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Tracking Narco-Dollars: The Evolution of a Potent Weapon in the Drug War

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TRACKING NARCO-DOLLARS: THE EVOLUTION OF A POTENT WEAPON IN THE DRUG WAR

I. INTRODUCTION .......................................................... 638

II. ENACTMENT OF THE BANK SECRECY ACT ................................. 640
   A. Legislative Background ........................................... 640
   B. Regulations Under the Bank Secrecy Act .......................... 641
   C. Early Enforcement Efforts ........................................ 642
      1. Administrative Problems ..................................... 643
      2. IRS Problems .................................................. 644
      3. Customs Problems .............................................. 646
   D. Initial Successes ................................................ 649

III. EMERGENCE OF THE BSA AS A MAJOR WEAPON IN THE DRUG WAR .......... 650
   A. Modification of Reporting and Recordkeeping Requirements .......... 651
   B. IRS/Customs Financial Task Forces .................................. 652
      1. The Great American Bank Investigation ......................... 653
      2. The Orozco Organization .................................... 653
      3. The Bank of Boston Case ................................... 654
   C. Organized Crime Drug Enforcement Task Forces ....................... 655
   D. Legal Obstacles to the BSA in the 1980s ............................ 657

IV. THE MONEY LAUNDERING CONTROL ACT OF 1986 ........................ 660
   A. Legislative Background ........................................... 660
   B. Enforcement of the MLCA and the Amended BSA .......................... 662
      1. Bank of New England ........................................ 663
      2. Operation C-CHASE ........................................ 664
      3. Operation POLAR CAP ..................................... 666

V. THE MONEY LAUNDERING PROSECUTION IMPROVEMENTS ACT .................. 666
   A. The RFPA ..................................................... 667
   B. The BSA ..................................................... 667
   C. The MLCA ................................................... 668
The inhabitants of the earth spend more money on illegal drugs than they spend on food. More than they spend on housing, clothing, education, medical care, or any other product or service. The international narcotics industry is the largest growth industry in the world. Its annual revenues exceed half a trillion dollars - three times the value of all United States currency in circulation, more than the gross national products of all but a half dozen of the major industrialized nations. To imagine the immensity of such wealth, consider this: A million dollars in gold would weigh as much as a large man. A half-trillion dollars would weigh more than the entire population of Washington, D.C.

Narcotics industry profits, secretly stockpiled in countries competing for the business, draw interest exceeding $3 million per hour. To what use will this money eventually be put? What will be its ultimate effect?¹

These were the questions confronting the Ninety-first Congress of the United States when it began to address the problem of money laundering, that is, the process of concealing the existence or source of illegal income and then using it as if it were legitimate.² This Article traces the United States Government's efforts to combat money laundering from its meager beginnings twenty years ago, to its present day status as a potent weapon in the na-
TRACING NARCO-DOLLARS

The first section of this Article discusses the enactment of the Bank Records and Foreign Transactions Act of 1970, commonly referred to as the Bank Secrecy Act (BSA), which required the reporting of certain cash transactions to the Government. This Article will analyze the congressional intent underlying the BSA, the implementing regulations, as well as the administrative and legal obstacles which hampered initial enforcement efforts. Wherever possible, this Article will briefly discuss some of the early, albeit relatively minor, successes under the Act during the latter half of the 1970s.

The next section of this Article traces the use of the BSA during the first half of the 1980s, when it began to emerge as a major weapon in the war on drugs. This section ends with a discussion of the 1984 amendments to the BSA which closed several loopholes in its enforcement, but still left unaddressed the emerging practice of structuring, that is, splitting currency transactions to avoid the BSA’s reporting requirements.

The third section of this Article covers the latter half of the 1980s, particularly, the Money Laundering Control Act of 1986 (MLCA). This section analyzes the successful prosecutions of major money laundering syndicates which laundered the narcotics proceeds of such notables as the Medellin cartel and Manuel Noriega. This section concludes with a discussion of the 1988 amendments to both the BSA and the MLCA.

The final section of this Article discusses the problems impeding the Government’s current enforcement efforts. It offers recommendations to address these problems and achieve maximum effectiveness from the existing legislation.


II. ENACTMENT OF THE BANK SECRECY ACT

A. Legislative Background

In 1970, Congress reacted to traditional organized crime's frequent use of secret bank accounts in foreign countries by enacting the first statute aimed specifically at combatting money laundering.\(^5\) Although primarily concerned with narcotics trafficking financing, Congress also tried to address a myriad of other organized and white collar criminal practices.\(^6\) As an example of the illegal uses of secret accounts, Congress specifically pointed to the practice of laundering income through the use of fictitious loans.\(^7\) Organized crime figures would move illegal profits into secret bank accounts and would then "borrow" the money back through fictitious loans, thereby laundering it and also benefitting from false income tax deductions claimed as "interest" on the "loan."\(^8\)

Additionally, most of the foreign jurisdictions used in these money laundering schemes had corporate secrecy laws which applied the same standards of confidentiality to business information as applied to banking information.\(^9\) As a result, agents pursuing leads in such countries would run into a virtual iron curtain of foreign secrecy laws.\(^10\)

Congress recognized that in particular foreign jurisdictions, neither law enforcement authorities nor banking institutions would cooperate with American authorities.\(^11\) Additionally, the application of American law in foreign countries was impractical.\(^12\) Consequently, Congress authorized the imposition of recordkeeping and reporting requirements on corporations and individuals in the

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6. H.R. 15073, 91st Cong., 2d Sess., 116 Cong. Rec. 16,955-56 (1970) [hereinafter H.R. 15073]. Congress was concerned with the following practices: tax evasion; overstatement of costs on government contracts; violations of stock purchase margin requirements, the manipulation of stock prices; insider trading; concealment of skimmed money from gambling casinos; and, most importantly, the infiltration of legitimate businesses by organized crime figures. Id.
7. Id. at 16,956.
8. Id.
9. Id. at 16,952.
10. Id. at 16,963.
12. Id.
United States who dealt with foreign financial agencies. Under the BSA, Congress intended to force those subject to U.S. jurisdiction to disclose the source of money deposited in secret foreign bank accounts. This was done in order to impede organized crime's use of tainted money to control legitimate businesses. Congress hoped to remove the anonymity which attached to cash transactions, and to create an audit trail for investigators to follow.

B. Regulations Under the Bank Secrecy Act

In 1972, the Secretary of the Treasury implemented the regulations authorized under Title II of the BSA and imposed the following requirements relative to financial transactions:

1) Banks must file a Currency Transaction Report (CTR) with the United States Internal Revenue Service (IRS) relative to each cash transaction of $10,000 or more, except when the transaction involves another financial institution or a customer with an account where such an amount was commensurate with the customary conduct of the business.

2) Parties, other than financial institutions and common carriers, carrying or receiving currency or other monetary instruments

1. prescribe regulations for the reporting of transactions involving currency or any other monetary instruments by the participating individuals, and financial institutions (31 U.S.C. §§ 5312-5313 (1983 & Supp. VI 1989));
2. require reports on all transactions with foreign financial agencies (31 U.S.C. § 5314 (1983));
3. require reports on foreign currency transactions (31 U.S.C. § 5315 (1983)); and
17. Internal Revenue Service Form 4789.
18. 31 C.F.R. § 103.22 (1972).
in excess of $5,000\textsuperscript{19} into or out of the United States on any one occasion, or causing the transportation thereof, must disclose the transportation by filing a Currency and Monetary Instruments Report (CMIR)\textsuperscript{20} with the United States Customs Service (Customs).\textsuperscript{21}

3) Persons subject to the jurisdiction of the United States and having an interest in a foreign financial account must file a Foreign Bank Account Report (FBAR)\textsuperscript{22} with the Treasury Department disclosing the interest in that account.\textsuperscript{23}

It is noteworthy that under the first provision, financial institutions conducting reportable domestic transactions were required by the government to identify the parties\textsuperscript{24} involved in the transactions and file the required CTBs.\textsuperscript{25} The Government had chosen to rely upon and burden financial institutions for the required records and reports, rather than the customers conducting reportable transactions.\textsuperscript{26}

It is important to note that the BSA did not prohibit money laundering, but merely imposed reporting and recordkeeping requirements with severe penalties for non-compliance.\textsuperscript{27}

C. Early Enforcement Efforts

Although this Article’s opening quotation uses gold to emphasize the enormity of wealth accruing to narcotics traffickers, drug


\textsuperscript{20} Customs Form 4790.

\textsuperscript{21} 37 Fed. Reg. 6913 (1972) (codified at 31 C.F.R. § 103.23 (1972)). Monetary instruments are defined as including all negotiable instruments, incomplete instruments signed but with the payee’s name omitted, and securities or stock in bearer or similar form so that title passes upon delivery. 31 C.F.R. § 103.11(k) (1972). In this paper, for the purposes of clarity and brevity, the terms currency or cash will be used but are intended to include all such monetary instruments.

\textsuperscript{22} Treasury Form TDF 90-22.1.

\textsuperscript{23} 37 Fed. Reg. 6913 (1972) (codified at 31 C.F.R. § 103.24 (1972)).

\textsuperscript{24} Id. at 6913-15.

\textsuperscript{25} 31 C.F.R. § 103.22 (1972).


traffickers do not deal in gold. The estimated $100 billion dollars in narcotics trafficking proceeds raised in the United States each year originates with drug users on the streets paying for their illicit goods with $5, $10 and $20 bills. The currency’s sheer volume presents major problems for the drug traffickers, as well as unique opportunities for law enforcement agencies.

Narcotics trafficking ringleaders, while wanting the proceeds of illegal narcotics transactions, do not want to be caught near their contraband. Moreover, stacks of currency are worthless unless they can be used. Consequently, traffickers have to launder the money in order to disguise its origin and make it appear legitimate. Traffickers that launder large amounts of currency, or its equivalent, by moving it through a country with bank secrecy laws are confronted with the problem of finding a means to transport it without being detected by law enforcement agencies, or having the currency stolen by enterprising free-lancers.

Federal law enforcement agencies, specifically Customs and the IRS, which were charged with enforcing the BSA, intended to capitalize on the problems confronting narcotics traffickers. Unfortunately, due to a variety of administrative and legal problems, the Treasury Department and these agencies were slow in implementing and enforcing the BSA’s requirements.

1. Administrative Problems

Among the administrative problems that impeded the implementation of the BSA were the following: A non-aggressive governmental posture regarding compliance by financial institutions; a

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29. A million dollars, composed of an equal mix of these denominations would consist of 85,715 individual bills weighing 189 pounds. According to the Federal Reserve, there are 490 individual notes to a pound. One hundred billion dollars would weigh approximately nine tons. Bureau of Engraving and Printing, U.S. Dep’t of the Treasury, Pub. No. 15, Production of Government Securities 5 (1985). These bills, if new, unwrinkled, and put in a single stack, would reach more than 600 miles high. Id.
30. Interview with Glendell W. Roberts, Assistant Special Agent in Charge (Currency Investigations), United States Customs Service, Miami, Florida, in Miami, Florida (Nov. 16, 1989) [hereinafter Roberts Interview].
31. 31 C.F.R. § 103.46 (1972), supra notes 19-21 and accompanying text.
32. 31 C.F.R. § 103.24, 26 (1987), supra notes 17-18 and accompanying text.
34. Among the agencies responsible were the Federal Deposit Insurance Corporation,
failure to clarify the provision exempting ordinary business transactions from domestic reporting requirements;\textsuperscript{35} a failure to require financial institutions to maintain lists of the exempted businesses;\textsuperscript{36} a failure to resolve questions concerning split deposits;\textsuperscript{37} a lack of uniformity in the assessment of penalties;\textsuperscript{38} a lack of dissemination of BSA reports;\textsuperscript{39} a lack of coordination among law enforcement agencies having use for the data collected;\textsuperscript{40} and, a lack of committed resources.\textsuperscript{41} These shortcomings were brought to the attention of the Treasury Department as early as 1975, but were not corrected until 1980.\textsuperscript{42} A possible indication of the Treasury Department's attitude toward enforcement was the fact that only one person at the Department was responsible for implementation and oversight of the BSA during that period.\textsuperscript{43}

2. IRS Problems

The legal problems encountered provided even greater enforcement obstacles than the administrative problems. The IRS faced its first legal hurdle with the constitutional challenges brought forward in \textit{California Bankers Association v. Shultz}.\textsuperscript{44} In that case, several named individual bank customers, the Security National Bank, the California Banker's Association, and the American Civil Liberties Union sought a temporary restraining order prohibiting the Secretary of the Treasury and the heads of other federal agencies from enforcing the provisions of the BSA. The plaintiffs alleged that, if enforced, these provisions would infringe upon the first, fourth, fifth, ninth, tenth, and fourteenth amendments of the Constitution.\textsuperscript{45}

The district court issued the temporary restraining order enjoining the enforcement of the CMIR and CTR reporting provi-
sions and requested the convening of a three judge court to consider the myriad of constitutional issues raised.\textsuperscript{46} The three judge court upheld the CMIR regulations, but held that the CTR regulations were facially violative of the fourth amendment on the basis that they permitted the Secretary of the Treasury to require reports of virtually all domestic financial transactions, regardless of their personal nature.\textsuperscript{47} Consequently, Customs was free to begin enforcement of the CMIR requirements, but the IRS was enjoined from implementing the CTR requirements.\textsuperscript{48}

Both the plaintiffs and the Government appealed the decision to the United States Supreme Court which considered the first, fourth, and fifth amendment claims.\textsuperscript{49} The first amendment challenge was based on allegations that the information available to the Government under the regulations could possibly be used to identify members of, and contributors to, various organizations in violation of the guarantee of freedom of association.\textsuperscript{50} The fourth amendment challenge was based on the assertion that the Government's access to the information contained in the reports constituted an unreasonable search and seizure.\textsuperscript{51} The fifth amendment challenge was based on a contention that the reporting requirement constituted compelled self-incrimination,\textsuperscript{52} and that the regulations were unduly burdensome, had no rational relationship to the Government's objective and, as such, were violative of due process.\textsuperscript{53}

The United States Supreme Court upheld the law on the issues raised, but two concurring Justices noted that if the Secretary of the Treasury had elected to impose the CTR reporting requirement on the depositors rather than on the financial institutions, the fifth amendment self-incrimination challenge might have posed a more significant constitutional question.\textsuperscript{54} Even though the Government won the suit, the case was not decided until April 4, 1974.\textsuperscript{55} Consequently, the IRS could not implement the CTR re-

\begin{itemize}
  \item \textsuperscript{46} Id.
  \item \textsuperscript{47} Id. at 42.
  \item \textsuperscript{48} Id.
  \item \textsuperscript{49} Id. at 42-44.
  \item \textsuperscript{50} Id. at 42-43.
  \item \textsuperscript{51} Id. at 43-44.
  \item \textsuperscript{52} Id. at 43.
  \item \textsuperscript{53} Id. at 42-43.
  \item \textsuperscript{54} Id. at 78-79 (Powell & Blackmun, JJ., concurring).
  \item \textsuperscript{55} Id. at 21.
\end{itemize}
porting requirements until two years after the regulations were enacted, and four years after the enabling legislation had been passed.56

Once the IRS began to enforce the BSA, the administrative problems cited above became critical.57 The questions left unanswered by the BSA and its implementing regulations quickly came to the forefront and further frustrated enforcement efforts.58 In addition, Congress enacted the Right to Financial Privacy Act59 (RFPA) in 1978, which limited the government’s access to financial institutions’ customer bank records. As a result, banks were often required to notify customers of the government’s interest in their accounts and give them the opportunity to challenge the government’s request.60

Although the RFPA specifically provided that financial institutions were not precluded from advising government authorities of possible violations of law,61 its major purpose was to protect the confidentiality of an individual’s financial records from the federal government.62 Therefore, since there was no provision requiring financial institutions to disclose information, and numerous prohibitions against it, many banks took a conservative approach and protected the confidentiality of such information.63

3. Customs Problems

While the IRS was being prevented from collecting CTRs, Customs was having its own legal problems enforcing the CMIR

57. See supra notes 34-43 and accompanying text.
58. CG REPORT, supra note 33, at 23-26. Two questions were left unanswered: Which businesses could the financial institutions exempt from the reporting requirements? What happened if a depositor affirmatively acted to avoid the reporting requirements by splitting deposits? Id.
61. Id. § 3402.
62. Id. § 3403.
63. The Drug Money Seizure Act and the Bank Secrecy Act Amendments: Hearings on S. 2306 Before the Senate Comm. on Banking, Housing, and Urban Affairs, 99th Cong., 2d Sess. 85 (1986) (testimony of Robert Hodges, General Counsel and Executive Vice President, South Carolina Banker’s Ass’n, representing the American Banker’s Ass’n).
requirements. The first enforcement hurdle it faced was the statute’s "willfulness" requirement. U.S. courts had consistently held that Customs was required to establish, beyond a reasonable doubt, that persons who entered or left the country without declaring currency in excess of $5,000 had both knowledge of the reporting requirement and the specific intent to commit the crime. At least one court had held that absent such a showing, conviction was inappropriate even though a traveller had deliberately lied to Customs and denied transporting more than $5,000. Customs addressed this problem by posting signs at airports, amending the U.S. Customs Declaration to include a notice of the reporting requirement, and having Customs Inspectors and carrier personnel specifically advise travellers of their responsibility to report.

Customs faced another major obstacle relative to its search authority in the enforcement of the BSA. Customs officers have long been empowered to search persons entering the country for merchandise or contraband, and to search outgoing persons and cargo for violations of the export control laws. However, Congress, in enacting the original BSA, specifically limited Customs authority to conduct searches for currency. Under the statute, Customs officers were empowered to search for currency only after obtaining a search warrant based upon a showing of probable cause. Courts relied on the wording of the BSA and would not

64. 31 U.S.C. § 5322 (1982 & Supp. VI 1989)(requiring that a person willfully violate this subchapter or a regulation prescribed thereunder before criminal penalties apply).
65. United States v. Chen, 605 F.2d 433 (11th Cir. 1979); United States v. Dichne, 612 F.2d 632 (2d Cir. 1979), cert. denied 445 U.S. 928; United States v. Granada, 565 F.2d 922 (5th Cir. 1978); United States v. San Juan, 545 F.2d 314 (1st Cir. 1976).
67. CG REPORT, supra note 33, at 21.
68. Customs Form 6059-B is distributed to international passengers to enable the passenger to declare the amount of currency being brought into or out of the United States.
69. United States v. Rodriguez, 592 F.2d 553, 555 (9th Cir. 1979); United States v. Rojas, 671 F.2d 159, 161 (11th Cir. 1982).
71. Most courts have held that the authority to conduct export searches is found in 22 U.S.C. § 401 (1990). Although that section only authorizes seizures, the courts have implied the power to conduct reasonable searches as a necessary adjunct to the power to seize. Samora v. United States, 406 F.2d 1085 (5th Cir. 1969); United States v. Marti, 321 F. Supp. 59 (E.D.N.Y. 1970). The implied search authority reasoning was not appropriate for currency searches because the statute explicitly provides for the use of a search warrant based upon probable cause. 31 U.S.C. § 5317(a) (1983).
73. 31 U.S.C. § 5317 states that a search warrant based upon probable cause may be
extend Customs general search authority to include searches for currency. Additionally, the BSA contained contradictory wording. It stated that a warrant could be applied for if there was reasonable suspicion, but it would be granted only if there was probable cause. This problem did not present a significant obstacle relative to persons entering the country. Routine searches for merchandise or contraband would also uncover concealed currency. However, since Customs did not have general outbound search authority, outbound currency cases were troublesome. This problem was addressed to some degree by performing outbound export control searches for restricted merchandise that was being shipped to countries known to be frequent destinations or transhipment points for smuggled currency. Additionally, in the case of outbound personal searches, proper questioning by a Customs officer could produce sufficient cause to search, and the imminent departure could produce sufficient exigent circumstances to justify a warrantless search. An often utilized alternative was to procure the traveller's consent.

The final legal obstacle faced by Customs was that the BSA did not provide criminal sanctions for attempted violations of the statute. The statute penalized the failure to file the required CMIR. However, since a passenger was required to file the form at the time of departure from the United States, courts held that a traveller did not violate the BSA until he actually surrendered his ticket and was ready to board.

obtained for such searches. Although 31 C.F.R. 103.50(b) states that this section is not in derogation of authority under any other section, Customs had no specific authority to search for currency.

74. Rojas, 671 F.2d at 167; United States v. Chemaly, 741 F.2d 1346, 1349-52 (11th Cir. 1984).
75. 31 U.S.C. § 5317(a) (1983) (while the Secretary may apply for a search warrant based on a reasonable belief that a monetary instrument is being wrongfully transported, a court may only issue the warrant on a showing of probable cause).
76. Chemaly, 741 F.2d at 1351.
77. Roberts Interview, supra note 30.
78. Rojas, 671 F.2d at 166; United States v. Kreimes, 649 F.2d 1185 (5th Cir. 1981).
81. 31 C.F.R. § 103.25(b) (1972).
As a result, when agents had ample evidence that an attempted currency transport would be made, they would have to wait until the actual transport before taking action. Consequently, if a major organized crime figure gave a courier $10,000,000 to take out of the country, Customs could not take action against the organized crime figure or the courier until the courier was about to board the aircraft. Additionally, if the courier decided to steal the money, the organized crime figure could not be charged under the BSA. Finally, if the courier went to a small landing strip or airport which serviced general aviation aircraft, he would not violate the BSA until he boarded the private aircraft, thereby making apprehension prior to departure very difficult.

D. Initial Successes

Despite these initial problems, during the 1970s the BSA was somewhat effective both as an intelligence tool and as a criminal enforcement statute. In one instance, an examination of two CTRs revealed that a foreign national had deposited more than $1,000,000 in a three day period without filing any corresponding CMIRs. It was evident that he either smuggled the money in from another country or had received it after arrival in the United States. A follow-up investigation disclosed that the monies involved were in fact narcotics payments which the foreign national had received after arriving in the United States.

In another case, Customs agents acting on a tip conducted an extensive examination of the CTR data base, and found twenty-two CTRs relating to potential criminal activity. Suspects who had deposited approximately $74 million were identified and subjected to a grand jury investigation. In a third case, Customs initiated an investigation from an examination of CTRs, and eventually identified a drug trafficking organization which had been

83. CG REPORT, supra note 33.
84. Id. If the courier waited several days before attempting to depart, surveillance would have to be maintained until he was ready to leave. Id.
85. Id.
86. Id.
87. Id. at 11-15.
88. Id.
89. Id.
90. Id.
91. Id.
92. Id.
distributing approximately 300 pounds of heroin per month.\textsuperscript{93} Sixteen persons were convicted as a result of this investigation.\textsuperscript{94}

The following advances were also being made: Customs officers were provided with specialized training in the use and enforcement of the BSA;\textsuperscript{95} the IRS initiated 400 CTR-related criminal cases between 1974-80,\textsuperscript{96} and planned to make extensive use of CTR data in future tax investigations;\textsuperscript{97} and the Treasury Department was ready, after much delay, to issue the clarifying regulations relative to the CTR "exempt list" and split deposits.\textsuperscript{98}

III. \textbf{EMERGENCE OF THE BSA AS A MAJOR WEAPON IN THE DRUG WAR}

During the first half of the 1980s, U.S. law enforcement agencies engaged in more aggressive and effective approaches in enforcing the BSA.\textsuperscript{99} The significant milestones in the government's efforts were the following: Modification of reporting and recordkeeping requirements;\textsuperscript{100} the creation of IRS/Customs Financial Task Forces throughout the country;\textsuperscript{101} the establishment of Organized Crime Drug Enforcement Task Forces in major U.S. cities;\textsuperscript{102} the successful prosecution of several significant investigations; and, the imposition of major fines and penalties against some

\begin{center}
\begin{tabular}{|c|c|c|c|c|}
\hline
\hline
Investigations Initiated & 126 & 171 & 238 & 338 \\
Prosecutions Recommended & 55 & 119 & 143 & 174 \\
Indictments & 29 & 103 & 102 & 144 \\
Convictions & 25 & 61 & 73 & 108 \\
\hline
\end{tabular}
\end{center}

\textsuperscript{93} \textit{Id.} at 65-66 (letter from Joseph T. Davis, Acting Commissioner of Internal Revenue, and John M. Walker, Jr., Treasury Assistant Secretary-Designate (Enforcement & Operations) (June 29, 1981)).

\textsuperscript{94} \textit{Id.} at 66.

\textsuperscript{95} \textit{Id.} at 9.

\textsuperscript{96} \textit{Id.} at 67.

\textsuperscript{97} \textit{Id.} at 9.

\textsuperscript{98} \textit{Id.} at 23.

\textsuperscript{99} Rusch, \textit{supra} note 15, at 473. The growth and extent of this enforcement activity is evidenced by the information which is presented in the following table provided by Rusch:

\textsuperscript{100} See infra notes 104-10 and accompanying text.

\textsuperscript{101} CG \textit{REPORT}, supra note 33, at 43.

of the nation's leading banks.\textsuperscript{103}

\section*{A. Modification of Reporting and Recordkeeping Requirements}

The first step toward the BSA's effective utilization was the modification and clarification of the reporting and recordkeeping requirements. In 1980, the Treasury Department reduced the time permitted for financial institutions to file CTRs from forty-five to fifteen days,\textsuperscript{104} and required the institutions to retain copies of CTRs for five years.\textsuperscript{105} The Treasury Department also limited CTR exemptions to domestic government agencies, certain other financial institutions, and retail businesses.\textsuperscript{106} Furthermore, the Treasury Department required financial institutions to review and record the identification of customers whose currency deposits met the reporting requirement thresholds, even in exempt transactions.\textsuperscript{107} Additionally, in 1981, the Federal Deposit Insurance Corporation, the Federal Reserve System, and the Comptroller of the Currency implemented extensive procedures for ensuring that financial institutions subject to their oversight complied with the BSA.\textsuperscript{108} Finally, in 1985, the Treasury Department, in response to widespread use of casinos for money laundering,\textsuperscript{109} implemented regulations which subjected casinos to the reporting requirements.\textsuperscript{110}

The Government failed to take aggressive action in one area. In 1981, the General Accounting Office (GAO) recommended that the Treasury Department revise the dissemination guidelines, so that BSA data would be more readily available to enforcement agencies.\textsuperscript{111} These revisions were drafted by Customs in 1982.\textsuperscript{112}

\begin{footnotesize}
\begin{enumerate}
\item[104.] 31 C.F.R. § 103.26 (1972).
\item[105.] 31 C.F.R. § 103.32 (1972). The shorter time period significantly reduced the delays that were hampering ongoing investigations.
\item[106.] 31 C.F.R. § 103.22(a)(2) (1985).
\item[107.] Id. § 103.27.
\item[108.] CG REPORT, supra note 33, at 39-43.
\item[110.] 31 C.F.R. §§ 103.22, .36, .45 (1985).
\end{enumerate}
\end{footnotesize}
Despite both of these actions, the Treasury Department did not make any changes in the dissemination guidelines during the first half of the 1980s.\textsuperscript{113}

\textbf{B. IRS/Customs Financial Task Forces}

The second significant development during this period was the establishment of Financial Task Forces by the IRS and Customs. The first of these task forces was Operation GREENBACK which was created in Miami, Florida in 1980.\textsuperscript{114} In 1978, Federal Reserve Banks in Miami and Jacksonville, Florida had received a surplus of $3.3 billion in currency from other financial institutions.\textsuperscript{115} However, thirty-five other Federal Reserve Banks throughout the country had a total currency deficit of approximately $3.5 billion during the same time period.\textsuperscript{116} This surplus was an increase from less than $1 billion in 1974 and was expected to be $6 billion by 1980.\textsuperscript{117} The Treasury Department suspected that the surplus cash represented large amounts of currency generated from illegal drug trafficking.\textsuperscript{118} Operation GREENBACK was formed to address this suspicion and initially focused on tracking $14 billion dollars deposited in Florida Federal Reserve banks.\textsuperscript{119} IRS and Customs analyzed the CTRs on file and selected twenty-five banks which had handled large numbers of cash transactions.\textsuperscript{120} These banks, several of which handled tens of millions of dollars and one of which was believed to have handled hundreds of millions,\textsuperscript{121} were then subjected to extensive compliance examinations.\textsuperscript{122} By 1984, the operation resulted in 164 arrests, 211 indictments, 63 convictions, $38.5 million in seized currency, $7.5 million in seized property, and $117 million in jeopardy tax assessments.\textsuperscript{123} The GREENBACK concept led to similar financial task forces

\begin{itemize}
\item \textsuperscript{112} Id.
\item \textsuperscript{113} Id.
\item \textsuperscript{114} \textit{BSA Hearings}, supra note 102, at 34.
\item \textsuperscript{115} PCOC REPORT, supra note 2, at 26.
\item \textsuperscript{116} Id.
\item \textsuperscript{117} Id.
\item \textsuperscript{118} Id.
\item \textsuperscript{119} CG REPORT, supra note 33, at 65.
\item \textsuperscript{120} Id.
\item \textsuperscript{121} Id.
\item \textsuperscript{122} Id. at 43.
\item \textsuperscript{123} \textit{BSA Hearings}, supra note 102, at 34.
\end{itemize}
composed of Customs and IRS agents supported by the Justice Departments in thirty-five major cities.\textsuperscript{124} In fiscal year 1983 alone, task force investigations led to the indictment of 497 persons and to 279 convictions.\textsuperscript{125} Between 1980 and 1984, they disrupted at least fifteen major money laundering organizations which had laundered over $2.5 billion in primarily drug proceeds.\textsuperscript{126} Among the more significant investigations pursued by the task forces were those of the Great American Bank,\textsuperscript{127} Eduardo Orozco,\textsuperscript{128} and the Bank of Boston.\textsuperscript{129}

1. The Great American Bank Investigation

The Great American Bank investigation involved a bank's criminal complicity in failing to file 406 CTRs covering more than $94 million in deposits during a one year period.\textsuperscript{130} The depositors agreed to maintain large accounts and to pay a fee to certain employees of Great American Bank.\textsuperscript{131} In exchange, the Bank agreed to the following: to refrain from filing the required CTRs; to issue cashier's checks disguised as loans; and to transfer the monies by wire, cashier's check, and bank checks through foreign and interstate accounts.\textsuperscript{132}

2. The Orozco Organization

In the Orozco investigation, several banks and a currency exchange house had disregarded the BSA's reporting requirements.\textsuperscript{133} The investigation uncovered the laundering of millions of dollars in cocaine and heroin proceeds for the Colombian cocaine cartels and La Cosa Nostra heroin traffickers.\textsuperscript{134} The case began when Orozco's attorney advised Federal authorities that Orozco was

\begin{footnotes}
\item 124. Id.
\item 125. Id.
\item 126. Id. at 35.
\item 128. United States v. Orozco-Prada, 732 F.2d 1076 (2d Cir. 1984).
\item 130. PCOC REPORT, supra note 2, at 39.
\item 131. Id. at 40.
\item 132. Id. One of the depositors, Interfil, a front company with no legitimate business made daily deposits over $250,000 which were delivered to the Bank in boxes and suitcases. Id.
\item 133. Id. at 39. See also Orozco-Prada, 732 F.2d 1076.
\item 134. PCOC REPORT, supra note 2, at 35.
\end{footnotes}
making frequent sizable cash deposits into numerous bank accounts.\textsuperscript{135} With Citibank's assistance, the DEA put an undercover agent in the bank to launder Orozco's cash.\textsuperscript{136} In all, Orozco used eleven banks and a currency exchange house to illegally launder over $150 million dollars.\textsuperscript{137} A subsequent investigation disclosed that the currency exchange house, Deak-Perera, laundered almost $100 million for Orozco without filing CTRs or CMIRs.\textsuperscript{138} Deak-Perera claimed it was ignorant of the reporting requirements.\textsuperscript{139} In addition, only one of the eleven banks involved notified the authorities, although four had become so suspicious that they refused further deposits.\textsuperscript{140} As in the \textit{Great American Bank} case, this investigation showed the blatant disregard of the BSA's requirements by some of the nation's major financial institutions.\textsuperscript{141} Despite numerous regulations imposed upon and substantially followed by legitimate banks, the Orozco organization had been able to launder almost $100 million in drug proceeds. The laundering went largely undetected by the Government because some institutions, willfully or otherwise, were ignoring the regulations.

3. The Bank of Boston Case

As a result of severe penalties imposed upon several major banks for non-compliance with the BSA's requirements, financial institutions increased their awareness of, and compliance with, the reporting requirements. The first of these cases was \textit{Bank of Boston}, in which the Bank admitted its failure to file CTRs on deposits and international transactions in excess of $1 billion between 1980 and 1984.\textsuperscript{142} The Bank was assessed and paid a criminal fine

\textsuperscript{135} Id. at 35-36.
\textsuperscript{136} Id. at 36. Eventually, Orozco put the agent on commission in exchange for his not filing the required CTRs. Id.
\textsuperscript{137} Id. at 37. Orozco changed small denomination bills into larger denominations, made multiple deposits under $10,000 to avoid the CTR requirements, established fictitious shell corporations, and used false bills of lading to substantiate and transfer monies among import and export companies. Id.
\textsuperscript{138} Id. Deak-Perera opened the accounts without requiring identification and received much of the money in cash deposit amounts of $500,000, $3.4 million of which was transferred to accounts in the United States, Panama, the Bahamas, and the Cayman Islands. Id.
\textsuperscript{139} Id. at 38.
\textsuperscript{140} Id. at 38-39.
\textsuperscript{141} Additional examples of significant cases in this period may be found in the PCOC \textit{REPORT}, supra note 2, at 42-49.
\textsuperscript{142} First Nat'l Bank of Boston, CR 85 52-MA (plea agreement and prosecutor's information to which the defendant pled guilty).
of $500,000.\textsuperscript{143}

In the wake of the Bank of Boston case and its surrounding publicity, over sixty banks and bank holding companies voluntarily advised the Treasury Department of past violations of the Act.\textsuperscript{144} By June of 1986, eighteen civil penalties ranging from $75,000 to $4.75 million had been assessed under the BSA.\textsuperscript{145} In addition, CTR filings increased from approximately 700,000 in 1984 to 1.8 million in 1985, and up to 3 million by mid-1986.\textsuperscript{146} The banking industry was no longer indifferent toward the BSA.

C. Organized Crime Drug Enforcement Task Forces

The success of the Treasury Department's financial task forces led to the creation of the Organized Crime Drug Enforcement Task Forces composed of agents from the Federal Bureau of Investigation (FBI), the Drug Enforcement Agency (DEA), the IRS, Customs, the Bureau of Alcohol, Tobacco, and Firearms (BATF), as well as attorneys from the offices of the United States Attorney.\textsuperscript{147} These task forces absorbed the already existing Treasury Department task forces in those cities where both existed.\textsuperscript{148} By the middle of 1984, the Organized Crime Drug Enforcement Task Forces had initiated 632 investigations which resulted in the indictment of 2,758 defendants, 66 of whom were charged with violations of the BSA.\textsuperscript{149} By 1986, they had initiated 1,350 cases which resulted in the indictments of 8,649 individuals.\textsuperscript{150} The most prominent task force investigation during this time was "The Pizza Connection."\textsuperscript{151}

The "Pizza Connection" investigation involved the laundering of heroin trafficking profits through major banks and investment

\begin{itemize}
  \item \textsuperscript{143} DML REPORT, supra note 103, at 3-4. The bank pled guilty, although it was only a matter of negligence when a first line supervisor had misinterpreted a change in the regulations. \textit{Id}.
  \item \textsuperscript{144} GAO HEARINGS, supra note 111, at 17 (testimony of Francis A. Keating II, Assistant Secretary of the Treasury, Enforcement).
  \item \textsuperscript{145} \textit{Id}.
  \item \textsuperscript{146} \textit{Id.} at 16.
  \item \textsuperscript{147} \textit{Id.} at 16.
  \item \textsuperscript{148} CG REPORT, supra note 33.
  \item \textsuperscript{149} BSA Hearings, supra note 102, at 98.
  \item \textsuperscript{150} GAO HEARINGS, supra note 111, at 16 (testimony of Francis A. Keating II, Assistant Secretary of the Treasury, Enforcement).
\end{itemize}
houses by the Cosa Nostra and Italian Mafia organized crime figures.\textsuperscript{152} The conspiracy first came to light when couriers were found transferring tens of millions of dollars in $5, $10, and $20 denominations through these financial institutions to Switzerland and Italy.\textsuperscript{153} Additionally, the investigation disclosed that money was also being transported by private jet to Bermuda, and by commodity account transfers from local brokerage houses to Switzerland.\textsuperscript{154} The monies in Switzerland and Bermuda were then being transferred to Italy to pay for opium and to finance narcotics laboratories, all in apparent violation of the BSA.\textsuperscript{155}

Franco Della Torre, the primary courier in the "Pizza Connection," had laundered almost $5 million through an account at Merrill, Lynch, Pierce, Fenner & Smith before the broker became suspicious and refused to accept additional deposits.\textsuperscript{156} When Merrill Lynch closed the account, the courier moved his business to another stock broker, E.F. Hutton, where he laundered another $13 million using the money primarily to purchase commodity futures contracts in Switzerland.\textsuperscript{157} Unfortunately, when the Government served E.F. Hutton with a grand jury subpoena for records of the accounts, E.F. Hutton immediately advised its Switzerland office, which in turn advised Della Torre's associate.\textsuperscript{158} Della Torre made no further deposits, but had already laundered over $25 million in a two year period.\textsuperscript{159} Twenty defendants were prosecuted and convicted in the case; Della Torre was also convicted of Swiss law violations.\textsuperscript{160}

This case demonstrated the following problems with the government's attack on money laundering: The difficulty in detecting or tracking cash physically transported from the country without the filing of a CMIR; the apparent willingness of banks and bro-

\begin{itemize}
  \item \textsuperscript{152} PCOC REPORT, \textit{supra} note 2, at 33-35.
  \item \textsuperscript{153} \textit{Id.} at 33.
  \item \textsuperscript{154} \textit{Id.}
  \item \textsuperscript{155} \textit{Id.}
  \item \textsuperscript{156} \textit{Id.} at 33-34. Merrill Lynch became suspicious because of the amount of cash involved and because the courier was reluctant to be filmed by the surveillance cameras at Banker's Trust which acted as an intermediary in transporting the currency. \textit{Id.}
  \item \textsuperscript{157} \textit{Id.} at 34. Della Torre stopped making deposits when E.F. Hutton, despite Government requests to the contrary, notified a Della Torre associate that the Government had served a Grand Jury subpoena for records of some of the accounts. \textit{Id.}
  \item \textsuperscript{158} \textit{Id.} at 34-35.
  \item \textsuperscript{159} \textit{Id.} at 35.
  \item \textsuperscript{160} Secretary of the Treasury, Money Laundering and the Bank Secrecy Act: The Question of Foreign Branches of Domestic Financial Institutions 21 (1987).
\end{itemize}
kerage houses to engage in highly suspicious transactions; and, the inclination of financial institutions to advise customers of ongoing investigations. ^161

D. Legal Obstacles to the BSA in the 1980s

In addition to the problems mentioned above, legal obstacles were still hampering the government's efforts during this period. First, the legal problems of Customs search authority and the lack of an "attempt" provision had not yet been resolved. ^162 Second, "structuring" or "smurfing," that is the splitting of cash transactions to avoid the CTR requirement, was considered legal by many courts around the country. ^163

The leading case concerning Customs lack of search authority was United States v. Chemaly. ^164 In Chemaly, the DEA received a tip from a previously reliable source that Chemaly would be flying from Miami to Aruba to purchase cocaine with $500,000 concealed in a cardboard box. ^165 Chemaly boarded the flight without the cardboard box, but a search of his person and attache case disclosed in excess of $5,000 cash. ^166 Since he had notice of the reporting requirement and had denied having more than $5,000 in his possession, he was arrested and convicted for violating the BSA. ^167 The circuit court reversed his conviction, holding that the Government was not relieved from the BSA's probable cause and warrant requirements by either the border exception, Chemaly's involuntary consent, or by a search incident to an arrest supported by probable cause. ^168

Congress attempted to resolve this problem with the enactment of the Crime Control Act of 1984. ^169 This Act granted Customs officers the authority to search for currency on the basis of reasonable cause, that is, reason to believe that currency was con-

^161. See supra notes 151-60 and accompanying text.
^163. GAO Hearings, supra note 111, at 33-34 (statement of William J. Anderson, Director, General Government Division, General Accounting Office).
^164. 741 F.2d 1346 (11th Cir. 1984).
^165. Id. at 1348.
^166. Id. at 1348-49.
^167. Id.
^168. Id. at 1353-54.
cealed. However, despite the amendment, some courts interpreted "reasonable cause to believe" as requiring probable cause. Additionally, Congress tried to resolve the "attempt" problem in the 1984 Act by adding the phrase "attempt to transport or have transported" to the BSA. However, this phrasing still presented problems in the courts, and in 1986, Congress replaced it with the phrase "transports, is about to transport, or has transported.

The 1984 Act also empowered Customs and the IRS to pay up to 25% of the monies forfeited or recovered in fines and penalties resulting from BSA violations to persons providing original information leading to seizures and forfeitures. This provided financial incentives for persons with knowledge of money laundering activities to provide Customs and the IRS with information leading to seizures. From 1984 to 1986, Customs currency seizures increased from $67 million to $96 million. During the three week period of Operation BUCKSTOP, Customs seized more than $7 million in smuggled currency. Finally, the 1984 Act raised the reporting threshold for the CMIR filing requirement from $5,000 to $10,000. This was done in order to focus efforts on relatively large transactions, reduce the paperwork involved in administering the BSA, and lessen the negative impact of the Act on travelers.

While these legislative initiatives were quite important, the more serious problem of structuring still remained. Circuit courts
were split on the issue of whether the deliberate structuring of deposits to avoid the CTR requirements was a crime. The leading case holding individuals conducting such transactions criminally liable was *United States v. Tobon-Builes.* In that case, Tobon-Builes and a companion purchased one cashier's check each for just under $10,000 at ten different banks in one day. The two entered the banks separately and went to different tellers, thereby concealing the fact that they were together and that the transactions were related. The trial court convicted Tobon-Builes of structuring currency transactions in excess of $10,000 in order to avoid filing CTRs with the Government. He appealed, arguing that as a bank customer, he had no legal duty to report the transactions, and without such a duty, he could not be found guilty of concealment. The circuit court found that, although he was not guilty of actual concealment, he was guilty of causing the banks' failure to file the reports, and consequently was criminally liable. The court reasoned that Tobon-Builes' criminal intent to cause the concealment, and the banks' failure to fulfill their duty formed actionable concealment.

The leading case holding that money structuring was not a crime was *United States v. Anzalone.* During a two week period, Anzalone purchased $100,000 worth of bank checks with cash amounts just under $10,000. Anzalone was convicted of concealing a material fact from the Government, of aiding and abetting, and of causing the bank's failure to file the required CTRs. The circuit court held that the conviction could not be sustained under the due process clause of the fifth amendment because the Govern-

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179. 706 F.2d 1092 (11th Cir. 1983).

180. Id. at 1094.

181. Id.

182. Id. at 1096. Tobon-Builes was convicted under 18 U.S.C. § 1001 for knowingly and willfully concealing a material fact from the government.

183. Id. at 1098.

184. Id. at 1098-1101.

185. Id. at 1101.

186. 766 F.2d 676 (1st Cir. 1985).

187. Id. at 679.

188. Id. at 679-80. Anzalone was convicted under 18 U.S.C. § 1001 of concealing a material fact, and under 18 U.S.C. § 2 of causing a financial institution's failure to file a CTR.
ment did not establish that Anzalone had any legal duty to disclose the material facts at the time of the transactions.\textsuperscript{189}

The uncertainty generated by the conflicting case law was eventually resolved when Congress codified the holding in \textit{Tobon-Builes} and expressly made money structuring a crime.\textsuperscript{190} Recently, however, courts have held that a defendant need not be aware that structuring a currency transaction is unlawful in order to be convicted of a willful violation of the statute.\textsuperscript{191} Nonetheless, the codification of \textit{Tobon-Builes}, and other changes to the BSA, were incorporated when Congress enacted the Money Laundering Control Act of 1986.\textsuperscript{192}

\section*{IV. The Money Laundering Control Act of 1986}

\subsection*{A. Legislative Background}

The MLCA amended and substantially improved the BSA, eliminated some of the requirements of the RFPA, and, most importantly, made money laundering itself a crime.\textsuperscript{193} This section examines these important changes, explores the criminal prosecution of a major financial institution, and explains the emerging concepts of "imputed knowledge" and "collective knowledge" under which financial institutions may be found criminally liable, even in the absence of specific knowledge and intent.

Among the amendments to the BSA were the following: The prohibition against structuring;\textsuperscript{194} the elimination of the "reasonable cause to believe" requirement in border searches;\textsuperscript{195} the authority, in CMIR cases, to seize not only the monetary instruments in-

\textsuperscript{189} Id. at 678, 683.
\textsuperscript{191} United States v. Scanio, 900 F.2d 485 (2nd Cir. 1990); U.S. v. Hoyland, 903 F.2d 1288 (9th Cir. 1990).
\textsuperscript{194} Id. § 1354(a), 100 Stat. 3207-22 (1986) (codified at 31 U.S.C. § 5324 (Supp. VI 1989)).
\textsuperscript{195} Id. § 1355(a), 100 Stat. 3207-22 (1986) (codified as amended at 31 U.S.C. § 5317(b) (1983 & Supp VI 1989)).
volved, but any traceable proceeds; the requirement that financial institutions maintain statements justifying CTR exemptions; an increase in criminal penalties from five years to ten years; and an increase in civil penalties from $10,000 to $25,000 of the amount of the transaction (not to exceed $100,000), with a specific clarification that civil penalties were additional to any criminal penalty exacted.

The two amendments to the RFPA were especially significant. The first specified that banks could voluntarily provide names, account numbers and suspicious activities to the Government without violating the RFPA or exposing themselves to prosecution under state or local privacy statutes. The second re-emphasized the courts' authority to prohibit financial institutions from disclosing to their customers that grand jury subpoenas or other court orders had been served upon the customer's account.

However, the most significant accomplishment of the MLCA was the establishment of distinct money laundering offenses. The statute established five separate money laundering violations:

1) knowingly conducting or attempting to conduct a financial transaction with the proceeds of a "specified unlawful activity" and with the intent to promote a "specified unlawful activity;"

2) knowingly conducting or attempting to conduct a financial

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transaction with the proceeds of a "specified unlawful activity," knowing that the transaction was designed to conceal the nature, location, source, or ownership of the proceeds or to avoid the CTR or CMIR reporting requirements;\(^{203}\)

3) importing or exporting monetary instruments with the intent to promote a "specified unlawful activity;\(^{204}\)

4) importing or exporting monetary instruments with the intent to disguise the nature or source of the proceeds;\(^{205}\) and

5) knowingly engaging or attempting to engage in a monetary transaction with criminally derived property valued at more than $10,000 derived from a "specified unlawful activity."\(^{206}\)

Additionally, the MLCA added the considerable resources of the FBI and DEA to the Government's effort.\(^{207}\) Although it did not alter the exclusive jurisdiction of the IRS\(^{208}\) and Customs\(^{209}\) to enforce the reporting requirements of the BSA,\(^{210}\) it granted the FBI and DEA overall responsibility for investigating the newly established crime of money laundering.\(^{211}\) Furthermore, the MLCA required the Treasury and Justice Departments to formalize a memorandum of understanding between them to ensure coordination among the law enforcement agencies involved.\(^{212}\)

**B. Enforcement of the MLCA and the Amended BSA**

After the MLCA was enacted, many significant investigations were prosecuted under the combined statutes. *U.S. v. Bank of New England* is noteworthy because of its legal significance to financial

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\(^{208}\) See supra note 32 and accompanying text.

\(^{209}\) See supra note 31 and accompanying text.

\(^{210}\) See CG REPORT, supra note 33, at 7-16; GAO HEARINGS, supra note 111, at 34 (statement of William J. Anderson, Director, General Government Division, General Accounting Office).


\(^{212}\) *Id.*
institutions.\textsuperscript{213} \textit{U.S. v. Awan} and \textit{U.S. v. Escobar-Gaviria} are interesting because they demonstrate the complexities of sophisticated money laundering operations and investigations.\textsuperscript{214}

1. Bank of New England

The most significant case from a legal point of view was \textit{United States v. Bank of New England},\textsuperscript{215} which established new principles of culpability for financial institutions. This case involved an individual who purchased multiple counterchecks on thirty-one different occasions.\textsuperscript{216} He made these payable to cash in amounts ranging from $5,000 to $9,000.\textsuperscript{217} He simultaneously presented two to four previously purchased counter checks to the bank and received a lump sum in excess of $10,000.\textsuperscript{218} The Bank did not file CTRs on these transactions because each was below the $10,000 threshold.\textsuperscript{219} The Bank appealed its conviction for failing to file the CTRs and asserted that its violation was not willful as required by the BSA.\textsuperscript{220}

In sustaining the Bank's conviction, the circuit court made three significant findings of law. First, it held that if any of the Bank's employees knew of the reporting requirements, that knowledge was imputed to the Bank.\textsuperscript{221} Second, the Bank's imputed knowledge was the total of its employees' knowledge within the scope of their employment.\textsuperscript{222} Third, the Bank's flagrant organizational indifference to the responsibilities as established under the law was equivalent to willfulness.\textsuperscript{223} The combination of "imputed knowledge," "collective knowledge," and a gross negligence stan-

\textsuperscript{215.} 821 F.2d 844 (1st Cir. 1987), \textit{cert. denied}, 484 U.S. 943 (1987).
\textsuperscript{216.} \textit{Id.} at 849. Counter checks are blank checks issued by a bank which a bank teller encodes with the customer's account number. \textit{Id.}
\textsuperscript{217.} \textit{Id.} at 848.
\textsuperscript{218.} \textit{Id.}
\textsuperscript{219.} \textit{Id.}
\textsuperscript{220.} \textit{Id.}
\textsuperscript{221.} \textit{Id.} at 856.
\textsuperscript{222.} \textit{Id.}
\textsuperscript{223.} \textit{Id.} The court quoted the Supreme Court as holding "willfulness," in both civil and criminal contexts, to be "a disregard for the governing statute and an indifference to its requirements." \textit{Id.}
standard resulted in the Bank's vicarious criminal liability. This case established a lower standard of proof for criminal convictions of financial institutions.224

2. Operation C-CHASE

Operation C-CHASE involved a money laundering syndicate and the Bank of Credit and Commerce International (BCCI) which allegedly laundered millions of dollars in narcotics proceeds in violation of the MLCA, but not in violation of the BSA.225 C-CHASE was a two year undercover operation in which Customs agents disguised themselves as money launderers and offered their "services" to a major money laundering syndicate which was handling the monies of the Medellin cartel,226 and Manuel Noriega, the deposed dictator of Panama.227 The undercover agents established their base of operations in Tampa, Florida, laundered currency for the syndicate, and eventually reached into the cartel in Medellin, Colombia.228

The syndicate employed several different money laundering schemes involving sixty-four domestic and sixty-five foreign bank accounts.229 Initially, the undercover agents picked up narcotics cash proceeds in several different cities.230 They then either deposited the cash in a local bank in the pick-up city and wire transferred it to an undercover account in Tampa, or physically transported it to Tampa and deposited it in the account.231 The syndicate then used the agents' signed blank checks as negotiable instruments.232 It would complete the checks and either draw upon the funds, give the checks to the owner of the funds, or sell them on the currency black market.233

As time went on, the syndicate developed two more ap-
approaches to money laundering. Under one approach, the funds were wire transferred from the undercover account in Tampa to another undercover account at BCCI in Panama. The syndicate would then complete pre-signed blank checks drawn on the account by the undercover agents, and would either give the checks to the owners of the funds or sell them on the black market. Under the second approach, adopted at the suggestion of BCCI, the funds were wire transferred from the Tampa undercover account, via a New York bank, to a foreign bank where ninety-day certificates of deposit were purchased. The undercover agents would then meet with a BCCI officer in Miami, and sign documents reflecting a loan by BCCI, Panama, guaranteed by the certificates of deposit. The loan proceeds would then be wired to an undercover account at BCCI, Panama, on which the undercover agents had already drawn blank checks which had been given to the syndicate.

In 1988, the syndicate initiated a more complex scheme involving nine corporations established in four foreign countries. In a typical transaction, the funds on deposit in a Tampa undercover account were wire transferred through New York to BCCI, Luxembourg, to BCCI, London, where they were used to purchase a certificate of deposit. The certificate was then used as collateral for a loan from BCCI, Nassau, with the proceeds being wired back to the undercover account in Tampa, and then, to a Uruguayan bank account in the name of the owner of the funds.

Announced as the most significant money laundering case in history, C-CHASE resulted in the indictment of BCCI, two of its subsidiaries, a British financial services company, and ten individuals in France, England, and the United States for laundering $31 million in cocaine proceeds in violation of the MLCA.

234. Id.
235. Id.
236. Id.
237. Id.
238. Id. at S16026-27.
239. Id. at S16027.
240. Id.
241. Id.
3. Operation POLAR CAP

In a similar FBI operation, POLAR CAP, the Government indicted Banco de Occidente and ten persons, including such notables as Pablo Escobar-Gaviria and Jorge Ochoa-Vasquez, two leaders of the Medellin cartel. The defendants were charged with various drug offenses and with laundering in excess of one billion dollars in drug proceeds. Most of the defendants used the same methods as those encountered in C-CHASE, and some defendants had already been indicted in C-CHASE for their money laundering activities.

An additional scheme employed by the syndicate in Operation POLAR CAP was the use of fictitious invoices, bills of lading, and other commercial paper, purportedly representing the importation of commercial goods from outside the United States. The subsequent wire transfers of drug proceeds were then fraudulently represented by the purported corporate “owners” of the monies as payments for the commercial goods allegedly imported into the United States.

Operation POLAR CAP revealed two positive aspects of the Government’s drive against money laundering. First, that many enforcement agencies are conducting extensive money laundering investigations, including numerous sting operations. In Operation POLAR CAP, the syndicate encountered separate undercover FBI, DEA, and Customs operations. Money laundering syndicates and narcotics trafficking organizations must constantly avoid these undercover operations. Second, the investigations can lead to both the indictment of money launderers and leaders of the narcotics trafficking organizations.

V. THE MONEY LAUNDERING PROSECUTION IMPROVEMENTS ACT

In 1988, with the passage of the Money Laundering Prosecu-
tion Improvements Act (1988 Act), Congress made some significant improvements to the Government’s effort to counter money laundering.

A. The RFPA

Congress amended the RFPA and abolished the notice requirement applicable when a government agency discovers records of potential criminal violations while performing normal regulatory duties. Congress also abolished the notice requirement imposed on financial institutions when the matter involved an institutional insider. Finally, it provided a “good faith” defense to liability for disclosures relative to insiders.

B. The BSA

The 1988 Act amended the BSA in several important respects. Among the more significant amendments to the BSA was the expansion of the definition of “financial institution” to include the following: automobile, airplane, and boat dealers; persons involved in real estate closings; the United States Postal Service; any government agency carrying out the business of a financial institution; and any other business designated by the Secretary of the Treasury. The 1988 Act also required financial institutions to obtain and retain identifying data on non-customers purchasing bank checks, cashier’s checks, traveller’s checks, or money orders for $3,000 or more in cash. Additionally, it authorized the Secretary of the Treasury to lower the reporting requirement threshold to any level he desired in specifically designated geographical areas for periods of up to sixty days. Finally, the 1988 Act required

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the Secretary of the Treasury to study the feasibility of withdrawing $50 and $100 bills from circulation.\textsuperscript{259}

C. The MLCA

The 1988 Act exempted attorney fees from the MLCA provisions prohibiting transactions involving illegal proceeds.\textsuperscript{260} Furthermore, the Act extended the "specified unlawful activities" to include income tax violations.\textsuperscript{261} It also broadened the MLCA's coverage to include wire transfers.\textsuperscript{262}

In response to an outcry from defense attorneys alleging that they could be convicted of violating the law if they were paid with the proceeds of a "specified unlawful activity," Congress added an exemption for attorney fees. Attorneys also asserted that the statute denied such persons legal representation, thereby depriving defendants of their constitutional right to counsel under the sixth amendment.\textsuperscript{263} Significantly, the exemption does not cover all transactions with attorneys, only those necessary to preserve the right to counsel under the sixth amendment.\textsuperscript{264}

An interesting aspect of the amendment making income tax evasion a "specified unlawful activity" is that tax evasion was one of Congress' primary concerns in enacting the BSA in 1970.\textsuperscript{265} It now appears that the Government's primary emphasis is on narcotics trafficking, with tax evasion simply broadening the Government's possible enforcement avenues.

The fact that the MLCA's coverage was expanded to include wire transfers is evidence of Congress' recognition that in most

\textsuperscript{259} Id. § 6187, 102 Stat. 4358-59.
cases, such as BCCI and Operation POLAR CAP, wire transfers were frequently used by money laundering organizations. The problem of wire transfers is now one of Congress' most overriding concerns.\textsuperscript{266} 

VI. CURRENT PROBLEMS

Many obstacles still impede the success of the United States effort to combat the laundering of illegal drug proceeds, including: the increasing use of "front companies" and "boutique banks" to conceal illegitimate transactions; the rising use of wire transfers to avoid reporting requirements; the continued practice of smuggling currency out of the country; and the recurring problems that arise when the laundered proceeds, the launderers, and owners of these proceeds are beyond the jurisdiction of United States courts.

A. Front Companies\textsuperscript{267}

"Front companies," especially those on the exempt list, are used to funnel illegal cash into the legitimate financial network.\textsuperscript{268} Since financial transactions of exempted customers are not reported to the Treasury Department, an analysis of the financial databases can not reveal suspicious activities.\textsuperscript{269}

One solution to this problem would be to abolish the exempt lists. However, the Treasury Department is already overwhelmed. It processes approximately 600,000 CTRs a month,\textsuperscript{270} and, with an existing backlog of 45 days for data input,\textsuperscript{271} probably could not handle the increased workload.\textsuperscript{272} Therefore, there seems to be lit-


\textsuperscript{267} CG REPORT, supra note 33. "Front Companies" are businesses with little or no legitimate activity established to cover illegal activities, in this case, money laundering.

\textsuperscript{268} Id.

\textsuperscript{269} Id.

\textsuperscript{270} H.R. Rep. No. 70, 100th Cong., 2d Sess. 11 (1988). However, note that this figure is denied by Assistant Secretary of Treasury for Enforcement, Salvatore Martoche. International Money Laundering: Law Enforcement and Foreign Policy Before the Subcomm. on Terrorism, Narcotics and International Operations of the Senate Comm. on Foreign Relations, 101st Cong., 1st Sess. 135 CONG. REC. D1121 (October 4, 1989) (testimony of Salvatore R. Martoche, Assistant Secretary of the Treasury for Enforcement) [hereinafter Martoche Testimony].

\textsuperscript{271} Id. at 25.

\textsuperscript{272} Meddis, Drug Probe Drowning in Paperwork, U.S.A. Today, Sept. 28, 1989, at 1, col. 4.
tle justification for the Treasury Department’s requirement that legitimate banks and other financial institutions file more reports.

An alternative approach would be to depend on the banks’ knowledge of their customers. There have been several steps in this direction already. Under the BSA’s present requirement, institutions make the appropriate inquiries and record their justification for placing customers on the exempt list. The institutions are also required to report suspicious activity. This effort has already been somewhat successful. The banks know what to look for, and due to their experience, are in a position to recognize suspicious activities almost intuitively. Furthermore, the American Banker’s Association Money Laundering Task Force was created by the banks to work with the Government in addressing the money laundering problem. The creation of a group of non-government financial experts to address money laundering is a major step forward, even if their motivation might be somewhat self-serving. With this added help from financial institutions, the Government’s overall effort may be more effective.

B. Boutique Banks

Since “boutique banks” have the opportunity to use and manipulate all of the financial services available to banks, including

275. The Government has received almost 300 Criminal Referral Forms or Reports of Apparent Crimes. For example, a tip to the IRS from a bank teller at the Bank of America led to the seizure of forty-five tons of marijuana and hashish seized in San Francisco on the barge Intrepid Voyager. H.R. REP. No. 70, 100th Cong., 2d Sess. 13-14 (1988).
276. PCOC REPORT, supra note 2, at 54-55. The telltale signs, which may also be observable in legitimate transactions, are:
1) An individual making unusual cash deposits;
2) An individual who uses his accounts only as a temporary depository for funds transferred foreign;
3) Corporate accounts whose transactions are dominated by cash;
4) A customer who provides minimal, fictitious, or vague information;
5) An individual engaging in repeated transactions beneath the reporting threshold;
6) A customer who maintains an unusually large number of accounts; and
7) A customer who makes frequent wire transfers to narcotics sources or transit countries or nations with secrecy laws.
277. DMLCE, supra note 266, at 137-39 (statement of Boris Melnikoff, Vice Chair, Am. Banker’s Ass’n Money Laundering Task Force).
278. Roberts, supra note 30. Boutique banks are very small banks, usually consisting of a single room in an office building, which are established for the specific purpose of laundering money.
the exempt list, letters of credit, certificates of deposit, large denomination bills, and wire transfers, they are an ideal avenue for money laundering.\textsuperscript{279} Furthermore, since many of their transactions, such as obtaining $100 bills from the Federal Reserve, wire transfers, and letters of credit, etc., are conducted through large corresponding banks, their activities are concealed from the Treasury Department.\textsuperscript{280}

One way of addressing this problem is to require larger legitimate banks to know their customers, in this case "boutique banks."\textsuperscript{281} The Treasury Department is working closely with the financial community and has established a system for financial institutions to report suspicious activities.\textsuperscript{282} However, not all institutions are as attentive to potential money laundering as they could be. For example, in a pending investigation, one Miami "boutique bank" was exporting $10 million every week in brand new, closely packed, hermetically sealed packages of $100 bills obtained from the Federal Reserve through a large corresponding bank.\textsuperscript{283} The amount the "boutique bank" exported to a single South American country in one year was over seven times the total value of imports to the United States from that nation.\textsuperscript{284} Since the "boutique bank" obtained the currency through a large corresponding bank, the Federal Reserve Bank had no reason to become suspicious. However, the corresponding bank should have questioned the boutique bank's request for $10 million a week in new $100 bills. Because CMIRs were being filed by the courier, an analysis of the CMIR database by Customs should have disclosed the suspicious currency exports.\textsuperscript{285}

In the future, the Treasury Department should be able to obtain improved analysis of the available data with its creation of the Financial Crimes Enforcement Network (FINCEN).\textsuperscript{286} FINCEN is designed to become the focal point of all money laundering intelligence activities, as well as a clearinghouse for the exchange of information and coordination of investigations among the various law enforcement agencies addressing narcotics and money launder-

\textsuperscript{279} Id.
\textsuperscript{280} Id.
\textsuperscript{281} Id.
\textsuperscript{282} See supra notes 273-77 and accompanying text.
\textsuperscript{283} CG REPORT, supra note 33.
\textsuperscript{284} Id.
\textsuperscript{285} Id.
\textsuperscript{286} Martoche Testimony, supra note 270, at 12-13.
Another way of addressing the "boutique bank" problem is for the Treasury Department to work more closely with federal and state regulatory agencies in examining "boutique bank" records. FINCEN should also help to improve the level of cooperation among law enforcement and regulatory agencies overseeing smaller financial institutions. However, it is incumbent upon the Treasury Department and the law enforcement agencies to launch an aggressive campaign to educate state regulatory agencies overseeing the smaller state chartered banks, so that regulators will recognize and report indications of money laundering activity.

C. International Wire Transfers

As evidenced in Operations C-CHASE\textsuperscript{288} and POLAR CAP,\textsuperscript{286} wire transfers have emerged as a primary device used by many high volume money launderers.\textsuperscript{290} In response to this problem, on October 31, 1989, the Treasury Department published alternative approaches under consideration for additional recordkeeping and reporting requirements.\textsuperscript{291} The following were among the options considered:\textsuperscript{292}

1. Requiring financial institutions to report all international wire transactions, including the identities and accounts involved, as well as a statement by the customer as to whether the sender or receiver is aware of any separate payment instructions unknown to the financial institution.\textsuperscript{293} This requirement could be coupled with an exemption for most normal business transactions;\textsuperscript{294}

2. Requiring all international wire transfer messages to contain

\begin{itemize}
\item 287. Id.
\item 288. See supra notes 225-43 and accompanying text.
\item 289. See supra notes 244-51 and accompanying text.
\item 290. DMLCE, supra note 266, at 6 (statement of Senator Dixon).
\item 291. Bank Secrecy Act Regulatory Applications to the Problem of Money Laundering Through International Payments, 54 Fed. Reg. 45769-71 (1989). Authority to impose such requirements is contained in 31 U.S.C. § 5314, under which the Secretary of the Treasury shall require reports or records relating to transactions between persons subject to the jurisdiction of the United States and "a foreign financial agency." Such authority is also found in 31 U.S.C. § 5318(a)(2), under which the Secretary may require that domestic financial institutions "maintain appropriate procedures" to ensure compliance with any regulation prescribed under 31 U.S.C. §§ 5311-5326 (1988).
\item 292. 54 Fed. Reg. at 45770.
\item 293. Id. at 45771.
\item 294. Id.
\end{itemize}
all known third-party identifying data;\textsuperscript{295}

3. Requiring financial institutions to apply model "know your customer" procedures to verify the legitimate nature of a customer's business and that the customer's transfers are commensurate with legitimate business activities;\textsuperscript{296}

4. Requiring special identification and recordkeeping or reporting procedures with respect to senders or recipients of international wire transfers who do not have accounts at the financial institutions;\textsuperscript{297}

5. Requiring financial institutions to develop profiles for suspicious international wire transfers and report suspicious payments to the Treasury Department;\textsuperscript{298}

6. Requiring reports and recordkeeping of wire transfers only to or from specifically targeted foreign financial institutions;\textsuperscript{299} and

7. Requiring information relative only to international book transfers of credit not involving wire transfers.\textsuperscript{300}

Each of these alternatives has both advantages and disadvantages. At a minimum, financial institutions should be compelled to record all identifying data on international wire transfer messages over $10,000 and to wire copies of the transfers and identifying data to the Treasury Department simultaneously with the wire transfer. This would impose a minimal institutional burden and make data available to the Treasury Department for electronic recordation without increasing its data input activities.

On October 15, 1990, the Treasury Department, after considering public comment, published a Notice of Proposed Rulemaking.\textsuperscript{301} The proposed regulation would require financial institutions to record the identities of the originators of wire transfers and their recipients.\textsuperscript{302} A better proposal would require banks to electronically transmit to the Treasury Department all the data identifying the parties involved in wire transfers over $10,000, whether international or domestic. Having this data available would enable

\textsuperscript{295} Id.
\textsuperscript{296} Id.
\textsuperscript{297} Id.
\textsuperscript{298} Id.
\textsuperscript{299} Id.
\textsuperscript{300} Id.
\textsuperscript{302} Id. The final rule was not yet issued by the time this article went to print.
enforcement officers to trace funds without the problem of corrupt or careless banking employees alerting the money launderers.\textsuperscript{303}

Presently, account information is usually obtained by subpoena.\textsuperscript{304} The subpoenaed information, generally received after ten days or more, often reveals wire transfers to or from other accounts in other banks. Agents are then required to subpoena the records of the newly revealed accounts. Once again, the records reveal wire transfers to and from additional accounts in different banks.\textsuperscript{305} This pattern continues indefinitely. All too often, by the end of the audit trail, the investigators are left with records of accounts in the names of fictitious individuals or front companies, and nothing more.\textsuperscript{306} The immediate availability of the account information would enable agents to trace the transactions by computer, obtain seizure and arrest warrants, and take effective action without alerting money launderers.\textsuperscript{307}

\section*{D. Smuggling of Currency}

Since Customs does not have sufficient resources to inspect persons, cargo, and conveyances entering the country, there is no reason to believe that it has sufficient resources to conduct adequate outbound inspections in order to discover currency being smuggled out of the country. To help alleviate this problem, the Government should make greater use of confidential informants. As previously mentioned,\textsuperscript{308} Customs success in its outbound currency inspection program, Operation BUCKSTOP, was largely dependent on the use of confidential informants. Informants are especially useful because Customs has the authority to conduct searches without revealing the identity or even the very existence of informants.\textsuperscript{309} Additionally, Customs is able to purchase information at a net profit to the Government because payments to informants can be funded from the proceeds of seizures.\textsuperscript{310}

Another recommendation is for the Government to make greater use of undercover operations. During Operation POLAR

\begin{footnotesize}
\begin{enumerate}
\item[303.] Roberts Interview, supra note 30.
\item[304.] Id.
\item[305.] Id.
\item[306.] Id.
\item[307.] Id.
\item[308.] See supra notes 174-76 and accompanying text.
\item[309.] Roberts Interview, supra note 30.
\end{enumerate}
\end{footnotesize}
TRACING NARCO-DOLLARS

CAP, the money launderers elicited the services of three different undercover operations conducted by three different agencies, indicating the potential success of such operations.311

Finally, the discontinuance of large denomination bills would increase the bulk of the currency being smuggled, thus making detection simpler. As noted earlier,312 the Government is exploring the feasibility of discontinuing $50 and $100 bills.313

E. Foreign Cooperation

Once the laundered income is removed from the United States, it is beyond U.S. jurisdiction and generally cannot be recovered.314 This presents a major problem in undercover operations since the undercover agents must launder monies for the syndicates in order to maintain their cover.315 Greater international cooperation might alleviate this problem. The Treasury Department, at Congress' urging,316 has begun negotiations with some foreign governments in this area.317 In addition, in January 1989, the Committee on Banking Regulations, composed of the Group of Ten industrialized nations, adopted a statement of principles aimed at preventing international money laundering.318 Furthermore, in July 1989, at an economic summit, leaders of the seven major industrialized nations319 agreed to establish a money laundering task force.320 Finally, some governments, including Australia,321 Ca-

311. See supra notes 244-51 and accompanying text.
312. See supra note 259 and accompanying text.
313. The report was to be submitted to Congress within 180 days of the enactment of the Money Laundering Prosecution Improvements Act of 1988, Pub. L. No. 100-690, § 6187, 102 Stat. 4358-59. However, according to David McCain, staff, Senate Foreign Relations Committee, it has not been received as of this writing.
314. Roberts Interview, supra note 30.
315. Id.
317. Martoche Testimony, supra note 270, at 4-6.
318. Daily Report for Executives (BNA) (Jan. 25, 1989). The ten nations are Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States.
319. The Group of Seven includes Canada, France, Italy, Japan, the United Kingdom, the United States, and West Germany. Paris Group Urges Decisive Action for Environment, N.Y. Times, July 17, 1989, at A1, col. 6.
320. Key Sections of the Paris Communiqué by the Group of 7, N.Y. Times, July 17, 1989, at A7, col. 5.
nada,322 England,323 and Switzerland324 are initiating independent efforts to counter money laundering.

The ultimate goal, of course, is not only to recover monies already out of the country, but also to extradite the money launderers and narcotics traffickers operating in foreign countries. In most undercover money laundering operations involving Colombian Cartel proceeds, undercover agents get daily money laundering instructions either directly, from Colombia through a complicated system of using telephone pagers, or indirectly through the money laundering syndicate involved.325 The government's effort is further complicated because cartel heads seldom leave Colombia and virtually never enter U.S. jurisdiction.326

One disadvantage of relying on the cooperation of foreign governments is that the drug traffickers and money launderers will move their operations to other countries. However, if fewer alternatives are available to them, their activities will become more centralized and obvious. Additionally, world opinion could pressure remaining nations to amend their secrecy and extradition laws. This pressure would grow as more nations cooperated, resulting in the "domino effect." When few havens remain, cooperating nations could prohibit financial transactions with recalcitrant countries.

VII. CONCLUSION

Successful investigations like Operations C-CHASE and POLAR CAP serve as examples of the effectiveness of the Government's effort to fight drug trafficking by combatting money laundering. Not only do these efforts cause serious problems for narcotics traffickers, but they also help prevent traffickers from penetrating legitimate businesses. The money laundering enforcement program has been very successful to date. However, it is still in need of the many improvements which have been recognized and are being implemented, or, at least, carefully considered. While the program has placed a considerable burden on financial

322. Id.
325. Roberts Interview, supra note 30.
326. Id.
institutions and the business community, these institutions and businesses appear to recognize that if the war against drugs is to be won, it will require the concerted effort of all.

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