiring only six people. In addition to providing ongoing training to financial investigators, the Center would also develop and administer a financial investigator accreditation process that would be recognized by and transferable to other public and private institutions, and that would be obtainable by both public and private sector practitioners. Finally, the Center would play a leading role in generating greater cooperation between public and private sector financial investigation experts (such as forensic accountants, banks, and law enforcement personnel). Techniques such as cross training, expertise pooling, and secondments would be used to facilitate this process, and to ensure that it is conducted cost-effectively (Britain. Cabinet Office). Finally, the Center would be used to facilitate the establishment of a financial investigator career path within law enforcement, allowing an officer to remain within

their chosen specialization and yet receive promotions and an expanding scope of responsibility (Britain. Cabinet Office).

Information Sharing

Information is a crucial weapon in combating organized and economic crime. Given this fact, criminal organizations also design their own information bases to survive and expand their sovereignty. In order to fully create a major understanding about the importance of information, it is best to first observe what the criminals do. The efforts of criminal organizations to purchase their own banks or other financial institutions are based on the fact that banks have criminally strategic information about customers and industry. The security of banks, more than other dynamics, rests on protecting the reserve of information that constitutes the special confidentiality of the bank-customer relationship (Dini, 1997).

Bernasconi (1997) argued that the national law enforcement agencies are supposed to acquire a culture of responsibility to automatically inform foreign law enforcement agencies related to international money laundering operations. One primary function of international co-operation should be the exchange of information related to financial matters that involve markets for products, corporate control and labor. The objective is detection of not only the activities in question but also the degree of compliance to norms. It is evident that the exchange of information is a potential instrument for tracking the directions of that particular criminal activity. The quality of cooperation is directly proportional to the number of data flows exchanged between the countries taking part (Dini, 1997).

A major argument is whether to give information or documents to foreign authorities about the economic movements of individuals who have not yet been accused in foreign criminal events. Another question arises regarding whether or not these activities are under the guarantee of national regulations in terms of banking secrecy or professional secrecy (Bernasconi, 1997).

Financial Intelligence Units (FIUs)

FinCEN's main goal regarding international anti money laundering efforts is to develop a partnership of Financial Intelligence Units (FIUs). FinCEN's efforts have resulted in a growth in the number of FIUs from 14 in 1995 to 53 in 2000. Their strategic plan estimated 54 FIUs by 2002. (MLA, September 2000, p.6). Once they become worldwide in the near future, FIUs will serve as unique bases of intelligence for money laundering control efforts and information sharing at international level.

Training and Awareness

The first step should be generating a sufficient public and official awareness of money laundering criminality. Such awareness would consist of two ingredients. First, acquaintance with the existence of money laundering operations, their whereabouts, and profiles of the actors involved are crucial. Second, a degree of awareness about the negative outcomes of this activity for the jurisdiction subject to the crime (Castle, 1999).

One expected outcome of the training given to bank employees is that, once they understand their duties and appreciate the importance of money laundering, they will try to contribute more than mere reporting formalities require. Afterwards, if they believe that superiors in their financial institution are negligent about reporting suspicious

transactions, they would ideally be able to report directly to law enforcement agencies (Evans, 1997).

Federal regulations require that financial institutions have a formal, written anti-money laundering compliance program that provides training for proper personnel. Habitually, financial institutions follow these regulations in order to avoid criminal charges. But there are other, more important reasons for having an anti-money laundering training program. Meeting the government's necessities may not be enough to satisfy the institution itself (MLA, April 2000f). And it may not be adequate to get rid of the serious risk of civil and criminal penalties posed by the Bank Secrecy Act and federal criminal money laundering laws. The question then becomes how financial institutions should decide the proper way of applying a training program. The MLA (April 2000f) suggested that a successful compliance-training program must view three important factors: policies, procedures and practices. Policies and procedures are created to form harmony and unity at an institution. They address the basics of the institution's structure. Training on BSA and money laundering controls must keep in mind the institution's overall mission and focal points, so that the whole efforts generate the harmony that is expected to exist between money laundering control policies and procedures and the institution's missions and operating procedures.

Employees subject to money laundering training are manifesting the cruel nature of the crime. Money launderers do not limit attacks to the front line or the teller line. Laundering can be operated via various services accessible through a bank. Thus, the

people subject to training should be all of the institutions' employees. Examples of relevant training topics for different departments include:

Tellers, Customer Service Representatives and Branch Management

Employees who are involved in initial customer contact must be trained to identify certain BSA money laundering activities concerning banking and linked transactions. MLA (May 2000) suggested, "training should consist of account openings, customer identification, cash-related activity, funds transfers, suspicious activity detection and reporting, and Know Your Customer control standards" (p. 8). In addition, the appropriate personnel should have acquaintance with the following areas: wire transfer issues, characteristics of private banking, loans, credit and loan operations, bookkeeping, audit and compliance, and branch administration and operations. It should be clarified that attendance at training sessions fluctuates from institution to institution. It is no surprise that all employees of community banks may easily attend training sessions, while such widespread training is often difficult for those from larger institutions with numerous offices in different cities and a wide range of products and services (MLA, May 2000).

Dini (1997) argued that apart from the controls performed by the authorities, the primary concern should be to motivate the staff to develop self-discipline and self-regulation within the industry. While designing such standards in the market, rules of conduct based on professional ethics can serve as a useful reference. One of the main problems faced by financial institutions is how to train branch staff, though this can

easily be handled by reminding branch staff of their requirements by regularly using circulars (Levi, 1991).

Considering the abundance of money laundering techniques and experts, investigators and prosecutors correspondingly need to specialize and assign group of investigators who can contribute their skills and experience (Evans, 1997).

Evans (1997) stated that training is expensive, and that specialists, international investigations, and running parallel files cost money. There is a global agreement that organized crime is now more dangerous than ever. As a result, international cooperation has been developed and national legislations were modified to facilitate the criminal justice system's taking the profit out of crime. Subsequently, what we need is to regulate the confiscation of the proceeds of crime both domestically and internationally.

The Dutch experience in financial investigation training can serve as a guideline for how a model Financial Investigation Center of Excellence should conduct its training (Britain. Cabinet Office, 2000). In 1998, in conjunction with three Dutch universities, the Dutch government initiated a four-level training scheme for law enforcement's financial investigators. Level One provided all police officers with the basic skills needed to identify the financial aspects of their normal work. Level One was accomplished through independent self-study, with passing determined by a concluding examination. Criminal investigators who had passed Level One were provided with Level Two training. Level Three training was provided to specialist investigators who deal with financial investigations or who support such investigations. Level Four training was provided to non-law enforcement personnel, such as accountants and lawyers, who work within law

enforcement. In parallel, the Dutch government also provided money laundering and asset seizure legislation training to prosecutors and justices.

Compliance training tips

The MLA (April 2000f) listed the pillars of an efficient training program as follows:

(a) All staff must be encouraged to value the significance of complying with policies and procedures. Failures can be costly. Intentional disrespect can have devastating outcomes.

(b) Abiding by policy and procedure is all about verdicts and outcomes. The idea is that regulations be valued as state decisions that have priority over business decisions.

(c) Procedures and processes are basically the same as making decisions and putting them into practice. Failures frequently have additional risk. BSA and money laundering control training are expected to reduce those risks.

(d) One way to guarantee disappointment in training is to generalize. Each learner must think that the training is speaking directly to him or her. Personalized and modified methods will advance the efficiency of training programs.

(e) Feedback is a requirement measured by follow-up training, reminders in employee newsletters or memos, or pop-quiz testing. Test results could indicate the areas or employees that need a secondary training (Apr. 2000f, p.8).

Professional Help

Professionals such as lawyers, accountants, tax advisers, and brokers are supposedly trustworthy enough to act ethically and can be efficiently regulated by ethical standards and self-policing. Since money-laundering activities are generally formed with help of professionals, national and international anti money laundering efforts rest on the ethical reliability of various businesses that operate large amounts of cash. Launderers have realized the benefit of hiring a group of professionals who have the privilege of confidentiality. These professions have used their legitimate privileges to build another barrier of confidentiality between their laundering clients and inquiries of law enforcement bodies (Bassiouni & Gualtieri, 1997).

Since 1986, Northern Ireland has used a number of innovative methods to both solve some of the problems faced with professionals, and to expand their investigative power (Britain. Cabinet Office, 2000). At the request of Police Superintendents, civilian investigators (typically accountants, lawyers, or bankers) are often appointed by the court to conduct financial investigations. These investigators have power to issue compulsory disclosure orders, which may involve mandatory attendance at an interview, producing documents, and responding to requests in writing. The orders can be extensive, even requiring the productions of documents that the individual is entitled to a copy of, but which they do not possess. Northern Ireland's civilian investigators can also issue general bank circulars to the head office of any bank. These circulars require that the bank disclose all information related to a named account holder. These disclosures are used by

the investigator to generate a listing of the accounts of an individual being investigated (Britain. Cabinet Office).

Northern Ireland's broad investigative powers are similar to those of Australia. In 1984, the Australian government established the National Crime Authority. The purpose of the Crime Authority was to address interstate and international crime that was sophisticated, complex, or organized in nature. Staffed by members of both the public and private sectors, including financial investigators, intelligence analysts, lawyers, and law enforcement officials, the Crime Authority had powers that went beyond the scope of those granted to the police. Subject to the permission of the multi-jurisdictional committee that oversees the Crime Authority's work, Crime Authority members can compel document production and testimony under oath. In order to protect the privacy and safety of those compelled to provide evidence, the Crime Authority's special powers are used confidentially (Britain. Cabinet Office, 2000).

Solutions to Enforcement Issues

International Standards

The international nature of money laundering means that national regulations and law enforcement are themselves insufficient to effectively control the problem. Compounding the issue, Levi (1996) noted the fact that nations differ in terms of their economic and social development, and thus have differing views with respect to if and how money laundering should be controlled. These differences can create political obstacles to the implementation of an international culture of regulatory compliance.

There is a function of regional and international regulation in numerous sectors to decrease not only organized crime's involvement in legal business, but also the money laundering activities that manipulate the legal and regulatory regimes of national systems (Evans, 1997). Levi (1996) argued that there are two fundamental approaches that can be taken in developing international money laundering regulations. The first is what Levi terms the 'diplomatic approach', wherein nations work together to reach consensus. The second has elements of the comprehensive approach of Savona & Feo (1997), beginning with a model of the ideal and then attempting to implement it. There is an increasingly evident need for a comprehensive approach, founded on constructive, pragmatic action covering several aspects of the problem and effectively set in an international framework (Dini, 1997).

Savona and Feo (1997) anticipated that the following problem areas addressed by the FATF recommendations and the Vienna Drug Convention, should be the focal point for immediate action by all countries in terms of dependable membership in international regulation systems and financial communities:

The Criminalization of Money Laundering Offences

Numerous international and regional practices already exist. One of the drawbacks in application is the lack of determination to make participation in money laundering punishable.

Limitation of Secrecy Privileges

Another major problem when enforcing anti-money laundering policies is deficiency in secrecy privileges. Principally all of the countries cooperating to fight money laundering

realize that to some extent there is a reasonable limitation on financial and professional privacy.

Know Your Customer (KYC)

A primary FATF and Basle Statement of Principles element is KYC regulation. Anonymous accounts are unique indications of a money laundering service. Presumably, the more anonymous accounts are used and the less functional equivalents are preferred.

Identification and Reporting of Suspicious Transactions

The requirement to report suspicious transactions is very often 'law on the books but not law in practice'.

Improving the Regulation of Business/Professionals Who Conduct Financial Operations

Once the banking industry was regulated in terms of anti-money laundering policies, non-bank financial institutions were seen as viable alternatives to banks for money laundering. It was relatively easy to extend regulation to such institutions because their financial activities were identical to banks and it was nonsense to argue that they should not abide by similar anti-money laundering policies.

Developing Asset Forfeiture

Asset forfeiture competences play a crucial role to implement anti money laundering regulation and punishment.

Afterwards, it is fair to say that only a few international cases are investigated properly. In turn, without cohesive and meaningful international investigations, one can estimate that criminal organizations are becoming more and more international (Evans, 1997). Criminals exploit the opportunities that are available to them, provided that they

have the skills and connections necessary to do so. Because money laundering activity is inherently intertwined with legitimate society, care must be taken in the regulatory arena to reduce the opportunity for illegal exploitation while at the same time preserving a diverse and dynamic economy (Levi, 1996).

Financial Action Task Force (FATF) Recommendations

Considering the international nature of money laundering crime, the importance of FATF becomes evident. The annual typologies report accumulates the 'Typologies Exercise', a meeting for law enforcement and regulatory authorities to recognize and illustrate recent laundering techniques and trends, actual threats and counter measures (MLA, April 2000e).

In essence, compliance with international money laundering control standards rests on whether or not those standards can be transformed into effective compliance controls among financial institutions, and what can be done at the international arena to aid that process. Fisse (1997) identified several lessons of compliance within organizations that could be collected and made available for ready distribution:

(a) Domestic anti-money laundering legislation could make clear both the necessity for financial institutions to have deterrent internal control structures and the importance of that goal.

(b) A model structure for compliance systems could be coupled with the related local money laundering legislation.

(c) Enforcement agencies should be motivated to focus on compliance systems in relation to financial institutions and particular compliance-based requirements.

(d) The legal structure for handling institutions was seen to only be concentrating on unlawful money laundering activities, so it could be designed to focus more on internal controls and the need to assess the need for both revision and supervision.

(e) Self-regulatory projects aimed at effective compliance programs could be supported within the financial industry and developed by forming a compliance clearing-house.

To summarize, the policies stated in the FATF Recommendations question the applications at the micro-level of the institutions where money-laundering activities surface. Although the concerns and the experience of firms are subjective and localized, they should be formed in the direction of international conduct and compliance methods, which are crucial in the context of money laundering (Fisse).

Australia used FATF's 40 recommendations to develop and implement a comprehensive package of anti-money laundering measures, which have resulted in an environment that is unfavorable to organized crime money laundering. Australia's domestic agencies, such as AUSTRAC, have also benefited from Australia's relationship with FATF, as they have been given the opportunity to form relationships with counterpart agencies from other nations (Jennings, 1996).

Mutual Agreements

The United Nations (UN), for mutual agreement purposes, has offered model treaties that can be used by countries. Evans (1997) indicated, "the Model Treaty on *Mutual Assistance in Criminal Matters* contains provisions that deal with, among other

things: the scope of application; the designation of competent authorities, the contents of requests; refusal of assistance; the protection of confidentiality; service of documents; obtaining of evidence; availability of persons in and out of custody to give evidence; safe conduct; search and seizure; certification and authentication; and costs" (p.203).

Given the growth in international money-laundering activities, measures for international cooperation in the investigation and prosecution of these activities are essential. For this reason, many countries have taken part in bilateral and multilateral mutual legal assistance treaties. However, the first step should be legislative applications designed to give power to mutual legal assistance and exchange of convicts in money laundering cases. For effective investigation, enforcement and prosecution, there needs to be well-designed and extensive legislation and regulation of money laundering criminality. Only such legislation can wholly mobilize the public and private sectors to take effective action against money laundering (Castle, 1999).

In order to trace, seize, and confiscate criminal gains in an effective way, inter-governmental co-operation is required. Bassiouni & Gualtieri (1997) noted that according to authorities in the field, this new approach is most appropriate through mutual legal assistance treaties, which are intended to assist in empowering the tracking, immobilizing and confiscating of gains of crime. This agreement is presented through implementation by the Eighth United Nation's Congress on the Prevention of Crime and the Treatment of Offenders of a Model Treaty on Mutual Assistance in Criminal Matters that involves an Optional Protocol related to the proceeds of crime.

Despite the fact that most police agencies and prosecutors are prejudiced about the applicability of such treaties, they can still be made to work. They should not be pictured as a means for good informal links and international working contacts which police officials so appreciate, but instead should be seen as mechanisms that can be used when there is a problem and a need for a formal, evident procedure (Evans, 1997).

Mutual Legal Assistance Treaties (MLTs) are not created only for the sake of powerful economies; neither are these efforts merely to protect their interests. All nations have a stake in deterring drug trafficking and further criminality. Further, law enforcement officials of a developing country may need to get help from more developed states. In addition, governments are looking for ways to minimize unilateral law enforcement applications, which has nothing to do with foreign sovereignty and interests (Bassiouni & Gualtieri, 1997).

Therefore, as Bassiouni & Gualtieri (1997) argued, instead of multilateral or regional agreements, the most practical way to overcome the problems seems to be a bilateral approach, which is more extensive and includes several modalities of international cooperation.

These model treaties are designed to give a functional framework for governments that is aimed at designing bilateral provisions in these fields. They stand for appropriate measures for each modality because they mirror disparities in existent legal systems and include only commonly agreed upon provisions (Bassiouni & Gualtieri, 1997).

Tureno (1997) remarked that once the legal cooperation between countries has functioned efficiently and has helped to facilitate inter-connected asset investigation in either country, the next phase is to confiscate the crime gains that have been tracked by the parties.

A Positive Approach for Offshore Countries

Another reflection of the international nature of money laundering activities is that economies in transition and developing markets have a crucial role in the laundering process. Therefore, the responding process should not only be reactive, it must also include an encouraging program that focuses on the prevention of money laundering and related crimes and that offers technical assistance and support. Through international regulations executed up to now, there has been a development in immunity to such activities to some extent. In addition to this, developing countries need to be encouraged to take further steps in terms of deterring money laundering and should be persuaded that such regulatory control measures do not impact the ability to attract foreign capital. Knowledge should be broadly exchanged so that uncertain states are convinced that the proceeds of crime harmfully impact their economic systems (Giacomelli, 1997).

When the negative effects of those financial havens surface, it is popular to protest them for what they are doing, but it is still essential to understand what allows them to maintain such illegality. First of all, their economies are vulnerable and, of course, they lack alternative resources to survive. What consuming countries do in combating drug criminality is to support and finance the alternative development programs for producing states. Similarly, it is possible to look for alternative

development options for those financial havens in order to integrate them into the world business community (UNDCP, 1998).

Evans (1997) noted that technologically developed intelligence and superior exchange of information on new techniques and organized crime groups are crucial. The collecting and proper exchange of criminal intelligence are sensitive responsibilities, necessitating a balanced decision about the value of the information, the legal privacy issues of customers and the reliability of those with whom information is to be exchanged.

Embargo and Exclusion

The attraction of offshore countries to money launderers rests on two main elements: unlike industrialized countries, exceptionally encouraging tax systems and an economic system, which gives an absolute discretion for flow of any form of money in their territories. In response, financial authorities in industrialized countries both formally and informally blacklist the offending offshore states (Bernasconi, 1997).

For an effective process of identification and the prevention of corrupt applications, an intensive political institutionalization is required. For example, the provision of immunity for key officials against extreme conditions concerning legal and illegal activity. At the most basic level, no country should be free to engage in corrupt practices, and all countries should be convinced to fight this threat in all of its forms (Castle, 1999).

Castle (1999) argued that there is no quick solution to the distress caused by corruption and its link to money laundering. The objective of removing corruption from

public life is drastically dependent on the progress of democracy and the rule of law. While subjective judgments are the norm in the political system, it is unreasonable to anticipate enormous advances in stopping corruption. Likewise, the function of a free press and sufficient human rights are aids in taking a stance against corrupt practices. However, no money laundering control approach can achieve all of these goals by itself. In addition to the provisions mentioned above, there needs to be financial transparency to be able to be successful in strategic planning against money laundering activity.

Law and Legal Problems

Money laundering investigations are difficult, complex, and time-consuming. In response to this reality, Pinner (1996) argued that broad money laundering legislation is desirable, as it would allow law enforcement and revenue authorities to simplify their investigations by reducing the burden of, for example, differentiating between funds derived from criminal sources and funds involved in revenue evasion.

The Britain Cabinet Office (2000) took a somewhat different approach to the issue of maximizing money-laundering efforts. While the Britain Cabinet Office supported a more robust and simplistic legal framework that includes an extension of existing civil forfeiture powers, they did not suggest redefining the underlying criminality, as Pinner (1996) seemed to. Instead, the Britain Cabinet Office proposed a number of steps that governments should take in an attempt to benefit from anti-money laundering efforts. In addition to revising legislation, the Britain Cabinet Office suggested that full use be made of taxation powers that already exist. In addition, the anti-money laundering approach should be more strategic in nature, involving relevant

participation from all aspects of the criminal justice system. Because of the inherent complexity of financial investigations, law enforcement officers require more training and support. The Britain Cabinet Office also suggested that greater efforts need to be made to reduce the laundering of funds from criminal sources, in conjunction with the establishment of higher international standards, modeled after those of nations such as the UK. Finally, the Britain Cabinet Office proposed the use of incentives and new structures to facilitate and underlie the changes that are necessary.

Annual Strategy and Evaluation Reports (Money Laundering Strategy for 2000)

Annual strategy reports are indications of the level of combat and what needs to be done to better combat that particular crime. Through annual reports, all parties of money laundering control cross-examine themselves and take the necessary provisions for the following report.

In this regard, the U.S. Money Laundering Strategy for 2000 presents a very tough action plan against dirty money. The 120-page document suggests that the Treasury Department should be seeking new regulations, such as obligatory suspicious activity reporting rules that are appropriate for the insurance industry, travel agencies, pawnbrokers, and other financial services. The strategy necessitates that U.S. financial institution supervisory agencies develop new anti-money laundering strategies that focus on high-risk areas such as ‘private banking, payable through accounts, and wire transfer activity’. These applications must indicate that anti-laundering efforts are risk-focused, mainly targeted to discover those institutions or performances that are most vulnerable to money laundering (MLA, April 2000a).

FinCEN's Gateway Program

Gateway is a seven-year old program, which lets state agencies gain access to millions of reports that financial institutions have filed under the BSA. Through state coordinators, agencies can enter a name, social security number, or other identifying personal information on a subject of a case and get BSA reports concerning that customer. The MLA (October 2000b) reported that due to security concerns, a record is filed each time the Gateway Program is used. This record is then used as an audit trail that allows FinCEN to track every access back to the written purpose for use of the system. In 1999, 94,781 Gateway queries resulted in 72,413 'hits', or reports, probably connected with the subject of the query. FinCEN is planning to offer a new training program as part of the 2000 U.S. National Money Laundering Strategy that will help state and local agencies to use the BSA data through Gateway.

FinCEN's primary objective with the strategic plan is designing a feasible model for assessing the extent of money laundering. Quite frankly, any kind of anti-money laundering program cannot offer efficiency without depicting the breadth of the problem. In this regard, FinCEN is planning to launch an analytical model that can be used to guess the magnitude of money laundering and to develop a plan to improve the quality of currently reported data (MLA, September 2000). As the use of technology increases in the crime world, law enforcement should be in search of better response tools against criminals. Thus, by providing unique data to facilitate investigators' tough mission, FinCEN's Gateway project is a chance to fight against money laundering. Being the only nation in the world that uses the Objective Model, the U.S. should be in search of ways to

filter the mass number of mandatory repots submitted by financial institutions on a regular basis. Therefore, FinCEN should be the leading agency with its state of the art Gateway Project.

Geographic Targeting Orders (GTOs)

The BSA empowers the U.S. Treasury Department to demand a federal or state enforcement official to control a geographic area in the U.S. with respect to compliance of reporting and record keeping by financial institutions. 'Geographic targeting orders', or GTOs, can be applied to any local financial institution or to groups of institutions. GTOs can instruct the targeted institutions to give information on transactions concerning currency and monetary instruments of any amount that the Treasury judges necessary and can ask for additional record keeping or reporting obligations. Although GTOs are limited to a 60-day period, the Treasury, based on its findings of conflict, and with the objective of preventing evasions of the BSA, might extend them. Institutions and individuals that violate the provisions of a GTO can receive civil penalties of up to $25,000 per occurrence and criminal penalties of up to $500,000 and 10 years in prison under the BSA's general penalty provision. A bill proposed by the Clinton Administration would have made it a crime to violate a GTO (MLA, April 2000g).

The MLA argued that, as the records show, only money transmitters have ever been the targets of a GTO. In an effort to broaden the target base, the 2000 U.S. National Money Laundering Strategy declares that the Treasury Department will determine areas of financial affairs that require the use of GTOs (Apr. 2000g).

A GTO is a unique tool, as it can help keep alerted financial institutions from participating in money laundering, as once it is identified that an institution is related to money laundering, GTO's give the power to monitor that institution for a long time period. Given this fact, financial institutions will always have influence on them to keep themselves clean, as being subject to a GTO is a fundamental threat to an institution's reputation.

Concentrate Resources on High-Risk Areas

Asset removal requires determining the location of the asset in the first place. Therefore, as the Britain Cabinet Office (2000) argued, a successful asset removal program requires that law enforcement officers have the skills and resources necessary to conduct complex financial investigations, including mapping complicated criminal money flows. In addition, improved investigations will result in a more in-depth comprehension of criminal networks, a general increase in detection rates, and the ability to link individuals to offenses who do not otherwise appear to be involved (Britain. Cabinet Office, 2000).

The Money Laundering Strategy for 2000 basically focuses on reinforcing local money laundering enforcement efforts by addressing the first four High Intensity Money Laundering and Related Financial Crime Areas, or HIFCAs, in Los Angeles, New York/New Jersey, San Juan, Puerto Rico, and the Southwest Border areas are subject to cross-border currency smuggling. Action teams formed by the authorities will perform concentrated anti-laundering efforts in each HIFCA (MLA, April 2000a).

According to MLA (August 2000b), the BSA declares various dynamics that Treasury must think about when selecting HIFCAs, including:

(a) population and demographics,

(b) quantity and quality of transactions occurring at bank and other financial services,

(c) whether the area is a concurrent point of transfers,

(d) whether the area is an international banking or economic midpoint,

(e) the number and characteristics of suspicious activity reports,

(f) whether the area has also been subject to a "geographic targeting order"

(g) unnatural economic statistics or signs, or strange transactions through financial institutions, and

(h) the amount of resources that state and local governments invest against financial crimes in that particular area (p.11).

Concentrate Resources on High-Risk Areas is an attempt to use the manpower and resources of money laundering control agencies in a more functional manner. If the use of HIFCAs is shifted gradually to other money laundering centers on an irregular basis, it is hoped that it will be effective in deterring money launderers. It is no surprise that if law enforcement concentrates all of its forces on certain regions, launderers tend to move to other safe harbors. Therefore, the strategy should be one of randomly changing directions to focus on other places in order to eliminate launderers at the new location.

FBI's "Enterprise Theory of Investigation"

Some police agencies have been much more successful in penetrating criminal organizations than others. The Federal Bureau of Investigation in the United States has had great success in convicting the leaders of criminal organizations in major American cities. The FBI's strategy in dealing with organized crime is called the "Enterprise Theory of Investigation". In this technique, the focal point is revealing the hierarchy in the organization. Other investigative issues seem to be identical to what other agencies do. According to Evans (1997), these include "the use of a witness protection program; informants; undercover agents; and, particularly important, court permitted electronic surveillance" (p.206). These techniques, accompanied by the United States' Racketeer Influenced and Corrupt Organizations Statute, have led to the conviction of numerous crime bosses. The focal point here is that in order to be successful in prosecuting leaders of criminal organizations, we need competent use of invasive investigative practices (Evans, 1997). While this is an approach to be highly appreciated, it is limited to a single agency level. Practically, and in contrast with money launderers, law enforcement has the unique chance to be able to coordinate within itself, involving multiple agencies. In this regard, ultimate success will be achieved only through generalizing these newly developed approaches to other federal, state, and local agencies.

Parallel File

Successful operations against money launderers necessitate specialization by both the police and the prosecutor's office. Apart from this, they should work together from the beginning of the case in order for investigators to get ongoing legal advice in terms of

evidence and other legal matters. Additionally, parallel files should ideally be designed from the beginning: one targeting criminal convictions in that particular case and another targeting the funds, which may be carried out either criminally or civilly (Evans, 1997).

Successful prosecution also necessitates the use of specialists to manage forfeiture and sophisticated money laundering cases. When forfeiture of the proceeds is essential in a case, prosecution specialists should be utilized from the beginning of the case. Success rests on integrating forfeiture concerns early and thinking through the matters cautiously (Evans, 1997)

Taxing unlawful gains

Taxing unlawful gains is a complicated and often unsuccessful task. The Britain Cabinet Office (2000) concluded that a number of avenues should be taken concurrently in order to increase the rate of taxation of criminally derived revenue. The first avenue to take is to increase the level of proactive investigation and removal of criminal assets by revenue authorities. The second is to facilitate communication between tax authorities and law enforcement officials, particularly as it relates to information about criminality. Finally, the Britain Cabinet Office proposed revising tax regulations to remove loopholes that criminal organizations are able to use, whether intentionally or not, to avoid taxation of their revenue. In some nations, for example, revenue cannot be taxed if its source cannot be determined. The Britain Cabinet Office proposed changing such regulations to put the burden of proof on the taxpayer, requiring them to prove that revenue is from a non-taxable source, rather than the government being required to prove that it is from a taxable source.

Confiscation

According to the Britain Cabinet Office (2000), asset confiscation deters crime by interfering with the profit motive and disrupting the activities of criminal organizations. In addition, asset confiscation promotes confidence in the criminal justice system by showing it to be fair, effective, and non-preferential (Britain. Cabinet Office). Asset confiscation also removes the influence that negative role models may have on a community, reduces the attractiveness of committing crime by reducing the benefits of crime, improves the detection of crime, and generally assists anti-money laundering efforts (Britain. Cabinet Office). Finally, in addition to being cost effective, implementing and maintaining a strong asset confiscation regime means that law enforcement will have the skills and resources necessary to effectively fight criminal enterprise (Britain. Cabinet Office).

Bernasconi (1997) proposed that legislation should allow the confiscation of the proceeds of the crime, even if committed in a foreign country and even if the assets to be confiscated are transferred through banks or other financial institutions. Basically, asset control regulations rest on two basic elements (1) immobilization and forfeiture of proceeds, and (2) trying to identify, reveal and control money laundering by means of both international and national law (Bassiouni & Gualtieri, 1997). However, the question remains as to how a 'regulatory compliance culture' can be formed, and how this would influence money laundering (Levi, 1997).

The Britain Cabinet Office (2000) argued that the confiscation of assets derived from crime should become a normal part of criminal proceedings. To accomplish this, the

details and application of the legislative environment must be improved in four ways (Britain. Cabinet Office). Because criminals involved in the drug trade often expand into other forms of criminality, drug-based asset confiscation laws should be expanded to cover assets derived from all types of crime. This change would eliminate the ability of defendants to retain their assets by pleading guilty to lesser charges in order to avoid the penalties of anti-drug laws, and it would allow assumptions to be made about the origins of the assets of all criminals. The second change needed is to encourage confiscation training for judges and lawyers. The third is to formally permit prosecutors to appeal those confiscation decisions that they feel specify inadequate asset values. The final change needed is to extend confiscation order application time limits so that all assets may be confiscated, even in cases where identifying those assets is extremely time-consuming.

In 1996, the U.S. federal government began to take steps to increase its use of asset forfeiture, through the *U.S. Attorney General's Asset Forfeiture Reinvigoration Program*. The program required federal law enforcement officials to coordinate with other agencies and to use asset forfeiture in all appropriate cases. Additionally, the program provided asset forfeiture training for prosecutors, financial investigation training for law enforcement agents, the development of model asset forfeiture plans for law enforcement, and the distribution of asset forfeiture best practices information to relevant agencies, and annual reporting of program results. In 1997, the program provided asset forfeiture training to almost 880 prosecutors, supervisors, and U.S. Attorneys Office personnel through a series of seminars. By some measures, the program appears to have

been successful; in 1998/1999, U.S. Department of Justice asset forfeiture revenues were $609 million, twice what they were in 1996, while the Treasury Department collected $300 million in 1998/1999 (Britain. Cabinet Office, 2000).

In order to be successful, a nation's asset forfeiture policy and programs must contain a number of components. The asset forfeiture strategy must include setting appropriate yet challenging asset confiscation targets. In addition, a successful asset confiscation strategy will include clarifying agency responsibilities, encouraging proactive behavior on the part of relevant agencies, providing incentives that encourage cooperation and coordinated action involving multiple agencies, facilitating and improving communication and the exchange of information between agencies involved in asset confiscation, and the adoption of computer-based databases to accomplish some of these tasks (Britain. Cabinet Office). Coordination between the private sector, especially the financial services industry, and the public sector is also important; information sharing, experience sharing, cooperation, and the shared use of resources are all components of successful asset confiscation policies and programs. Finally, the measures of success and progress need to be defined so that the policies and programs can be evaluated and revised on a regular basis. The Britain Cabinet Office argued that criminal organizations have been successfully disrupted in countries that have effectively enforced asset confiscation. In these nations, asset confiscation has slowed the growth of criminal organizations and limited their ability to create a foundation within the larger community (Britain. Cabinet Office). The asset confiscation policies and programs of these nations

can therefore serve as valuable models for developing an effective asset confiscation policy and program in the U.S.

Conclusion

Money laundering control is thus a very difficult issue because the focal point of crime is money, which has been the most powerful and most effective instrument in human life. This single fact makes financial institutions the heart of money laundering control. Considering globalization and the liberalization of economic life and, through that, the removal of countries' financial borders, one realizes that the diagnosis made by anti-money laundering authorities is absolutely true. Nevertheless, there needs to be some corrections. First of all, regulating only one sector appropriately is far beyond solving the problem, yet it may make the fight more chronic. Such a limited regulation forces money-laundering practitioners to abuse alternative sectors. It will take time for criminals to find assistance in this new environment, but money opens every door, so to speak.

Secondly, there is always another crime that money laundering is rooted in; we cannot exclude the underlying crime while combating money laundering. Such duality requires a more comprehensive approach, including that particular criminality, its complications, and, further, its money-laundering dimension.

Thirdly, from the law enforcement point of view, if law enforcement officials are more prepared and systematic than the criminals are, their probability for success will escalate (Madinger & Zalopany, 1999). Since the locomotive of money laundering investigation is law enforcement agencies, they should be the ones who are looking for

more agreements and common ground between the other parties of combat. It should be stressed that without the participation of banks and financial institutions, the fight would be condemned to remain at street level drug or gang operations. The best way of generating cooperation is first planting a basic understanding of the problem in the minds of those within the financial sectors and, second, to be attentive to not harm their benefits. The prerequisite of such hypothetical cooperation is to solve all interagency problems within law enforcement agencies. Lacking a synchronized law enforcement front, it would be optimistic of us to expect outsiders to fully cooperate.

The flexible and dynamic nature of money laundering techniques, on the other hand, deserve extreme attention because they are only restricted to the imagination of the criminals who are also making maximum use of professionals' help. So, the training of investigators, in this regard, and their stability in the task, need to receive priority for an uninterrupted combat.

The international perspective is quite different, of course, because of conflicting economic and political interests, and also because there exist personnel, technical, and regulation disparities among countries. Typically, law enforcement agencies step back when investigation heads towards the political, economic and sovereignty concerns of the other country in question (Priess, 1996). So, as Savona and Feo (1997) remarked, the issue must be pictured in a broader perspective, which includes economic, social, and political aspects. The process of addressing a crime and then enacting the required provisions cannot be the sole prescription for financial criminality, especially in the international arena (Savona & Feo). Aside from ratifying multilateral agreements, there

must be a recognition of the mutuality of interest in fighting international money laundering among countries and not compromising each other's sovereign interests. Over all, however, there must be the political will to put needs into practice (Preiss, 1996).

Ultimately, strong anti-money laundering efforts provide financial institutions with protection from operational and reputational risks by reducing the accessibility of such institutions to criminally derived funds. Such efforts also provide law enforcement officials with the ability pursue criminal assets through the acquisition, use, and analysis of intelligence information.

CHAPTER 5

CONCLUSION

The main handicap with money laundering is that it involves both a criminal offense and a legitimate-appearing economic activity in which the instruments and institutions of both anti-social activities and highly social phenomena are intermingled. Because money laundering is a mainly criminal use of a nation's financial system, it is very difficult to offer a 100 percent success rate in money laundering control. The American Bar Association (1993) noted that money laundering control chiefly exists as a matter of persistent balancing between the needs of a society for financial control and personal privacy. Presumably, however, the way a country chooses to tackle money laundering is mostly a reflection of the nature of its systems, its financial structure, and the financial regulations in its general legal system.

One major issue to be clarified at this point is who is going to lead the anti-money laundering efforts at the national level. There exists a strong argument that the regulatory and investigative aspects of money laundering control should be attributed to a nation's Treasury authorities, depending on local needs. From the investigation point of view, though, no matter who is leading, cooperation within and between the involved agencies and private entities must be the focal point. Efficient cooperation is achieved through private and governmental entities having a mutual understanding of each other's perspectives and problems in tackling money laundering.

Rather than being restricted as a local problem, money laundering has lately appeared in an international format. Given the ability to conduct rapid-fire transactions across international borders, international cooperation in the combat against money laundering has become vitally important to the success of that combat for any single nation. The dependence of national law enforcement authorities on one another is presumably inevitable, given the international scope of criminal organizations of the modern age. But the necessity for cooperation goes well beyond single investigation participants, because one nation's powerful money laundering control mechanisms can easily be hampered by other nations to which illegal proceeds can flow without any restrictions. This fact raises the issue that a particular country needs to be familiar not only with its own rules, but with the rules of other jurisdictions.

Recommendations

As discussed so far, money laundering control activities have taken place in three main directions. First, money laundering has been criminalized and this criminalization has been reinforced with tough penalties. Second, financial institutions have been mandated to develop systems within themselves to detect and prevent money laundering. Finally, reporting of known or suspected money laundering to law enforcement has been legislated. In light of these existing activities, a number of recommendations for a comprehensive action plan can be made. These recommendations are an attempt to trigger more extensive enthusiasm within related public and private entities to attack

money laundering. Using the systematic structure developed previously, the recommendations fall into the following subheadings:

(1) Recommendations to financial institutions

(2) Recommendations for investigators

(3) Recommendations to regulators

(4) Recommendations to governments

(5) Recommendations for cooperation

Recommendations to Financial Institutions

As discussed in previous chapters, some measures should be taken within the financial industry to develop reporting systems in order for the industry to be more functional in combating illegal proceeds and criminal markets. To achieve this, the quality and amount of reporting requirements should be increased to be able to involve all institutions, a gap which money launderers are currently exploiting. While there exists two major models for regulating financial institutions, both models have their own limitations. Therefore, to combat money laundering efficiently and effectively, a hybrid system must be followed, which aims at capturing the best features of both approaches. In so doing, the goal is to create an efficient overall system, as opposed to each model being implemented individually with its weaknesses. This recommended system, which involves a regular record keeping and reporting mechanism, deters money launderers and also increases the costs of money laundering. On the other hand, with the contribution of the Subjective Model, this hybrid system encourages financial institutions to familiarize themselves with their customers, which increases their participation on the front lines of

combating money laundering. Finally, it offers an environment where regulators and the regulated work together enthusiastically and cooperatively. Despite the fact that this system is something strongly related to financial institutions themselves, this is a model that can only be put into practice by regulators.

Another issue to be focused on is the quantity and quality of training mechanisms for financial institutions. According to Gold & Levi (1994), the officials of the financial industry should be trained to be sensitive to money laundering with an analogy that they need to be as sensitive as what a fire situation requires. Above all, they should be informed about how to start the initial precautions, which do not harm the customer, such as copying documents and using surveillance tools within the institution, as opposed to labeling every single large dollar transaction as being gained from illegal activities. Financial industry staff should also be persuaded that failing to initiate procedures for suspicions, once they surface, could make them subject to prosecution in that particular case. Finally, specialized education programs conducted by interdisciplinary groups embracing all public and private parties subject to money laundering should be endorsed.

Filtering suspicions

Financial institutions face an expectations conflict; on the one hand, they are required to keep customer confidentiality, while on the other they are expected to show a willingness to cooperate with law enforcement. With regard to the second expectation, they are also expected to take the necessary steps to allow the anti-money laundering system be successful. Since a mixed system of the Objective and Subjective Models in regulating financial institutions is recommended, the increased active role played by

institutions will necessitate extensive filtering of the volumes of reports that will be submitted to law enforcement.

Once it has been discovered that determining the features of a disclosure that will carry one to success is difficult, a rational approach in which the quality of a disclosure rather than the quantity of reports is favored will be followed. Therefore, filtering the reports to some extent seems to be the most rational solution. There has to be a realistic criterion of suspicion, though. To clarify the issue, the scope of transactions that are considered to be 'highly likely' related to money laundering should be given to financial institutions in the first place. It is widely accepted that the worst thing that can happen to a financial institution is to lose its reputation in the eyes of customers. Therefore, they have the right not to be seen as detectives; instead, they prefer to play the part of observers of a 'pattern of conduct' and get feedback when the case is successfully completed (Gold & Levi, 1994).

Designated appropriate persons and compliance officers

Frequently, once financial institutions realize that law enforcement officials are leading their case without court orders, the institution immediately rejects cooperation. The use of designated appropriate persons would be a pragmatic solution to this problem. In addition, since bankers complain about being conflicted with becoming policemen or the degree of diligent compliance, letting someone else do this duty for them seems to be the best option (Gold & Levi, 1994). Besides, such an approach contributes to cooperation between both sides, and also accelerates information dissemination.

Recommendations for Investigators

The primary recommendation for law enforcement is to establish efficient management/quality control. The first emphasis should be the allocation and training of staff. Gold & Levi (1994) argued that because working on money laundering cases requires extra intelligence and quality of management, the selection process for investigators should be performed more carefully.

After recruiting the appropriate personnel, the next focus should be aimed at increasing the proportion of investigations where money laundering investigators are involved from the early stages of the case. This will automatically increase the percentage of successful cases utilizing financial investigators' contribution. Emphasizing the involvement of financial investigators from the beginning is going to cause an increased percentage of confiscation orders in criminal cases. This, in turn, is going to reduce the amount of tax evasion that occurs (Britain. Cabinet Office, 2000).

Investigators need to be made aware of the true nature of money laundering. Money laundering should be considered as a whole package involving an underlying crime generating illegal funds as well as efforts to launder these proceeds. Otherwise, combat is condemned to eventually fail. Upon clarifying the target of an investigation, an investigator's priority should be choosing the most effective weapons to subsequently use. In essence, the international and highly technological nature of money laundering crime is expected to inspire investigators to use the same kind of weapons. As indicated in the previous chapter, there are some effective tools, some already in use, which should

be expanded to cover the whole field. For example, GTO and HIFCA seem to be effective systems, especially if their use in investigations is generalized.

Another issue to be focused on is that there are numerous efforts being utilized by agencies individually, but which are limited only to their own use. For example, the FBI's "Enterprise Theory of Investigation" is an effective way of tackling organized groups, revealing their hierarchy, and eliminating them through undercover operations. Geographical Targeting Orders (GTOs), on the other hand, are unique in discovering crime areas and targeting the investigative powers and resources towards them. However, GTOs are limited to use by the Department of Treasury. Instead of creating a competitive environment for agencies in the field, where they seem to be stepping on each others' toes, there needs to be an upper agency whose members consist of representatives from the multiple agencies involved in anti-money laundering efforts, and which coordinates both sides of combat. Such an agency, the Performance and Innovation Unit (PIU) was established in the United Kingdom. The UK experience has shown that the PIU is extremely efficient in generating a cooperative environment and creating standards for the participating parties.

Recommendations to Regulators

The concern of regulators should be examining the reasons as to why a report was not made when it should have been made. The objective then seems to be maximizing the "compliance in the least punitive way possible" (Gold & Levi, 1994, p.111, 112). In addition, as Gold & Levi (1994) remarked, another major problem seems to be inadequate information on old accounts. This is a major limitation for the system of

registration, especially when the companies that are in question often do not inform the banks that their ownership has been altered.

According to the Britain Cabinet Office (2000), an efficient combat against money laundering requires establishing a financial investigation center of excellence. The creation of such a research, development, and monitoring center is a unique opportunity to allocate all the data and expertise and adequately evaluate the policies in this regard.

In order to create harmony and accelerate the money laundering investigation process with judicial support, training of prosecutors should be emphasized. Basically, this is like a chain reaction, which requires increasing the awareness of a whole police force by increasing the financial investigation training days. Another crucial measure is increasing the percentage of financial investigators in the whole police force, as well as increasing their budgets as a portion of the total police force budget.

Given the fact that financial institutions are forced to play on an uneven playing field, for regulators, one of the main concerns should be establishing a more balanced spread of financial organizations through requiring those previously ‘untouched’ institutions to file mandatory transaction reports. As the self-regulation approach gains support with regard to money laundering control efforts, the percentage of financial organizations setting up or adopting their own local anti-money laundering measures should be encouraged.

Recommendations to Government

Governments are the entities that determine crime prevention policies. Thus the concern should be whether an improvement could be achieved through better

management. As mentioned previously, money laundering is something that cannot be controlled by the participation of a single party. Therefore, the intrusion by and the leading role of the government above its agencies and the private sector becomes inevitable. Gold & Levi (1994) argued that considering the problems of all parties in the field, government should be in favor of more intelligence-driven policing.

Governments are also engaged in establishing and maintaining foreign policies on behalf of their nations. Therefore, they should be expected to increase co-operation in international demands for assistance with rapid response rates in order to prevent failures caused by preventable delays. The criteria for determining the good faith of a particular country would be the amount of international criminal proceeds that asset-sharing agreements between countries regulate. The reverse situation also becomes essential when speaking of effective money laundering control, in that the total amount of criminal assets recovered from overseas by local law enforcement would indicate the determination of that particular country in combating money laundering. In this regard, barriers to the prosecution and conviction of money launderers should be removed in order to use the legislation efficiently for criminal operations. Regarding international money laundering control efforts, FATF seems to be the idealleading agency, given the large number of banks within member nations, and the effective policies and programs already created by it. These indicators should force governments to comply with the FATF recommendations for a powerful global fight against money laundering.

Recommendations for Cooperation

In a competitive environment where performance figures are crucial, inter-agency cooperation is not easy to accomplish. Such an environment will jeopardize relationships within agencies engaged in combating money laundering. Aside from this, the problem of deciding the border lines between operational and intelligence functions can be tackled through increasing the qualified manpower of the agencies in charge. Therefore, in order to create a peaceful atmosphere and promote coordination between and within the parties, establishing a financial investigation center of excellence becomes crucial. The creation of such a center will prevent undesired competition among investigating agencies and will develop permanent relations with financial institutions.

Feedback to financial institutions is another handicap of law enforcement that is not favored for security reasons related to an ongoing case. The timing and the degree of the feedback are crucial. For this particular limitation, it is recommended that feedback in the form of general statistics declaring the proportion of an institution's contributions through their disclosures for a certain period of time might be effective. Conversely, for missing information, the responsible operators should be warned on a periodic basis (Gold & Levi, 1994).

Obviously, action is needed on a wide range of interconnected issues in order to tackle money laundering. Above all, priority should be given to the pursuit and forfeiture of criminal assets by the whole criminal justice system through developing the skills of law enforcement officials in dealing with financial investigations, including the use of incentives within agencies and with regard to financial sectors.

After developing such initiatives, the concern should be measuring their impact on money laundering criminality. However, measuring the ultimate impact of these initiatives will not be easy because they cannot be detached from the broad, often interdependent measures with regard to crime control and prevention. These performance measures should therefore be implemented by the agencies that are primarily involved in money laundering, as they are in the best position to indicate progress. The Britain Cabinet Office (2000) argues that after setting up the proper mechanisms, measuring progress should be part of the annual monitoring and reporting requirements for a center of excellence. Progress reports should indicate annual revisions of strategies, and should also demonstrate a longer-term evaluation of money laundering strategies in order to develop crime reduction policies.

The recommendations outlined above are numerous and not always easy to harmonize with either one another or the specific situation of a nation to which their application is sought. It is now apparent that all sides of this combat do not have equal weapons. As mentioned earlier, while law enforcement is limited within confines of jurisdiction, criminals are only confined by their imaginations. Likewise, as opposed to the vast amount of money in the criminals' hands, law enforcement must contend with low budget in its fight. Further, money laundering crime has lately been transformed from a local and national crime to a complicated and international crime with the help of the globalization of trade, highly developed computers and telecommunication devices, alternative financial services, amplified travel opportunities, the creation of free trade zones, and the advent of the World Wide Web beginning in 1990. Apart from this, given

their phenomenal monetary power, criminals do not have to try hard to find assistance from professional hands. Rather, they have turned out to be the experts in using contractors for their dirty and risky businesses. The saddest aspect is that this negative power significantly impacts the society. It fosters the creation of ill-mannered role models who are making big money without working for it. On top of it all, money laundering also creates economic and political influence on the legal and political system. Finally, governments seem to be trying to increase the compliance of the financial world in the least punitive way yet while attacking money laundering they should consider how to keep the transparency of their financial systems.

While considering implementing these new approaches, one should also keep the cold hard truth in mind that countries continue to have different views about combating money laundering. There are always going to be some nations that welcome launderers with open arms, no matter how dangerous they are. There are always going to be political and economic conflicts between countries, and launderers are always going to find some key officials prone to be corrupted. Personnel disparities in different countries will also facilitate the crime. Simply put, there are always going to be some countries whose laws only exist on paper. It is a threat for this study that a developed and a rich country like Switzerland, while being expected to be against money laundering, on the contrary, is the center of illegal money in the world. Therefore, from an academic point of view, as one is offering some new approaches that prove to be effective in one part of the world, it should not be forgotten that the cruel nature of this economic power can even attract the

most developed countries. This reinforces the fact that effective combat requires political will in the first place.

Likewise, during the discussion of how to regulate financial institutions --either with the Objective Model or Subjective Model--, it was clarified that both models have their own pros and cons. Remembering how the U.S. was established, it is no surprise that the separated nature of combat (the Objective Model), while posing a threat to effective cooperation also provides a unique opportunity to deal with corruption. Typically, as the system is assigning the responsibility to numerous agencies, on the one hand, it is creating an environment for them to be able to control each other and minimize corruption, on the other. In contrast, their counterparts in Europe have been institutionalized as a great monopoly. This approach (the Subjective Model) provides a unique advantage through its ability to harmonize the multiple sides of money laundering combat. However, at the very least, it comes with potential danger that officials in this monopolized system can be easily influenced by wealthy criminals, which may lead to corruption. Therefore, creating an upper agency to facilitate cooperation one might also have doubts regarding the tendency of members of this upper agency to change their priorities and get corrupted by opportunist and powerful launderers.

Financial institutions culturally value the sensitivities of their customers. Then, not surprisingly, for customers, regardless of their being legitimate or illegitimate, the primary sensitivity is confidentiality. Thus, it should be remembered that effective cooperation means collective gain. Unless financial institutions make profit from their contribution to investigations, their attitude towards money laundering control efforts are

not going to change. They are going to let money laundering occur within themselves to some extent, as they obscure law enforcement investigations through passive assistance.

Finally, in order to understand the importance of control efforts, I cite Pinner (1996), who perfectly articulated that despite the fact that money laundering is a current issue, organized crime has existed for a long time. While it is evident that the power and size of international organizations are increasing, it should also be kept in mind that in the very first days of fighting organized crime in the U.S., successes were acquired by the use of financial investigations. Financial investigators were able to terminate the activities of Al Capone through the power of taxation laws. Therefore, law enforcement should be in search of the weaknesses of criminal organizations; time-honored experience has shown that it is their profits that make criminals vulnerable. Finally, the international aspect of money laundering should always be a matter of focus, which requires international law enforcement and regulatory cooperation.

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