Reverse Money Laundering

Stefan D. Cassella

INTRODUCTION

A new form of money laundering involves not the proceeds of past crimes, but money intended to be used to commit crimes in the future.

Since the mid-1980s, virtually all of the developed countries, and many of the developing countries, have enacted legislation to make money laundering a criminal offence. The statutes differ in complexity and scope: some are quite simple and narrow, making it an offence only to launder the proceeds of drug trafficking. Others are complicated and broad, like the US statute which is several pages long and makes it an offence to launder the proceeds of any one of some 250 state, federal and foreign crimes.[1] Still others are elegantly simple yet broader still, succinctly stating that it is an offence to conduct any financial transaction with the purpose of disguising the provenance of the funds in question.

The statutes also differ in terms of the penalties provided: some only provide for incarceration, while others authorise the confiscation of the laundered property or any property involved in the laundering offence.[2]

But with only minor exceptions, these statutes have one thing in common: they focus on the proceeds of crimes that have already been committed. Every one of them asks, 'what is the defendant doing with the proceeds of his crime?' Is he engaging in convoluted transactions to conceal or disguise the source of the money? Is he commingling it with other funds to disguise its whereabouts, or putting it in third-party names to conceal or disguise its ownership? Is he converting it to cash to avoid a paper trail, or is he employing professional money launderers to sell it for him on the black market so that he can move the money out of the country or convert it to another currency?

The ways in which the proceeds of crime can be concealed or disguised are endless — particularly in an age of financial globalisation; and those responsible for law and order are constantly — through revisions to legislation, and through the development of new investigative techniques — trying to keep up with the inventiveness of the criminal mind.

But again, in all of these instances, focus has been on the past; on looking backwards to see where the money came from and how the criminal is trying to disguise that source, and not forwards to see what the money was going to be used for.

REVERSE MONEY LAUNDERING

But what about criminals who are using clean money — or money from an unknown source — to commit crimes in the future? Are they not capable of using the same techniques and the same professional money men to conceal the ownership of the money and the purpose for which it will be used? Would they not use the same convoluted transactions, the same clandestine shipments of cash, the same international shell games whereby money is moved in and out of different accounts in different countries, disguised as legitimate funds, to finance new criminal operations and enterprises?

The financing of terrorism is the obvious example. It is now known that the attacks of 11th September, 2001, were financed with cash and wire transfers from abroad. In one instance, money from a money exchange in the United Arab Emirates passed through a correspondent account at a New York bank before being credited to the accounts of the hijackers at another bank in Florida. In other instances, the hijackers or their supporters simply carried bundles of cash into the country. The money may have had a legitimate origin — it could have come from someone's personal fortune, from funds raised for humanitarian aid, or from any other source — but its purpose was deadly.

The lesson is simple: terrorism and many other criminal acts can be financed with perfectly clean funds — funds that are shipped as cash, moved through a money remitter, disguised as humanitarian aid, or exchanged for imported goods like cigarettes, jewels, or even foodstuffs, like honey. If the focus is only on the *source* of the money moving through the financial channels, this will be completely missed. It is the manner in which the money is being moved that is the clue to the intended future use of that money for dreadful purposes.

The process of conducting financial transactions with clean money for the purpose of concealing or disguising the future use of that money to commit

Journal of Money Laundering Control
Vol. 7, No. 1, 2003, pp. 92–94
© Henry Stewart Publications
ISSN 1368-5201

a criminal act could be called reverse money laundering. The author's thesis is that it is just as important to use the tools of money laundering enforcement, including the confiscation of assets, to interrupt schemes that have yet to reach fruition, as it is to recover the proceeds of crimes that have already occurred.

LEGISLATION

Unfortunately, because existing anti-money laundering legislation is mostly backward looking, focusing on what becomes of the proceeds of crimes that have already been committed, it does not address the financing of crimes that have not yet occurred. Legislation, in other words, that requires proof of a prior bad act provides no shield whatsoever against misuse of the financial system to put funds in place so that they can be used to support the bad act that will be committed tomorrow. The USA has only just begun to focus on this problem and to draft legislation that allows law enforcement to address reverse money laundering. The following are some initial, but by no means adequate, attempts in this direction.

Bulk cash smuggling

In the USA Patriot Act, which became law shortly after the 11th September attacks, Congress took the first step in this area by making it a crime to smuggle currency in amounts over $10,000 into or out of the USA. Free transport of currency in any amount across the frontier is still entirely legal: all the traveller has to do is report the amount of currency that he is transporting to a Customs official on a form.[3] That form has been in use for some time, but in the past, failure to file the Customs form was treated as a minor offence for which the penalty was relatively minor.[4] Now, concealing more than $10,000 in currency in luggage, in merchandise, in the mail, or on your person, without filing the Customs declaration, is treated as a smuggling offence, leading to higher penalties and to the confiscation of all of the unreported currency, *without regard to the source of the money or the motive of the smuggler.*[5]

International money laundering

There is one older US statute that has applied to reverse money laundering for some time. It makes it a money laundering offence for anyone to transmit, transport or transfer any amount of money in any form into or out of the USA for the purpose of financing the commission of another crime.[6] It does not matter what the source of the money is; the only requirement is that the government prove that there was an intent to use the money for a specified unlawful purpose.

This statute has been used in a variety of circumstances. For example, if the victim of an advance-fee fraud scheme is induced to send his money from the USA to a foreign country, the transaction can be prosecuted as a money laundering offence because the victim's 'clean' money is being transmitted for the purpose of promoting the fraud. It has also been used in instances where someone sends 'clean' money in and out of the country several times to make it appear that he has access to more money than he really has, and thus is able to defraud his bank or his investors.[7] But obviously this statute can and will be used if it is discovered that someone has brought money into the USA with the intent to use it to finance a terrorist act.

This is all well and good. But what the USA does not have — what most countries do not have — is a domestic version of this statute. Persons engaged in the secret financing of terrorist acts and other crimes have been known to move large quantities of cash from one place to another — in automobiles, in luggage, in boxes of merchandise and in FedEx packages — within the USA. But under current law, if that money is clean money, or money from an unknown source, the movement of the money is not a money laundering offence.[8] The same is true of wire transfers, convoluted business deals or real estate transactions, or the sale of securities, even if the purpose of the transaction is to conceal or disguise the financing of serious future crimes.

There are several ways legislation could be crafted to deal with this. First, the act of transporting cash in excess of $10,000 from one place to another — on a highway, in an airport or on a train or bus — should be an offence if the courier knows the money is criminal proceeds, *or that it is intended to be used for an unlawful purpose*. Second, it also should be an offence to engage in any transaction, whether it involves currency, wire transfers, monetary instruments or commodities, if the purpose of the transaction is to conceal or disguise the intended unlawful use of the money.

The point is that transporting money domestically, with the intent to promote a criminal act, does just as much harm as transporting it across a border for that

purpose; and engaging in concealment behaviour to disguise the intent to commit future illegal acts, does just as much harm as concealing past acts — or perhaps more.

Section 1960(b)(1)(C)

It is essential to focus on the persons who facilitate these transactions — the money remitters and other professional money men who move money from place to place within one country or across international borders. They must be targeted whether they be formal business storefronts that wire money for customers who walk in off the street, or informal but highly sophisticated money transfer operations like the hawalas and unofficial *casas de cambio*.

Any money transmitter, formal or informal, whether or not he is licensed to do business in the jurisdiction in which he is operating, should be guilty of a money laundering offence if he knows that the money he is moving is derived from an unlawful source, *or is intended for an unlawful purpose*.

There is one provision in the USA Patriot Act that begins to address this issue. It applies only to money transfer businesses, but it says that if the money remitter engages in the transfer of funds that he knows are derived from an illegal source, *or are intended for an unlawful purpose*, he is guilty of an offence, and the assets of his business can be confiscated.[9] The term 'business' is not defined in the statute, and probably should be defined to avoid the technical defence that a 'business' must be a formal bricks-and-mortar operation. One possible definition that would include hawalas, street-corner money changers, and couriers moving money on behalf of drug traffickers, would be this: a 'business' is any person or association of persons, formal or informal, licensed or unlicensed, that provides money transfer services for third parties on multiple occasions in return for some remuneration or other consideration.

But however it is defined, what everyone should be thinking about is how to apply the concept embodied in this new statute to all money remitting businesses, formal and informal, domestic and international, to impose a measure of liability on those who knowingly facilitate the financing of criminal acts through the movement of funds.

CONCLUSION

The conclusion is simple: the way money laundering is viewed and considered must be changed. For more than a decade, money laundering enforcement has looked backward, asking what was the source of the laundered money, and how has the criminal tried to hide it? In the new age, it is essential to look forward: what is the criminal planning to do with the money that he is going to such great lengths to conceal? Reverse money laundering is the new modality, and merits the attention of all.

References

(1) 18 USC §1956.
(2) See 18 USC §982(a)(1), authorising forfeiture of all property 'involved in' the money laundering offence.
(3) See 31 USC §5316.
(4) See *United States v Bajakajian* 524 US 321 (1998) (full forfeiture of unreported currency being taken out of the United States would be 'grossly disproportional to the gravity of the offence', unless the currency was involved in some other criminal activity).
(5) See 31 USC §5332.
(6) 18 USC §1956(a)(2)(A).
(7) See *United States v Piervinanzi* 23 F. 3d 670 (2d Cir. 1994) (s. 1956(a)(2)(A) violated when the defendant wires money out of the USA to promote fraud against bank); *United States v O'Connor*, 158 F. Supp. 2d 697 (ED Va 2001) (following *Piervinanzi*; defendant sends money to Bahamas and brings it back to make it appear to be new funds in furtherance of fraud scheme).
(8) Recently enacted legislation makes it an offence to provide any material support to a terrorist. See 18 USC §2339C (2002).
(9) See 18 USC §1960(b)(1)(C).

***Stefan D. Cassella**, Deputy Chief of the Asset Forfeiture and Money Laundering Section of the US Department of Justice in Washington, DC. The views expressed in this paper are solely those of the author and do not necessarily reflect the view or policies of the Department of Justice or any of its agencies.*