Combating the New Generation of Money Laundering: Regulations and Agencies in the Battle of Compliance, Avoidance, and Prosecution in a Post-September 11 World.

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> "[T]he first steps to reversing their recent dramatic gains must be to. . . treat these conflicts not as law enforcement problems but as a new global trend that shapes the world as much as confrontations between nation-states did in the past. Customs officials, police officers, lawyers, and judges alone will never win these wars."[1]

Increasing globalization, the opening of markets, and the proliferation of both officially sanctioned and underground financial networks have contributed to an exponential growth of money laundering.[2] In the past, money laundering was often about profit-making, such as hiding and integrating drug trafficking profits.[3] In response to the attacks of September 11, 2001, a new and more sophisticated perspective on money laundering is evolving: it is no longer simply about profit for profit's sake, but is more recently about funding religious and zealous objectives – and it is no small problem.[4] While various efforts to pinpoint exact amounts have

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1. Moises Naim, *The Five Wars of Globalization*, Foreign Pol'y, Jan./Feb. 2003 Issue 134, at 28.

2. Peter J. Quirk, *Macroeconomic Implications of Money Laundering*, 1, 22 (Int'l Monetary Fund, Monetary and Exchange Aff. Dep't), Working Paper No. 96/66, 1996 (stating cost of increased freedom of commerce and globalization is "greater facility" for money laundering).

3. *See* Financial Action Task Force on Money Laundering, *Report on Money Laundering Typologies*, (2002-2003), 1, 3-10, *at* http://www.fatf-gafi.org/pdf/TY2003_en.pdf. Findings in the 2001 Annual Report indicate that there is little difference in the methods to launder money used by terrorists and those used by organized crime. Financial Action Task Force on Money Laundering, *Annual Report* (2001), 16 *at* http://www.fatf-gafi.org/pdf/AR2001_en.pdf.

4. U.S. Dep'ts of the Treasury and Justice, *Nat'l Money Laundering Strategy* (2002) at 3 [hereinafter *National Money Laundering Strategy*]. "The overriding goal of the 2002 [National Money Laundering] Strategy is to deny terrorist groups access to the international financial system, to impair the ability of terrorists to raise funds, and to expose, isolate, and incapacitate the financial networks of

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proven unsatisfactory,[5] in 2002 the International Money Fund estimated global money laundering at two to five percent of the total world gross domestic product,[6] or approximately $600 billion to $1.8 trillion U.S. Dollars.[7] The world's greater interconnectedness means all countries are at risk for money laundering and terrorism, as well as their repercussions. Money laundering is a global issue, and several players in the international arena are currently working together to fight it.[8] While the United States has addressed some aspects of money laundering by forming new organizations, bolstering existing regulations, and passing the USA PATRIOT Act of 2001 (PATRIOT Act),[9] after two years only a handful of related claims have found their way to our high courts.[10]

This note discusses the paradigm shift and the United States' position on contemporary money laundering issues in light of the events of September 11, 2001, and their aftermath. Key aspects of the money laundering battle are the definition and evolving nature of money laundering and it processes, the organizations that combat it, and the delicate international balance of government and economic trust and cooperation entwined with it. Domestically, U.S. federal court decisions also shed light on the interpretations of changes in the money laundering statutes.[11] Part I defines money laundering and discusses its processes. Parts II – IV explore the economic implications of money laundering, U.S. regulations designed to

terrorists." *Id.* at 4. Investigations revealed financial operations that provided significant "material, financial, and logistical support" to Al Qaeda and other terrorist groups. *Press Release*, U.S. Dep't of the Treasury, *Testimony of Kenneth W. Dam Deputy Secretary Dep't of the Treasury Before The Senate Banking Comm.* (Jan. 29, 2002) *at* http://www.ustreas.gov/press/releases/po959.htm. *See National Money Laundering Strategy* at 14 (contrasting goals of drug traffickers to those of terrorist groups).

5. Models based on tax evasion, money demand, and ratios of official GDP and nominal GDP have shown a wide degree of variance. *National Money Laundering Strategy* at 3. *See* Quirk, *supra* note 2, at 3 (noting difficulties in measuring levels of money laundering).

6. *National Money Laundering Strategy* at 3; Financial Action Task Force on Money Laundering, *Basic Facts about Money Laundering* (2003), *at* http://www.fatf-gafi.org/MLaundering_en.htm [hereinafter *FATF Basic Facts*].

7. *National Money Laundering Strategy* at 3; *FATF Basic Facts, supra* note 6 (indicating global money laundering ranges between 590 billion and 1.5 trillion U.S. dollars). The lower estimate equals the 1996 total output of Spain's economy. *Id.* In Fiscal Year 2001, the Departments of Justice and Treasury jointly seized over $1 billion in criminal assets, over $300 million of which was attributable to money laundering. *National Money Laundering Strategy* at 1.

8. *See* discussion *infra* Part VIB.

9. Pub. L. 107-56, 115 Stat. 272 (Oct. 26, 2001).

10. *See* discussion *infra* Part VC.

11. *Id.*

address it, and domestic and international agencies that exist to fight it. Part V addresses modern means of compliance, avoidance, and efforts to enforce the PATRIOT Act.

I. WHAT IS MONEY LAUNDERING?

Money laundering is a multi-faceted process of disguising financial assets.[12] It can be as exceedingly simple as cash deposits and withdrawals from a bank account, or as complex as an international labyrinth of off-shore banking, shell corporations, trafficking in cash and monetary instruments, wire transfers, and informal personal networks.[13] The subversive nature of money laundering makes it difficult to characterize,[14] but it is generally bifurcated according to its source: dirty and clean.[15] Dirty money is proceeds derived from an illegal source that launderers transform into funds with a seemingly legal source.[16] Clean money is funds that are acquired legally, but criminals launder or misappropriate for the purpose of illegal activities.[17] Previously, analysts ignored clean money as a component of money laundering; part of the re-conceptualization resulting from the September 11, 2001 attacks involves the inclusion of clean money into the definition of money laundering.[18]

Generally, regardless of its purpose, money laundering occurs in three stages: placement, layering, and integration.[19] At the placement stage, the launderer transfers the physical proceeds into a financial institution or system.[20] This transfer may occur through cash transactions, such as depositing small amounts into a bank account or purchasing monetary instruments (such as checks or money orders) and depositing them in a different location,[21] thus commingling the cash with that from a cash-based business.[22] As such, one effective means to obscure the source of illegal proceeds is to deposit them into the financial accounts of legitimate cash-based businesses, such

12. *See generally* Financial Crimes Enforcement Network, *Frequently Asked Questions*, *at* http://www.fincen.gov/af_faqs.html [hereinafter *FinCEN FAQs*]; *FATF Basic Facts*, *supra* note 6; Andres Rueda, Note, *International Money Laundering Law Enforcement & the USA PATRIOT Act of 2001*, 10 MSU-DCL J. INT'L L. 141 (2001).
13. Rueda, *supra* note 12, at 171-88.
14. *Id.*; s*ee FATF Basic Facts*, *supra* note 6.
15. Rueda, *supra* note 12, at 152-53.
16. *Id.* at 152-53, 173-74.
17. *Id.*
18. *Id.* at 152-53.
19. *FATF Basic Facts*, *supra* note 6; Rueda, *supra* note 12, at 173.
20. *FATF Basic Facts*, *supra* note 6; Rueda, *supra* note 12, at 173-74.
21. *FATF Basic Facts*, *supra* note 6; Rueda, *supra* note 12, at 173-74.
22. *See* Rueda, *supra* note 12, at 174.

as restaurants, laundry-mats, car washes, or convenience stores.[23] The placement stage presents the greatest logistical challenge to the launderer in developed countries, due to the increased prospect of detection by the financial service industry or government officials.[24] Financial institutions and legal authorities look for transactions that do not seem to relate to the account's business, or those that are disproportionate to the business' size, as indicators of possible money laundering.[25]

The second stage, layering, occurs after the proceeds enter the public financial network.[26] The launderer attempts to dissociate the funds from their source by moving them, thus creating 'layers' of transactions between their origin and the completion of the laundering process.[27] The launderer could purchase and sell investment instruments, wire the funds to other global accounts, or camouflage them in exchange for goods or services.[28]

The inherent nature of modern financial exchange creates many successful avenues to launder through layering. In one estimate, the speed, agility, and nearly untraceable nature of wire transfers enabled the movement of approximately $2 trillion through the U.S. banking system in 700,000 transfers per day, although the study estimated only 0.05% to 0.1% to be laundered funds.[29] Another nearly undetectable layering method is through international trade, by over- or under-invoicing for goods.[30] Legitimate import-export businesses over-invoice by charging more per item, or under-invoice by offering an illicit rebate to a purchasing company controlled by the launderer.[31]

23. *Id.*
24. Rueda, *supra* note 12, at 173-74.
25. *See* ICC Commercial Crime Services, Int'l Chamber of Commerce, *Guide to the Prevention of Money Laundering* 24 (1998).
26. *FATF Basic Facts*, *supra* note 6.
27. *Id.; see* Rueda, *supra* note 12, at 177.
28. *FATF Basic Facts*, *supra* note 6.
29. Rueda, *supra* note 12, at 177, citing Jack A. Blum et al., *Financial Havens, Banking Secrecy and Money-Laundering* 20 (1998).
30. Rueda, *supra* note 12, at 178.
31. *Id.* This process offers many benefits: it transfers the funds, allows proof via documentation, and because the invoiced value of the goods does not match their inherent value, the laundering fraudulently avoids tariffs and taxes when he later sells the goods. *Id.* Studies reflect that the U.S. alone lost $42 billion in 1999 from import and export tax revenues of over- and under-priced goods. *Id.*, citing Money Laundering in Industrial America, *Money Laundering Alert*, Nov. 1997, at 8, and *College Professors Release Study that Shows U.S. Government Cheated Out of $42.7 Billion in Tax Revenues in 1999*, PR Newswire, May 31, 2000. The goods included such unusually priced items as razor blades from Singapore at $2,952.00 each, apple juice from Israel at $2,052.00 per liter, and missile/rocket launchers

The successful incorporation of laundered funds into the legitimate marketplace constitutes the third stage of integration.[32] The launderer could acquire debit/credit cards or fake loans from offshore banks,[33] or invest in "real estate, luxury assets, or business ventures."[34] Money laundering can occur anywhere in the world, and while many countries have adopted anti-money laundering statutes,[35] areas with a lower risk of detection entice launderers.[36] Jurisdictions with developing financial centers are therefore vulnerable to this exploitation.[37] Jurisdictions with little or lax regulations create safe havens for the money laundering process,[38] which benefits their own financial systems, as seen in the Cayman Islands and Anguilla.[39]

II. INDUSTRY AND MACROECONOMICS

Notwithstanding the successes of any particular national program or agency, money laundering undeniably exists as an international problem that requires international solutions.[40] Outside of the motivation to detect and prosecute criminal activity, there are economic reasons to pursue money laundering. It negatively affects financial institutions, which function in an industry that places a

sent to Venezuela for $59.50 each. *Id.*

32. *FATF Basic Facts*, *supra* note 6.

33. Rueda, *supra* note 12, at 179-80.

34. *FATF Basic Facts*, *supra* note 6.

35. *See generally* Financial Action Task Force on Money Laundering, *at* http://www.fatf-gafi.org (discussing countries with anti-money laundering statutes).

36. *FATF Basic Facts*, *supra* note 6.

37. *Id.*

38. USA PATRIOT Act of 2001, 31 U.S.C. 5311 § 302(a)(4)-(5) (2001).

> The Congress finds that . . .certain jurisdictions outside the United States that offer 'offshore' banking and related facilities designed to provide anonymity, coupled with weak financial supervisory and enforcement regimes, provide essential tools to disguise ownership and movement of criminal funds, derived from, or used to commit, offenses ranging from narcotics trafficking, terrorism, arms smuggling, and trafficking in human beings, to financial frauds that prey on law-abiding citizens. . .such offshore jurisdictions make it difficult for law enforcement officials and regulators to follow the trail of money earned by criminals, organized international criminal enterprises, and global terrorist organizations.

Id. See FATF Basic Facts, *supra* note 6 (discussing vulnerability of growing or developing financial centers). One goal of the U.S. National Money Laundering Strategy is to reduce such vulnerable regimes. *National Money Laundering Strategy* at 54-63.

39. Rueda, *supra* note 12, at 181-82.

40. *FATF Basic Facts*, *supra* note 6. "Large-scale money laundering schemes invariably contain cross-boarder elements. Since money laundering is an international problem, international cooperation is a critical necessity in the fight against it." *Id. See National Money Laundering Strategy* at 19 (discussing international information sharing and support, multilateral efforts, and use of "quiet diplomacy").

premium on an institution's reputation for integrity and the perception that each operates within high legal, professional, and ethical standards.[41] A desecration of these standards, or undermining of the faith placed in such institutions, would have deleterious consequences. Evidence of laundering could affect an institution's reputation and business with other financial intermediaries, regulatory authorities, and ordinary customers.[42] Money laundering effects more than the implicated financial institution. On a national scale, laundering may negatively impact a country's interest and exchange rates, quality of investments, and economic growth.[43] Sufficiently pervasive money laundering can advance the risk of systemic industry crisis, and force macroeconomic policy-makers to contemplate its effects.[44]

III. UNITED STATES REGULATIONS

A. Banking Secrecy Act

The United States, a pivotal arena for international commerce, has had anti-money laundering measures in place for years to discourage the entrenchment of laundering networks.[45] The Bank Secrecy Act (BSA) of 1970 created a record-keeping and reporting system that required financial institutions to create an audit trail of transactions and spotlight criminal, tax, and regulatory violations.[46] It also then imposed civil and criminal penalties for noncompliance.[47] As an integral part of any money laundering scheme, financial institutions create bottlenecks from which to record the identities of transactions and customers.[48] Institutions supply this information to law enforcement, to aid efforts in tracking laundering schemes and

41. *FATF Basic Facts*, *supra* note 6.

42. *Id. See* Quirk, *supra* note 2, at 24-25, 28 (discussing contamination of money laundering on legal transactions).

43. *See* Quirk, *supra* note 2, at 18 (asserting cross-boarder shifts in money demand affects interest and exchange rates, and income redistribution affects investment quality and economic growth).

44. *Id.* at 18, 27-28 (concluding broad impact of money laundering on financial behavior and macroeconomic performance).

45. *See generally* Louis V. Csoka, *Combating Money Laundering: A Primer for Financial Services Professions*, Ann. Rev. Banking L. 311 (2001)(reviewing legislative and regulatory evolution of agencies and advisory groups prior to passage of USA PATRIOT Act).

46. Bank Secrecy Act, Pub. L. No. 91-508, 31 U.S.C. § 5313 (2002) as amended.

47. *Id.*

48. Rueda, *supra* note 12, at 146-47.

criminals.[49] The BSA requires financial institutions to file Currency Transaction Reports (CTRs) when conducting transactions with a single individual exceeding $10,000.[50] Under the BSA, the Secretary of the Treasury has discretion to bring federal charges against any noncompliant institution.[51] As a consequence of non-compliance, the institution's federal depository institution charter or state depository institution insurance may be terminated.[52] Today, BSA's reporting requirements noticeably lack application to transactions of non-physical currency transfers, leaving wire transfers and e-money transactions open for abuse.[53]

B. Money Laundering Control Act

Money launderers easily avoided the BSA's requirements by structuring transactions under the $10,000 limit, so Congress amended the act with the Money Laundering Control Act of 1986 (MLCA), to prevent such circumvention.[54] The MLCA criminalized the act of money laundering itself, apart from CTR reporting violations.[55] It prohibits the domestic or international transaction or

49. *See FATF Basic Facts*, *supra* note 6; *FinCEN FAQs*, *supra* note 12.

50. *See* Bank Secrecy Act, 31 U.S.C. §5313(a) (2002) (stating reporting obligations of financial institutions); 31 C.F.R. 103.30(a)(1)(I) (2002) (stating US$10,000 as triggering amount); *see also* 31 U.S.C. § 5212(a)(2) (2002) (defining financial institutions covered by BSA). The BSA defines financial institutions broadly as: 1) an insured bank; 2) a commercial bank or trust company; 3) a private banker; 4) an agency or branch of a foreign bank in the U.S.; 5) an insured institution; 6) a thrift institution; 7) a broker or dealer registered with the SEC; 8) a broker or dealer in securities commodities; 9) an investment banker or investment company; 10) a currency exchange; 11) an issuer, redeemer, or cashier of traveler's checks; 12) an operator of a credit card system; 13) an insurance company; 14) a dealer in precious metals, stones or jewelry; 15) a pawnbroker; 16) a loan or finance company; 17) a travel agency; 18) a licensed sender of money; 19) a telegraph company; 20) a business engaged in a car, boat, or plane sales; 21) persons involved in real estate closing or settlements; 22) the U.S. Postal Service; 23) an agency of the U.S., state, or local government carrying out a duty or power described in section 5312(a)(2); 24) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters. 31 U.S.C. § 5212(a)(2); Jonathan P. Straub, Note, *The Prevention of E-Money Laundering: Tracking the Elusive Audit Trail*, 25 Suffolk Transnat'l L. Rev. 515, 523 n.47 (2002)(discussing 31 U.S.C. § 5212(a)(2)).

51. 12 U.S.C. § 1954 (2003); 31 U.S.C. §5318 (2003).

52. *Id.;* Straub, *supra* note 50, at 523 (citing Fletcher Baldwin, *Money Laundering and Wire Transfers: When The New Regulations Take Effect Will They Help?*, 14 DICK. J. INT'L L. 413, 425 (1996)).

53. Straub, *supra* note 50, at 523-24.

54. 18 U.S.C. §§ 1956-57, 31 U.S.C. §§ 5324-26 (2003).

55. 31 U.S.C. § 5324 (stating MLCA defined criminal offenses); The Money Laundering Suppression Act of 1994 eliminated the willfulness requirement in civil penalties for structuring transactions. *Id. See* Straub, *supra* note 50, at 523-24.

transportation of funds (section 1956) and transactions of property in excess of $10,000 (section 1957), when the funds derive from specific unlawful activities.[56] It also specifically empowers the government to conduct sting operations.[57] Transactional money laundering proscribes the financial transaction itself.[58] Section 1957 requires that the launderer knowingly engage or attempt to engage in a transaction with property that is criminally derived and valued over $10,000, ostensibly to deter ordinary people from transacting with suspected launderers.[59] The section on transportation money laundering prohibits the transmission of monetary instruments into or out of the United States that are comprised of criminally derived proceeds, and intended either to mask that instrument or circumvent reporting requirements.[60] The MLCA utilizes both civil penalties of fines and forfeiture, and criminal penalties of fines and imprisonment.[61]

C. The USA PATRIOT Act

The events of September 11, 2001 forced the international community and the United States in particular to take a new perspective on money laundering.[62] Previous legislative attempts to address changes to money laundering laws languished in Congress, due to banking industry opposition.[63] Yet 45 days after September 11, the 107th Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, or USA PATRIOT, Act of 2001, which included Title III, the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001.[64] The stated purpose of Title III was to "increase the strength of the United States' measures to prevent, detect, and prosecute international money laundering and the

56. 18 U.S.C. §§ 1956-1957 (2003).
57. 18 U.S.C. § 1956(a)(3). *See* Rueda, *supra* note 12, at 192, 202-03 (arguing for increased use of sting operations as an effective counter-measure).
58. *See generally Money Laundering*, 39 Am. Crim. L. Rev. 839 (2002) [hereinafter *Money Laundering*] (citing four prohibited activities, elements of the offense, discussion, and case analysis).
59. *Id.* at 844-45.
60. *Id.* at 843.
61. *See* 18 U.S.C. §§ 1956-1957 (2003) (describing criminal and civil penalties).
62. 31 U.S.C. 5311 § 302(a)(2) (stating "Money laundering, and the defects in financial transparency on which money launderers rely, are critical to the financing of global terrorism and the provision of funds for terrorist attacks").
63. *Money Laundering*, *supra* note 58, at 861 (discussion of previous attempts to "revamp and expand" counter-money laundering laws, including responses to 1999 Bank of New York "BONY" scandal).
64. USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 stat. 273.

financing of terrorism."[65] Title III grants the Secretary of the Treasury broad discretion and power to require financial institutions in the United States to aid in detecting money laundering.[66] It also grants the Secretary authority to negotiate with other countries regarding counter money laundering efforts and facilitating international cooperation.[67] Title III places additional requirements on domestic financial institutions,[68] such as requiring them to keep a

65. *Id.* at § 302(b)(1).

66. *Id.* at § 311(b)(2) (noting Secretary may require U.S. banks to take reasonable steps to obtain ownership information of accounts opened or maintained in the United States by foreign person or institution) and § 311(b) (4)(A) (granting similar power for correspondent accounts).

67. *Id.* at § 330(a) (under Presidential direction and in consultation with Board or Governors of the Federal Reserve System). The President may also direct the Secretary of State and Attorney General to enter into negotiations. *Id.*

68. In an effort to keep pace with contemporary forms of money laundering, domestic financial institutions are defined broadly:

> (A) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); (B) a commercial bank or trust company; (C) a private banker; (D) an agency or branch of a foreign bank in the United States; (E) any credit union; (F) a thrift institution; (G) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); (H) a broker or dealer in securities or commodities; (I) an investment banker or investment company; (J) a currency exchange; (K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments; (L) an operator of a credit card system; (M) an insurance company; (N) a dealer in precious metals, stones, or jewels; (O) a pawnbroker; (P) a loan or finance company; (Q) a travel agency; (R) a licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutional system; (S) a telegraph company; (T) a business engaged in vehicle sales, including automobile, airplane, and boat sales; (U) persons involved in real estate closing and settlements; (V) the United States Postal Service; (W) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph; (X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which- (i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision. . . pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of [such act]; (Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or (Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

31 U.S.C. § 5312(a)(2) (2003).

"clean house," "know their customers,"[69] meet standards for maintaining adequate records,[70] and communicate information among financial institutions, regulators, and law enforcement.[71] Institutions are required to develop internal controls and policies, designate compliance officers, train employees, and conduct independent audits to discourage and detect laundering schemes.[72] To allow for more efficient communication between financial institutions and law enforcement, Title III established a secure network for reporting.[73] Additionally, the global scope of Title III[74] affects foreign financial institutions with its anti-money laundering goals.[75] Title III allows the Secretary to impose blockages or boycotts on institutions or jurisdictions deemed uncooperative in anti-money laundering efforts, and ban U.S. banks from business with foreign banks that fail to answer a U.S. summons for information.[76] Should laundering occur in accounts abroad, Title III permits seizure of the foreign bank's assets in the United States – even without direct tracing to the dirty funds or to the individual under investigation.[77] The Act also prohibits U.S. financial institutions from holding correspondent

69. *See* Special Due Diligence for Correspondent Accounts and Private Banking Accounts, U.S.C § 5318 (2003). The statute requires financial institutions holding private or correspondent accounts with non-U.S. persons of assets not less than $1 million to establish procedures to detect laundering in those accounts, ascertain beneficial ownership, and provide additional scrutiny for detecting foreign corruption proceeds of senior political figures or their family. *Id.*

70. *See* 31 U.S.C § 5318(h) (2003).

71. *See* 31 U.S.C § 5311. This section also allows institutions to share information on suspected terrorists or laundering activities, after notice to the Treasury Department. *Id.* "This new information sharing capacity has long been sought by financial institution security officials as the most effective means of deterring organized criminal efforts." John J. Byrne, *Key Sections of the International Money Laundering Abatement And Anti-Terrorist Financing Act of 2001 (Title III of the USA PATRIOT Act of 2001)*, 1289 PLI/Corp 97 at 101 (2002).

72. *See* 31 U.S.C § 5318(h) (2003).

73. *See* Establishment of Highly Secure Network, 31 U.S.C. § 310 (2003). The Secretary will establish a secure web site to receive Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs) online, and provide alerts and other suspicious activity information to institutions immediately. *Id.*

74. "United States anti-money laundering efforts are impeded by outmoded and inadequate statutory provisions that make investigations, prosecutions, and forfeitures more difficult, particularly in cases in which money laundering involves foreign persons, foreign banks, or foreign countries. . ." 31 U.S.C. 5311 § 302(8). "[T]he ability to mount effective counter-measures to international money launderers requires national, as well as bilateral and multilateral action, using tools specifically designed for that effort." *Id.* at § 302(9).

75. *See* Forfeiture of Funds in United States Interbank Accounts, 18 U.S.C § 1956(c); Laundering Money Through a Foreign Bank, 31 U.S.C § 5318 (2003).

76. 18 U.S.C. § 1956(c) (2003).

77. 31 U.S.C. § 5318 (2003).

accounts with foreign shell banks.[78]

IV. AGENCIES & ORGANIZATIONS

As the practice of money laundering is a massive enterprise with tentacles in countless industries and across boarders, three entities stand out in their specifically dedicated efforts towards fighting it: the Financial Crimes Enforcement Network, the Financial Action Task Force, and Operation Green Quest.[79] These groups represent comprehensive and cooperative efforts to link multiple agencies, organizations, and nations together; respectively, they process intelligence and provide analytical support, promulgate consistent international policies and review trends, and provide U.S. domestic enforcement.[80]

A. Financial Crimes Enforcement Network

In 1990, the Department of the Treasury created the Financial Crimes Enforcement Network (FinCEN).[81] Intelligence professionals, along with financial and computer industry experts,

78. *Id.* Correspondent accounts are defined as accounts "established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution." 31 U.S.C. § 5318A(f)(1)(B). Shell banks are defined as a foreign bank without a "physical presence" in any country. 31 U.S.C. § 5318(j)(1-4) (2003).

79. *See* discussion *infra* Part IV A-C.

80. *Id.*

81. Financial Crimes Enforcement Network, *About FinCEN Overview* [hereinafter *FinCEN Overview*], *at* http://www.fincen.gov/af_overview.html. FinCEN's original mission was "to provide a government-wide, multi-source intelligence and analytical network to support the dedication, investigation, and prosecution of domestic and international money laundering and other financial crimes." *FinCEN FAQs*, *supra* note 12. In May 1994, it gained regulatory responsibilities. *Id.* Reflecting the differences in the post September 11 world, its mission has broadened "to support law enforcement investigative efforts and foster interagency and global cooperation against domestic and international financial crimes; and to provide U.S. policy makers with strategic analyses of domestic and worldwide money laundering developments, trends and patterns." Financial Crimes Enforcement Network, *FinCEN Mission, at* http://www.fincen.gov/af_mission.html. There are many organizations that seek to address anti-money laundering efforts, this notes discusses only a few primary ones. The National Money Laundering Strategy discusses other efforts, such as the High-Risk Money Laundering and Related Financial Crime Area (HIFCA), a unified task force of federal and state agencies. *National Money Laundering Strategy* at 31-32. It also covers state and local efforts to participate with HIFCA, and the Federal Crime-Free Communities Support Program (C-FIC), which administers grant money to local programs with innovative strategies. *National Money Laundering Strategy* at 48-53.

comprise FinCEN,[82] each working together to stay ahead of the money laundering curve.[83] They work jointly to "maximize information sharing among law enforcement agencies and [FinCEN's] partners in the regulatory and financial communities."[84]

FinCEN acts in three ways: as an intelligence repository, by providing analytical support, and by disseminating intelligence reports.[85] As an intelligence gathering repository, FinCEN uses Treasury regulations like the BSA to gather required reports and recordkeeping from banks and other financial institutions to illuminate audit trails for investigators.[86] An institution can trigger an investigation by submitting a required Suspicious Activity Reports (SARs) or Currency Transaction Reports (CTRs).[87] SARs are especially valuable to identify trends, patterns and issues; as such, they provide the foundation of FinCEN's analytical products.[88] Second, FinCEN also provides intelligence and analytical support to law enforcement: it combines the reported information with information gathered from other government origins and from the public to construct intelligence reports for its customers.[89] As a broad

82. *FinCEN FAQs*, *supra* note 12 (detailing structure and objectives of FinCEN).

83. *Id.*

> [T]he threats we deal with today have taken on new dimensions from those that existed when the legal structure for anti-money laundering was first created. Traditional methods for laundering have mutated over time to take advantage of new technologies, diverse institutions and industries. The financial channels of terrorism have traversed all of these changes, creating an urgency for seeking greater cooperation among governments, law enforcement, regulators, and the regulated industries to share and disseminate information as never before. It is an undertaking to which all of the employees at FinCEN are deeply committed, while preserving out core values, including our accountability for what we do with the masses of data entrusted to us.

Press Release, Financial Crimes Enforcement Network, U.S. Dep't of the Treasury, *Statement before the Subcomm. on Oversight and Investigations, Comm. on Fin. Services*, 11 (March 11, 2003) (James F. Sloan, Director, Financial Crimes Enforcement Network, U.S. Dep't of the Treasury) [hereinafter *Statement*], *at* http://www.fincen.gov/james_sloan_statement_031103.pdf.

84. *FinCEN FAQs*, *supra* note 12. It is one of three entities within the Department of Treasury that fight money laundering and terrorist financing. The other two are the Office of Foreign Asset Control and the Internal Revenue Service Criminal Investigation Division. Financial Crimes Enforcement Network, *2003-2008 Strategic Plan* (August 4, 2003), *at* http://fincen.gov/strategicplan2003_2008.pdf (draft).

85. *FinCEN FAQs*, *supra* note 12.

86. *Id.*

87. *Id.*

88. *Statement*, *supra* note 83, at 7.

89. *FinCEN FAQs*, *supra* note 12.

reference source, FinCEN serves the financial, law enforcement, intelligence, and regulatory communities.[90] Its analysts provide direct and indirect case support to more than 300 federal, state, and local law enforcement agencies.[91] The third facet of FinCEN is the distribution and network of its products: in addition to providing access to its database, FinCEN disseminates approximately 6,500 intelligence reports each year.[92]

To effectively administer the BSA, FinCEN relies on its regulatory partners: the five banking regulators,[93] the Internal Revenue Service (IRS), the Securities and Exchange Commission (SEC), and the Commodities Futures Trading Commission.[94] Although each partner administers its own regulations regarding laundering and examines institutions for compliance, other law enforcement officials may refer to FinCEN those institutions that fail to comply for enforcement actions.[95]

In March 2003, FinCEN determined[96] Western Union Financial Services, Inc. (Western Union), a U.S. money service business,[97] failed to comply with reporting requirements under the BSA.[98] Initially, a routine state examination of Western Union's New York operations revealed the company had failed to "review whether the

90. *Statement, supra* note 83, at 2-4.

91. *FinCEN FAQs, supra* note 12. Since 1990, FinCEN has provided direct case support, or connecting aspects of a case, to more than 105,000 cases involving over 400,000 subjects. *Id.* Agencies can obtain indirect case support by accessing FinCEN's Platform and Gateway analytical programs. *Id.*

92. *FinCEN FAQs, supra* note 12. *See Statement, supra* note 83. The United States uses the largest computerized cash-transaction reporting system in the world, with high success rates. Rueda, *supra* note 12, at 163-64 (discussing reporting system as an "invaluable tool against money laundering," and citing percentages of successfully use of FinCEN's services by law enforcement officials).

93. The Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration. *Statement, supra* note 83, at 5.

94. *FinCEN FAQs, supra* note 12.

95. *Id.*

96. The Director of FinCEN has the authority, delegated from the Secretary of the Treasury, to determine if a financial institution has violated the BSA, and what sanctions, if any, are appropriate. Financial Crimes Enforcement Network, Dep't of the Treasury, *In the Matter of Western Union Financial Services, Inc.*, Assessment of Civil Money Penalties with Undertakings, No. 2003-02 (March 6, 2003), 1, *at* http://www.fincen.gov/western_union_assessment.pdf [hereinafter *Western Union*].

97. Registered with FinCEN pursuant to 31 U.S.C. § 5330. *Western Union, supra* note 96, at 1. Western Union is a financial institution within the meaning of 31 U.S.C. § 5312(a)(2) and 31 CFR § 103.11 (uu) (2003). *Id.*

98. *Id.* at 2. The BSA requires financial institutions to file CTRs for transactions in currency greater than $10,000 in a day. 31 U.S.C. § 5331 (2003); 31 CFR § 103.33 (2003).

same person engaged in currency transactions with different Western Union agents on the same day that totaled more than $10,000 in determining whether to file a CTR."[99] The Department of Banking of New York instigated an administrative action against Western Union, for which the company agreed to pay an $8 million fine.[100] FinCEN took notice of the New York Department of Banking's findings, and requested Western Union review its transactions via aggregation by agent across the country, which revealed more currency transactions that required reporting.[101] Western Union filed the additional CTRs, but the review also exposed Western Union's failure to file SARs[102] for "transactions across agents on a single day and transactions through the same and different agents over several days."[103]

Prior to September 2, 2002, Western Union used an old, partially automated system that was supposed to be updated by the end of 2001.[104] The events of September 11, 2001 and the company's subsequent aid to law enforcement officials in their investigative efforts delayed the new system's implementation.[105] Although Western Union filed approximately 8,500 SARs in 2002, FinCEN determined[106] it willfully failed to file an additional 662 SARs, for which Western Union consented[107] to the assessment of a civil

99. *Western Union*, *supra* note 96, at 2.
100. *Id.*
101. *Id.*
102. January 1, 2002 was the effective date for money services businesses to file reports of suspicious activity or

> . . .any transaction involving or aggregating to at least $2,000 or $5,000, that it 'knows, suspects, or has reason to suspect': (i) involves funds derived from illegal activities or is conducted to disguise funds derived from illegal activities; (ii) is designed to evade the reporting or recordkeeping requirements of the BSA (e.g., structuring transactions to avoid currency reporting); or (iii) 'has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage. . .' 31 CFR § 103.20.

Id. at 3. The $2,000 limit applies to transactions at the front office or agent level, while the $5,000 limit applies to the back office level of review. 31 CFR § 103.20 (a)(3) (2003); *Western Union*, *supra* note 96, at n.2.
103. *Western Union*, *supra* note 96, at 2.
104. *Id.* at n.3.
105. *Id.*
106. *Id.* at 3.

> FinCEN has determined that Western Union's old procedures and system were inadequate to comply with the SAR requirements for reporting structures because they did not identify all multiple transactions conduced by a customer across agents for a single day. Nor did they identify multiple transactions conduced by a customer through the same or different agents over multiple days. Thus, Western Union failed to file SARs for both types of structured transactions.

Id. at 3-4.
107. *Western Union*, *supra* note 96, at 5. Without admitting or denying the facts

penalty[108] of $3 million.[109]

In another action for failure to file SARs, FinCEN charged Banco Popular with violation of Title 31 U.S.C. section 5318(g)(1) and section 5322(a).[110] The company "waived indictment, agreed to the filing of the information, and accepted and acknowledged responsibility for its behavior."[111] FinCEN assessed a $20 million civil penalty for Banco Popular's violations of the BSA, yet held that the company's forfeiture of $21.6 million to the United States government to cover any civil claims satisfied this penalty.[112] Additionally, due to the company's "remedial actions. . . and its willingness to acknowledge responsibility for its actions," the government recommended deferral of criminal prosecution for one year and dismissal pending the bank's compliance with its responsibilities.[113]

Despite being a U.S. entity, FinCEN is a leading contributor in the global efforts to develop effective and transnational anti-money laundering standards and information sharing.[114] It coordinates with and helps establish financial intelligence units (FIUs) worldwide,[115] such as the Egmont Group, whose members total 69 countries.[116] FinCen also supports the Financial Action Task Force (FATF).[117]

B. Financial Action Task Force

FATF, an inter-governmental membership body established in

in FinCEN's determinations, but only to resolve the matter. *Id.*

108. *See* 31 U.S.C. § 5321 (2003); 31 CFR § 103.57(f) (2003) (authorizing liability to U.S. Government for "a civil penalty of not more than the greater of the amount (not to exceed $100,000) involved in the transaction (if any) or $25,000.").

109. *Western Union*, *supra* note 96, at 5.

110. *Statement*, *supra* note 83, at 5. The Secretary may require any financial institution, employee, or agent thereof to "report any suspicious transaction relevant to a possible violation of law or regulation." 31 U.S.C. § 5318(g)(1). Willful violation of the section can be punished with criminal penalties of up to $250,000 in fines, five years in prison, or both. 31 U.S.C. § 5322(a).

111. *Statement*, *supra* note 83, at 5.

112. *Id.*

113. *Id.* FinCEN asserted a similar penalty assessment of $1.1 million against the Korea Exchange Bank. Financial Crimes Enforcement Network, Dep't of the Treasury, *In the Matter of Korea Exchange Bank*, Assessment of Civil Money Penalty, No. 2003-04 (June 24, 2003), *at* http://www.fincen.gov/koreaexchangeassessment.pdf. FinCEN determined that between March 1998 and May 2001, the Korea Exchange Bank failed to file SARs on nearly $32 million suspicious transactions in violation of 31 U.S.C § 5318(g) and 31 C.F.R. § 103.18. *Id.*

114. *Statement*, *supra* note 83, at 4.

115. *FinCen FAQs*, *supra* note 12.

116. *Statement*, *supra* note 83, at 4.

117. *FinCen FAQs*, *supra* note 12.

1989 by the G-7 Economic Summit in Paris, addresses money laundering on an international scale.[118] The FATF develops and promotes policies, and seeks to "generate the necessary political will to bring about national legislative and regulatory reforms" to counter money laundering at national and international levels.[119] Thirty-three countries and territories, as well as two regional organizations, make up FATF membership.[120] The organization has three major tasks: to spread the anti-money laundering message worldwide,[121] to monitor the implementation of its *Forty Recommendations* among FATF members,[122] and to review money laundering trends and countermeasures.[123]

118. Financial Action Task Force on Money Laundering, More About the FATF, *at* http://www.fatf-gafi.org/About FATF_en.htm [hereinafter *FATF About*]. It does not have a tightly defined constitution, and will continue its work after 2004 provided the member governments agree it is necessary. *Id.*

119. *Id.*

120. *FATF About*, *supra* note 118. Members include: Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; European Commission; Finland; France; Germany; Greece; Gulf Co-operation Council; Hong Kong, China; Iceland; Ireland; Italy; Japan; Luxembourg; Mexico; Kingdom of the Netherlands; New Zealand; Norway; Portugal; Russian Federation; Singapore; South Africa; Spain; Sweden; Switzerland; Turkey; United Kingdom; and the United States. *Id.* Bodies that have observer status with FATF: Asia / Pacific Group on Money Laundering (APG); Caribbean Financial Action Task Force (CFATF); Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) (formerly PC-R-EV); Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); Financial Action Task Force on Money Laundering in South America (GAFISUD). *Id.* Organizations that have observer status with FATF: African Development Bank; Asia Development Bank; The Commonwealth Secretariat; Egmont Group of Financial Intelligence Units; European Bank for Reconstruction and Development (EBRD); European Central Bank (ECB); Europol; Inter-American Development Bank (IDB); International Monetary Fund (IMF); Interpol; International Organization of Securities Commissions (IOSCO); Organization of American States / Inter-American Drug Abuse Control Commission (OAS/CICAD); Offshore Group of Banking Supervisors (OGBS); United Nations Office for Drug Control and Crime Prevention (UNODCCP); World Bank; World Customs Organization (WCO). *Id.*

121. *FATF About*, *supra* note 118. "FATF fosters the establishment of a world-wide anti-money laundering network based on appropriate expansion of its membership, the development of regional anti-money laundering bodies in the various parts of the world, and close co-operation with relevant international organizations." *Id.*

122. *Id.* "All member countries have their implementation of the Forty Recommendations monitored through a two-pronged approach: an annual self-assessment exercise and the more detailed mutual evaluation procedure." *Id.*

123. *Id.*
Money laundering is an evolving activity, the trends of which will continue to be monitored. FATF members gather information on and knowledge of money laundering trends (e.g. the use by criminals of sophisticated and complex ways to legitimise illegal assets, the professionalism of the process, the use of various sectors of the financial system and of the economy, and the recourse to new

The FATF established a series of *Forty Recommendations*[124] in 1990 that represent the cornerstone of their endeavors to promulgate consistent policies.[125] A "comprehensive blueprint of the action needed to fight against money laundering," the *Forty Recommendations* set out a universal framework of counter-laundering efforts for national criminal justice systems and law enforcement, financial systems and their regulators, and for international cooperation.[126] They have become the field's principal standard.[127] The Recommendations include the criminalization of laundering proceeds from serious crimes[128] and the enactment of laws to seize and confiscate those proceeds;[129] requirements for financial institutions to identify all clients (including beneficial owners) and to keep appropriate client records;[130] implementation of a range of internal control measures;[131] requirements for financial institutions to report suspicious transactions to national authorities[132] and to have adequate systems for the control and supervision of financial institutions.[133] The Recommendations also promote entering into international treaties and passing national legislation to provide prompt and effective co-operation.[134] FATF puts countries that do not participate in anti-money laundering efforts on its list of non-cooperative countries and territories (NCCTs).[135] The FATF only lists countries on NCCT after it analyzes their criminal laws, their

geographic routes) so as to ensure that the Forty Recommendations remain up to date and effective.
FATF About, *supra* note 118.

124. *Id;* Financial Action Task Force on Money Laundering, The Forty Recommendations, *at* http://www.fatf-gafi.org/40Recs_en.htm [hereinafter *40 Recommendations*]. Revised in 1996 and 2003. *FATF About*, *supra* note 118.

125. *FATF About*, *supra* note 118.

126. *Id.*

127. Financial Action Task Force on Money Laundering, *at* http://www.fatf-gafi.org; s*ee* Financial Action Task Force *Annual Report* 22 (June 20, 2003), *at* http://www1.oecd.org/fatf/pdf/AR2003_en.pdf (stating combined efforts of International Monetary Fund and World Bank to develop common methodologies to combat money laundering). *National Money Laundering Strategy* at 56 (recognition of Forty Recommendations as international standard for an effective anti-money laundering regime).

128. *40 Recommendations*, *supra* note 124, at Recommendation 4.

129. *Id.* at Recommendation 7.

130. *Id.* at Recommendations 10-12.

131. *Id.* at Recommendation 19.

132. *Id.* at Recommendation 15.

133. *40 Recommendations*, *supra* note 124, at Recommendations 26-29.

134. *Id.* at Recommendations 32-40.

135. Financial Action Task Force on Money Laundering, *Non-Cooperative Countries and Territories*, *at* http://www.fatf-gafi.org/NCCT_en.htm; Annual Report, s*upra* note 127, at 25-26.

supervision of the financial industry and means to establish customer identification, their reporting of suspicious transactions, and the country's level of international cooperation.[136]

FATF responded to September 11, 2001 at an October 29-30, 2001 meeting.[137] It broadened its mission beyond global money laundering to encompass world-wide efforts to combat terrorist financing.[138] FATF established *Eight Recommendations* relating specifically to counter-terrorist financing,[139] and updated its NCCT list to reflect new systemic weaknesses in the anti-money laundering programs of specific jurisdictions.[140] Moreover, at the June 20, 2003 meeting, FATF released an international best practices paper to offer further explanation, suggestions for implementation, and guidance on detecting "alternative remittance systems outside the conventional financial sector."[141]

C. Operation Green Quest

On October 25, 2001, the U.S. Department of the Treasury created Operation Green Quest (Green Quest), a "multi-agency financial

136. Non-Cooperative Countries and Territories, *supra* note 135. *See* Andrew Ayers, *The Financial Action Task Force: The War on Terrorism Will Not Be Fought On The Battlefield*, 18 N.Y.L. SCH. J. HUM. RTS. 449, 452-53 (2002).

137. Financial Action Task Force on Money Laundering, *at* http://www.fatf-gafi.org.

138. *Id.*

139. Financial Action Task Force on Money Laundering, *Terrorist Financing*, *at* http://www.fatf-gafi.org./TerFinance_en.htm. The Special Recommendations members commit to: take immediate steps to ratify and implement the relevant U.N. instruments (1999 U.N. International Conversion for the Suppression of the Financing of Terrorism); criminalize the financing of terrorism, terrorist acts and terrorist organizations; freeze and confiscate terrorist assets; report suspicious transactions related to terrorism; provide extensive support to other countries' law enforcement and regulatory investigative efforts; impose anti-money laundering requirements on alternative remittance systems; strengthen customer identification measures in international and domestic wire transfers; and ensure that entities, specifically non-profit organisations, cannot be misused to finance terrorism. *Id*.

140. Financial Action Task Force on Money Laundering, *Annual Review of Non-Cooperative Countries or Territories*, (June 20, 2003), *at* http://www1.oecd.org/fatf/pdf/NCCT2003_en.pdf. The update commends certain jurisdictions for their progress in combating money laundering, and criticizes others for their failures. *Id.* at 1. It warns its members to be vigilant in business transactions with those countries on the NCCT list. *Id.* at 2; *see* Annual Report, *supra* note 127, at 2.

141. Financial Action Task Force on Money Laundering, *Combating the Abuse of Alternative Remittance Systems: International Best Practices* (June 20, 2003), *at* http://www1oecd.org/fatf/pdf.SR6-BPP_en.pdf. The paper examines the existing alternative remittance problem and means of addressing it, including licensing and registration, increasing identification and raising awareness, regulations, monitoring, and sanctions. *Id.*

enforcement initiative intended 'to augment existing counter-terrorist efforts by bringing the full scope of the government's financial expertise to bear against systems, individuals, and organizations that serve as sources of terrorist funding.'"[142] As an enforcement agency, Green Quest can "freeze accounts, seize assets, and. . . bring criminal actions against individuals and organizations that finance terrorist groups."[143] The U.S. Customs Service leads Green Quest, but its staff consists of agents from the IRS, the Secret Service, the Bureau of Alcohol, Tobacco and Firearms (ATF), the Federal Bureau of Investigations (FBI), the Office of Foreign Assets Control (OFAC), FinCEN, the U.S. Postal Inspection Service, the Naval Criminal Investigative Service, and federal prosecutors from the Department of Justice's Criminal Division.[144] The agents rely on inspection technology, training, and U.S. Customs dogs to target a variety of schemes, including illegal enterprises (such as fraud schemes and illegal remittance networks), legitimate enterprises (such as businesses commingling legitimate and illicit funds), and charity and relief organizations (where funds can be intentionally or unknowingly diverted to terrorist groups).[145] Green Quest also fights terrorist groups who use the same low-tech methods for bulk smuggling of cash and monetary instruments that drug traffickers have employed for years.[146] The PATRIOT Act identifies bulk cash smuggling as a new crime with greater sanctions, reflecting the need of launderers to find other means[147] of transporting funds when the financial industry's

142. Operation Green Quest, *Overview*, (February 26, 2002), *at* http://www.customs.ustreas.gov/xp/cgov/newsroom/press_releases/22002/02262002.xml.

143. *Id.*

144. *Id.* Due to reorganization, U.S. Customs is now U.S. Customs & Boarder Protection, under the U.S. Department of Homeland Security. *See generally* U.S. Bureau of Customs and Boarder Protection, *at* http://www.cbp.gov/xp/cgov/home.xml.

145. Press Release, U.S. Customs Service, U.S. Dep't of the Treasury, *Operation Green Quest Seizes More than $22 Million in Ongoing Efforts to Dismantle Terror Finance Networks* (July 17, 2002), *at* http://www.customs.ustreas.gov/xp/cgov/newsroom/press_releases/72002/07172002_3.xml [hereinafter *Green Quest Seizes*]. Seizures made to date include: $624,691 in "cash hidden in plastic bags that were professionally sewn into the lining of a comforter" inside a suitcase on a commercial flight bound for the Middle East; "smuggled negotiable checks totaling $1.06 million that were hidden in a parcel bound for the Middle East" with a declared value of $1; "smuggled certificate of deposit worth $297,000" hidden in a package from Asia, bound for Central America. *Id.*

146. *Id.* Monetary instruments consist of: "traveler's checks, money orders, and investment securities – in bearer form." *Id.*

147. *FATF Basic Facts*, *supra* note 6. "Money launderers have shown themselves through time to be extremely imaginative in creating new schemes to

increased scrutiny shut down previous methods.[148]

In the first four months of its existence, Green Quest's work resulted in the seizure of approximately $10.3 million in smuggled U.S. currency and $4.3 million in other assets.[149] By its ninth month, the total increased to $22.8 million.[150] As of March 21, 2003, Green Quest's work resulted in nearly 200 search warrants/consent searches, 93 arrests, seizure of more than $11 million from suspected terrorist networks and another $24 million in smuggled monetary instruments.[151] Due to the increased workload from investigations and enforcement actions, which result in more evidence, leads, and tips, financial investigations, initiatives continue to expand.[152]

V. THE CONTEMPORARY PROBLEM: COMPLIANCE, AVOIDANCE, AND COURT APPLICATION

A. Modern Means of Compliance

In an effort to capitalize on technology in the war against money laundering, FinCEN launched the PATRIOT Act Communication

circumvent a particular government's countermeasures. A national system must be flexible enough to be able to detect and respond to new money laundering schemes." *Id.*

148. USA PATRIOT Act of 2001, Pub. L. No. 107-56 § 371, codified at 31 USC § 5332 (2003). The first successfully prosecuted case under the new bulk cash smuggling provision was against Nabeeh Awawdeh, who plead guilty after attempting to smuggle $30,000 worth of negotiable checks on a flight to Israel. *Green Quest Seizes*, *supra* note 145.

149. *Id.*

150. *Id.*

151. Press Release, U.S. Customs Service, U.S. Dep't of the Treasury, *Fact Sheet on Expansion of Operation Green Quest*, (January 09, 2003), *at* http://www.customs.ustreas.gov/xp/cgov/newsroom/press_releases/012003/01092003.xml.

152. *Id.* The specific title of Operation Green Quest was eliminated on June 30, 2003, when the Customs agents working the program were rolled into the newly formed U.S. Immigration and Customs Enforcement (ICE) initiative called Cornerstone, under the U.S. Department of Homeland Security. *Telephone Interview* with Dean Boyd, Spokesman, U.S. Immigration and Customs Enforcement (March 15, 2004). *See also* U.S. Immigration and Customs Enforcement, *Operation Cornerstone*, *at* http://www.ice.gov/graphics/enforce/ops/ops_cs.htm, and *Operation Green Quest Conducts Separate Enforcement Actions in Five States*, *at* http://www.ice.gov/graphics/news/newsrel/articles/icegqmar.htm. Cornerstone continues Green Quest's objectives by identifying and eliminating financial system vulnerabilities, working with industry representatives to share information, and training representatives from the private sector. U.S. Immigration and Customs Enforcement, *Operation Cornerstone*, *at* http://www.ice.gov/graphics/enforce/ops/ops_cs.htm.

System (PACS).[153] PACS allows financial institutions to file BSA reports quickly and securely over the Internet; the first phase of the program allows for electronic filing of CTRs and SARs.[154] PACS aims to achieve two major goals: first, to expedite the filing process, making information available faster, and second, to reduce financial institutions' cost burden and processing costs for the government and thus for taxpayers.[155] Information submitted to PACS is encrypted for protection, and companies are granted access only after applying for and receiving a digital certificate from a government-approved certifying authority.[156] Companies can still use the old-fashioned methods of filing reports on magnetic tape or paper; PACS simply provides another option to meet filing requirements.[157]

FinCEN's Strategic Plan 2003-2008 highlights the Gateway system as a key component of the goal to modernize the collection, maintenance, and retrieval of BSA information.[158] The Gateway system creates a method for participants to review records filed under the BSA.[159] FinCEN hopes to expand the Gateway user base from less than 1,000 to more than 3,000 by Fiscal Year 2005, by consolidating direct user access and persuading users to perform their

153. Press Release, Financial Crimes Enforcement Network, U.S. Dep't of the Treasury, *FinCEN Launches E-Filing System, Will Allow for BSA Filing over Secure Internet* (May 28, 2002), *at* http://www.fincen.gov/newsrelease05282002.pdf [hereinafter *FinCEN Launches*]. The pilot program, launched May 28, 2002, had 26 participants that tested the program. Press Release, Financial Crimes Enforcement Network, U.S. Dep't of the Treasury, *FinCEN Expands E-Filling System, Financial Institutions begin filing BSA reports over Secure Internet* (October 1, 2002), *at* http://www.fincen.gov/newsreleasepacs10012002.pdf [hereinafter *FinCEN Expands*]. FinCEN made changes based on the participant's suggestions, and opened PACS to all institutions on October 1, 2002. *Id.* The National Money Laundering Strategy often discusses the need for greater communication and coordination among anti-money laundering parties. *National Money Laundering Strategy* at 3, 14, 28, 48-63.

154. *FinCEN Launches*, *supra* note 153.

155. *Id.*

The deployment of PACS is a win-win for financial institutions and government. Financial institutions will realize cost savings through elimination of magnetic tape handling, routing paper forms for approval and shipping costs. PACS will also save the government considerable taxpayer dollars in processing costs associated with paper and magnetic filing and will allow for BSA information to be processed and made available to law enforcement investigators on an expedited basis. *FinCEN Expands*, *supra* note 153.

156. *FinCEN Launches*, *supra* note 153.

157. *Id.*

158. Financial Crimes Enforcement Network, *2003-2008 Strategic Plan Draft* (August 4, 2003), 12, *at* http://fincen.gov/strategicplan2003_2008.pdf (draft).

159. *Id.*

own inquiries.[160] Reducing inefficiencies and redundant analysis in the BSA reporting process will improve the flow of information between institutions and law enforcement, making it easier to spot suspicious activity and new trends in money laundering.[161]

The use of technology has greatly assisted agencies in their efforts to track money laundering, but also creates problems. Pursuant to Section 366 of the PATRIOT Act,[162] the Secretary of the Treasury conducted a survey of the CTRs and SARs filing process, exemption process, and related costs.[163] The study indicated that while FinCEN received more than 12 million CTRs in the prior year, it estimated more than 30 percent of CTRs related to recurring customer transactions that were unnecessary and eligible for exemption from the filing process.[164] Instead of assisting law enforcement efforts, such surplus submissions have little use and add additional cost burdens to the financial institution filing them.[165] They also burden intelligence analysis, and hinder timely efforts to target terrorist financing.[166] In time, continued explanation of rules from government agencies and further input from regulators and institutions should improve the accuracy of the content of these reports and their filing.[167]

Institutions have also turned to the private sector for technical answers.[168] Vendors aim to develop software to assist banks and financial institutions, especially smaller institutions, in their efforts to comply with reporting requirements and other rule changes resulting from money laundering counter measures.[169] While large institutions have long used software that goes beyond government parameters to

160. *Id.*
161. *See id.*
162. USA PATRIOT Act of 2001, Pub. L. No. 107-56 § 366 (2001), codified at 31 U.S.C § 5313 (2003).
163. *See* Press Release, Financial Crimes Enforcement Network, U.S. Dep't of the Treasury, *Survey on Costs of Filing Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs) and the Use of the Exemption Process* (August 30, 2002), *at* http://www.fincen.gov/ctrsurveyann082902.pdf [hereinafter *Survey on Costs*].
164. *Id.* "Rather than risk a fine, the thinking is, 'I'm automated, so I'm going to report it anyway,' knowing full well that the information may overload the system." John Gibeaut, *Show Them the Money*, 88 A.B.A.J. 47 (2002) (quoting banking industry lawyer, John J. Byrne).
165. *Survey on Costs*, *supra* note 163.
166. *Id.*
167. The National Money Laundering Strategy cites FinCEN's estimate that CTR filings could be reduced by a minimum of 30% through education of the financial sector so that it complies with current exemptions. *National Money Laundering Strategy* at 45.
168. Caron Carlson, *Terrorism Act Expanded*, eWeek, April 22, 2002, at 18.
169. *Id.*

root out laundering schemes, smaller firms can now purchase software that screens individual accounts more thoroughly than previously possible.[170] As with previous efforts to cooperate with laundering investigations,[171] regulators may consider the use of such software as a mitigating factor in non-compliance prosecution.[172] Industry experts predicted U.S. banks would spend close to $60 million in 2002 on anti-money laundering and related technology; for the entire financial industry, the spending estimate doubled.[173]

B. Modern Schemes of Avoidance

Regardless of efforts to improve regulations and compliance, international cooperation and information sharing regulations will prove unsuccessful to the extent that launderers can avoid cash-based transactions and evade the financial service industry.[174] Despite similarities in the methods of money laundering, enforcement systems designed to unearth the large scale transfers used by money launderers and drug traffickers are not as adept at identifying the "small, routine transactions of terrorist cells."[175] "Terrorists often use clean money, from legitimate sources," and they launder much smaller amounts than those laundered by drug traffickers.[176]

The Internet and related technology have offered both a blessing and a curse to anti-money laundering efforts. Technology assists organizations and agencies in their efforts to track laundering and exchange information.[177] Yet the cyber-launderer can operate often with virtual anonymity through the use of Internet banks, online transfers of funds, the transmission of electronic money (e-money), and stored value cards, also known as microchip money.[178] In recognition of these convenient methods, FATF warns financial

170. *Id.*
171. *See Statement*, *supra* note 83 and accompanying text.
172. Carlson, *supra* note 168 (discussing financial industry's interest in software as means to mitigate possible liability).
173. AFP Exchange, *Investment in Anti-Money Laundering Technologies Increases*, May/June 2002, at 70 (citing effect and industry spending for new anti-money laundering technologies).
174. Rueda, *supra* note 12, at 171.
175. Mike McNamee, et al., *A Hard Slog for Financial 'Special Forces,'* Business Week, Nov. 26, 2001, at 3.
176. *The Needle in the Haystack*, Economist, Dec. 14, 2002, at 69. *See National Money Laundering Strategy* at 14 (contrasting drug trafficking laundering to terrorist group laundering).
177. *See* discussion *supra* Part VA.
178. *See generally* Straub, *supra* note 50; Wendy J. Weimer, Note, *Cyberlaundering: An International Cache for Microchip Money*, 13 DePaul Bus. L.J. 199 (Fall/Spring 2000-2001).

institutions to give careful review to "any money laundering threats that may arise from new or developing technologies that might favor anonymity."[179]

In addition to the Internet, traditional technologies like phones and fax machines support informal value transfer systems (IVTS) or remittance systems.[180] An IVTS describes "value transfer systems that operate informally to transfer money," and refers to any system, mechanism, or network of people who receive money for the purpose of conferring payment to another party, sometimes in a different geographic area.[181] Some examples are the hawala (Afghanistan and Pakistan), hundi (India), fei ch 'ien (China), phoe kuan (Thailand), and the Black Market Peso Exchange (South America).[182] IVTSs operate legitimately in many countries, and in some they represent the only means of transferring funds across territories where conventional systems remain underdeveloped or corrupt.[183] The very nature, however, of IVTSs as efficient, convenient, trusted, fast, anonymous, and paperless, make them very appealing for money launderers generally and terrorists specifically.[184]

Fundamental to anti-money laundering efforts in the formal financial arena, the 'know your customer' principle still applies in informal remittance systems.[185] Customer identification requirements have had a deterring effect in the formal financial sector, but money launderers have also displaced their efforts from utilizing formal networks to other sectors.[186] This shift boosts money laundering activity in informal financial networks, which become "increasingly vulnerable" to abuse by launderers when they operate in an unregulated arena.[187]

179. Annual Report, supra note 127, at 4.

180. *See Statement, supra* note 83, at 3-4; Financial Crimes Enforcement Network, U.S. Dep't of the Treasury, *The SAR Activity Review; Trends Tips & Issues* (February 2003), Issue 5, at 17-21 [hereinafter *SAR Review*].

181. *SAR Review, supra* note 181, at 17; Financial Crimes Enforcement Network, U.S. Dep't of the Treasury, *FinCEN Advisory* (March 2003), Issue 33.

182. *Statement, supra* note 83, at 3-4; *SAR Review, supra* note 181, at 17-18.

183. *Statement, supra* note 83, at 4; *SAR Review, supra* note 181, at 18.

184. *Statement, supra* note 83, at 4; *SAR Review, supra* note 181, at 18.

185. Financial Action Task Force on Money Laundering, *Combating the Abuse of Alternative Remittance Systems: International Best Practices* (2003), 7, *at* http://www1.oecd.org/fatf/pdf/SR6-BPP_en.pdf.

186. *Id.*

187. *Id.* at 2. The reliance on 'know your customer' reverberates through the formal financial industry as well, where even established firms express concern about working with other businesses but still verifying information: "[H]ow far do you go? How much can you rely on intermediaries? Can you rely on a legitimate broker dealer or bank?" Ellen L. Rosen, *Learning the law on laundering*, Nat. L. J., June 3, 2002.

The PATRIOT Act addresses informal banking systems by extending money laundering laws and all laws that apply to the Federal Deposit Insurance Act[188] to all domestic banks for application to these "underground banking systems."[189] The PATRIOT Act expansively defines underground banking systems to include persons that operate "as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside the conventional financial institutions system."[190]

Another means for launderers to provide financial support to terrorism, yet avoid traditional detection in the formal financial sector, involves the processing of legitimate funds through charities or non-profit organizations.[191] Such organizations can be divided into two categories: legitimate groups that divert funds to support terrorist objectives, and sham groups that exist merely to channel money to the same.[192] Fundraising may be directed at certain communities for a good cause, and while some funds may indeed support the legal activities the organization claims to perform, some resources may be diverted to terrorist causes through subterfuge and manipulation of the organization's local offices or by certain employees.[193] FATF

188. 12 U.S.C. § 1829b (2002).

189. *See* USA PATRIOT Act, Pub. L. No. 107-56 § 359 (2001), codified at 31 U.S.C § 5318 (2003).

190. *Id. See* Rueda *supra* note 12, at 193-95, 202-03 (arguing for use of sting operations to police alternative remittance systems). Rueda argues that while PATRIOT Act gives unprecedented strengths to U.S. financial reporting system, it "does nothing against criminals who launder money through other means. Sting operations thus are key to 'bringing criminals into the net.'" *Id.* The National Money Laundering Strategy seeks to address alternative remittance programs by compelling terrorists use formal and more "transparent" financial systems, by regulating legitimate alternative systems to meet reporting requirements, and by investigating illegal use of alternative remittance systems. *National Money Laundering Strategy* at 22.

191. Financial Action Task Force on Money Laundering, *Guidance for Financial Institutions in Detecting Terrorist Financing* (2002), 6, *at* http://www.fatf-gafi.org/pdf/GuidFITF01_en.pdf [hereinafter *Guidance for Financial Institutions*]. Generally, experts believe that terrorist financing comes from two primary sources: State, organization, or wealthy individual sponsorship, and 'revenue-generating' activities, such as hostage ransom, extortion, smuggling, fraud, "thefts and robbery, and narcotics trafficking." *Id.* at 4. The key difference between terrorist and traditional criminal organizations, however, is the additional use of funding from legal sources. *Id.* Charities, legitimate and otherwise, are an evasive and effective means of raising revenue that fall into this category. *Id.*

192. *Id.*; Financial Action Task Force on Money Laundering, *Combating the Abuse of Non-Profit Organizations: International Best Practices* (2002), 1, *at* http://www.fatf-gafi.org/pdf/SR8-NPO_en.pdf [hereinafter *Combating*].

193. *Guidance for Financial Institutions*, *supra* note 191, at 5; *Combating*, *supra*

recognizes the increasing importance of this fundraising and laundering method, referring to the "misuse of non-profit organizations for the financing of terrorism" as "a crucial weak point in the global struggle to stop such funding at its source."[194]

C. Court Application

Since the passage of the PATRIOT Act, most cases reaching the courts under the amended money laundering sections center on money laundering in drug trafficking, rather than terrorism funding.[195] Despite this, parallels exist between these arenas in application. In *United States v. Rivera-Rodriguez,* two defendants appealed a conviction of conspiring to launder money under 31 U.S.C section 1956(a)(1), or conducting "a financial transaction" involving proceeds from an unlawful activity, "knowing" the funds were tainted and that the transaction was "designed. . . to conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds."[196] The court affirmed the convictions of both defendants, based on application of the section 1956 knowledge element, stating

note 192, at 1. To avoid such manipulation, FATF recommends that organizations implement responsibilities such as financial transparency, verification of activity, oversight on offices, due diligence in ethical administration, and public and private sector oversight and investigations. *Combating*, *supra* note 192, at 2-6.

194. *Combating*, *supra* note 192, at 1. While FATF and FinCEN produce best practice papers, advice, and research on how to spot laundering schemes structured to avoid traditional detection methods, the FATF clearly states that following their guidelines does not alone protect a financial institution from any jurisdictional action, nor do they "supersede or modify requirements imposed by national or regional authorities." *Guidance for Financial Institutions*, *supra* note 191, at 2. Between April 2002 and September 2002, 74.05% of SARs filed were due to apparent matches of names on watch lists (such as the Office of Foreign Assets Control and FBI), from media reports, and from law enforcement subpoenas. *SAR Review*, *supra* note 181, at 22. In addition, 21.33% were filed after reviews revealed "accounts with foreign indicators, unusual account activity, or unusual relationships" uncharacteristic for the kind of account, such as "charitable organizations and Islamic foundations. . .aviation (plane rentals and aviation schools); wire activity to or from suspect countries (mostly the Middle East); large cash deposits followed by wires out to suspect countries – usually structured to avoid reporting requirements; or large and frequent ATM activity." *SAR Review*, *supra* note 181, at 22-23. *See National Money Laundering Strategy* at 23-24 (addressing means to regulate laundering through NGOs).

195. *See* discussion *infra* text accompanying notes 196-238. Legal changes adopted by Congress in 2000 and 2001 to the asset forfeiture procedures and lower sentence length for some white-collar crimes, however, "may encourage prosecutors to rely less often on money laundering charges as a basis for federal forfeiture proceedings" which may result in a possible "statistical decline in the total number of money laundering cases brought to federal court." *National Money Laundering Strategy* at 10 n.6.

196. *United States v. Rivera-Rodriguez*, 318 F.3d 268, 271 (1st Cir. 2003).

that the defendant must know only that some felony created the proceeds, not the type or the specifics of the felony.[197]

The first *Rivera-Rodriguez* defendant, Trinidad, purchased an expensive speedboat in a joint venture with Ubadldo Rivera Colon, a drug dealer who provided the funds.[198] Trinidad took $100,000 from Colon and purchased manager's checks from different banks in amounts under the $10,000 limit, then deposited the checks along with additional funds in the boat merchant's bank account, towards the purchase of the speedboat.[199] Colon registered the boat in Trinidad's name, even though Trinidad did not contribute to its purchase cost.[200] The court upheld the standard of willful blindness, holding that Trinidad obviously must have known that a felony provided the source of the funds.[201] The court cited the "red flag events" of large amounts of cash, concealment, and false ownership, which jointly validated the jury reaching a reasonable conclusion that these events showed a pattern of laundering illegal proceeds.[202]

The second defendant, Rivera, claimed the prosecution failed to offer any evidence that he conspired, that he knew the transactions were intended to disguise the fund's source, or that he knew the funds were proceeds from an illegal activity.[203] The court disagreed, and characterized his involvement a "classic example of money laundering."[204] It held that the jury reasonably could conclude that large sums of cash payments into a business for "no demonstrated reason," and use of those funds to purchase property for the depositor, could plausibly reflect an attempt by Colon and Rivera to disguise the origins of those payments, even if the agreement between them had to be inferred.[205]

Although applicable to drug proceeds, the defendant in *United States v. Dinero Express, Inc.*[206] implemented an international laundering process that could easily translate to other forms of illegal

197. *Id.* at 279; 31 U.S.C § 1956(c)(1).
198. *Rivera-Rodriguez,* 318 F.3d at 271.
199. *Id.* at 271-72.
200. *Id.* at 272.
201. *Id.* Knowledge was established by showing the defendant was "'willfully blind' to facts patently before him." *Id.* (citing *United States v. Frigerio-Milgiano*, 254 F.3d 30, 35 (1st Cir. 2001)).
202. *Rivera-Rodriguez,* 318 F.3d at 272.
203. *Id.* at 277.
204. *Id.*
205. *Id.* The court noted that "[i]t is not logically impossible for there to have been some legitimate explanation for the transactions; but one who is caught with a smoking gun and a dead victim can hardly complain if, absent some explanation, the jury draws the natural inferences from the facts." *Id.*
206. 313 F.3d 803 (2d Cir. 2002).

activity.[207] Defendant Roberto Beras appealed a conviction of thirty-three counts of international money laundering facilitated by his position as co-owner and vice president of Dinero Express, Inc., a licensed money remitter that transmitted money from the United States to the Dominican Republic and Puerto Rico.[208] Beras and his co-conspirators accepted cash from drug dealers.[209] For a commission, they produced invoices with false identities and addresses for fictitious transactions in quantities under the reporting limits, and then made wire transfers with a Dominican 'peso supplier.'[210] Beras argued that because no individual step involved direct wiring of money to the Dominican Republic, no "transfer" under the meaning of section 1956(a)(2) occurred.[211] The court disagreed and affirmed his convictions,[212] holding that both precedent and legislative history[213] required a broader reading of the term 'transfer' in section 1956(a)(2).[214] The court defined transfer to include when a sum of money starts in one country and ends with a related amount in another by "a single step or a series," regardless of whether the funds move directly or by physical transportation between the accounts.[215] The underlying criminal activity does not need to be completed prior to the laundering.[216] Similar to the holding in *United States v. Bolden*,[217] the key is "whether the unlawful activity generated proceeds prior to the money laundering, and if the

207. *See id.*
208. *Id.* at 804-05. The counts were for violations of 31 U.S.C. § 1956 and 31 U.S.C. § 5324. *Id.*
209. *Id.*
210. *Dinero Express*, 313 F.3d 803, at 804-05. The peso supplier gave the local currency equivalent of Dinero's original New York deposit, minus a commission, to Dinero's Dominican office, who conveyed the cash to the "drug traffickers' Dominican personnel under the pretense of fulfilling the fictitious remittances generated in New York." *Id.* Dinero then repaid the peso supplier by wiring funds from their New York operating account to the peso supplier's U.S. bank accounts. *Id.* at 805.
211. *Id.* at 805-06.
212. *Id.* at 807.
213. *Dinero Express*, 313 F.3d at 806. The court cited *United States v. Harris*, 79 F.3d 223, 231 (2d Cir. 1996) (holding that "a multi-step plan to transfer money from one location to another should be viewed as a single 'transfer' under § 1956 (a)(2)."). *Id.* Additionally, the court examined the ordinary meaning of the term 'transfer,' and the 1988 amendment to § 1956(a)(2), intended to clarify that transfer included "electronic and other forms of movement of funds other than physical transportation." *Id.* at 807 (citing 134 Cong. Rec. S17367 (Nov. 10, 1998) (statement of Sen. Biden)).
214. *Id.*
215. *Id.*
216. *United States v. Bolden*, 325 F.3d 471, 487-88 (4th Cir. 2003).
217. *Id.*

laundering involved those proceeds."[218] Beras' argument for a broader reading of the statute's terms failed.[219]

The government does not always have such clear steps upon which to base inferences. In *United States v. Esterman*, the defendant appealed his conviction for wire fraud, transacting in criminally derived property, and money laundering under section 1956(a)(1)(B)(i).[220] Esterman argued that he made no attempt to conceal the transactions, and therefore did not meet the element requiring intent to "conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specific unlawful activity."[221] The Seventh Circuit cited its previous difficulties in defining "precisely what amount of concealment must occur before mere use of ill-gotten gains becomes money laundering."[222] In its analysis, the court applied two standards: first, the isolation of the initial transaction as the origin of the funds from the subsequent transactions designed to conceal their source.[223] Second, the requirement of more than "mere transfer and spending of funds," the subsequent transactions must be purposely structured to hide the origin of the funds.[224] Esterman failed to reach the second standard when he stole money from a Russian business partner: he "made no effort to disguise or conceal his withdrawal" of the funds from the bank or their deposits in other banks, or retail transactions.[225] The court held this action failed to meet the standard of concealment,[226] when the necessary concealment relates to the origin of the funds.[227] In contrast, the courts have held that the creation and use of a sham business,[228] the use of a third party to "purchase goods on one's behalf or from which one will benefit,"[229] or concealing ownership of a business,[230] provide relevant evidence of concealment

218. *Id.*
219. *Dinero Express*, 313 F.3d at 806.
220. *United States v. Esterman*, 324 F.3d 565, 568 (7th Cir. 2003).
221. *Id.* at 569.
222. *Id.* at 570.
223. *Id.* (citing *United States v. Scialabba*, 282 F.3d 475, 476-78 (7th Cir. 2002)).
224. *Id.* (citing *United States v. Jackson*, 935 F.2d 832, 843 (7th Cir. 1991)).
225. *Esterman*, 324 F.3d at 571.
226. *Id.*
227. *United States v. Tekle*, 329 F.3d 1108, 1114 (9th Cir. 2003) (stating that concealment element refers to "source of funds, not identity of launderer").
228. *Bolden*, 325 F.3d at 490.
229. *United States v. Willey*, 57 F.3d 1374, 1385 (5th Cir. 1995) (noting sufficient proof of design to conceal found in use of third party to "purchase goods on one's behalf or from which one will benefit").
230. *United States v. Ladum*, 141 F.3d 1328, 1349 (9th Cir. 1998) (finding concealment where defendant hid ownership of business from bankruptcy trustee).

in money laundering.[231]

If a law enforcement agency charges an organization with money laundering, the government has considerable latitude to seize the assets of that organization when the organization's conduct involves the threat of terrorism.[232] In *Global Relief Foundation, Inc. v. O'Neill*, the government did not assert money laundering, but the plaintiff, a U.S.-based Islamic global humanitarian relief organization, brought an action for declaratory and injunctive relief against government officials.[233] Global Relief Foundation (Global) sought to unfreeze their assets, which the government seized pursuant to the Foreign Intelligence Surveillance Act[234] on December 14, 2001, and froze[235] on grounds that the foundation possibly possessed connections to terrorist organizations.[236] The District Court denied Global's motion, deferring instead to the executive and legislative branches in matters relating to national security.[237] The court held that Global failed to overcome the important governmental interest at stake.[238]

VI. CONCLUSION

Little reason exists to suppose that the general applications of the relevant case law would differ in the event of laundering for terrorist financing rather than drug trafficking. The United States and international community are accustomed to money laundering for drug trafficking. Meanwhile, terrorism in its current forms creates a newer battle on the money laundering front.

Understanding the contemporary forms of money laundering processes is key to dismantling them. It is essential that law enforcement and the formal financial sector stay abreast of not only

231. *Bolden*, 325 F.3d at 490.
232. *Global Relief Found., Inc. v. O'Neill*, 207 F. Supp. 2d 779, 788 (N.D. Ill. 2002).
233. *Id.* at 785-86.
234. Foreign Intelligence Surveillance Act of 1978, §§ 101(b)(2)(A), 304 (e), 305(d-g), as amended, 50 U.S.C.A. §§ 1801(b)(2)(A), 1824(e), 1825(d-g); *Global*, 207 F. Supp. 2d at 786.
235. Frozen by the Office of Foreign Asset Control, Department of the Treasury, pursuant to the International Emergency Powers Act and President Bush's Executive Order No. 13224, 66 Fed Reg. 49074 (2001). *Global*, 207 F. Supp. 2d at 786.
236. *Global*, 207 F. Supp. 2d at 786.
237. *Id.* at 788. "As a general principle. . .this [C]ourt should avoid impairment of decisions made by the Congress or the President in matters involving foreign affairs or national security" such that Global must make an exceedingly compelling argument on the injunction's relevant factors. *Id.*
238. *Id.* at 806.

of the statutory changes to definitions, requirements, and penalties, but also of the constant innovations in placing, layering, and incorporating laundered funds into the marketplace. As the technology to expose laundering evolves, reducing inefficiencies and redundancies while increasing in scope, so will the efforts increase to evade such detection.

In the U.S., specifically, courts have sought to impact money laundering by applying both traditional and contemporary laws to evolving circumstances. Elements such as knowledge or willful blindness, an inferred agreement, and concealment translate from money laundering in drug trafficking to money laundering in the context of terrorist financing.[239] Knowledge that a felony created the proceeds, defining transfer to include the whole of the transaction instead of literal and limited participation, and deference to the executive and legislative branch on issues of national security, reflect the court's ability to adapt to new conditions. For money laundering and terrorist financing to reach the courts, however, further public and private international efforts in identifying, tracking, and weeding out those financial transactions from the commerce that sustains the globalized economy are required.

The importance of money laundering cannot be understated, both for tracking and enforcement against criminal objectives (terrorist or otherwise), as well as economic purposes. It is an underlying requirement for a healthy domestic and global economy that investors and the general public view the formal financial sector as reliable. Preserving the high degree of ethics for the financial sector is essential for public confidence, as knowledge of money laundering would have an insidious effect on specific institutions and on monetary structures worldwide.[240] Such corruption seen by the general public would affect their ability to trust financial markets and systems, with catastrophic economic and governmental consequences.

There is a delicate dance among nations between governmental trust and mutually beneficial investing, and the looming threat of seized accounts, banned businesses, blockages, and boycotts.[241] Jurisdictions and institutions that fail to cooperate with U.S. and international anti-money laundering efforts can find themselves burdened with painful sanctions, yet enforcement of internationally

239. *See* discussion *supra* Part VC.
240. *See* discussion *supra* Part II.
241. *See* discussion *supra* text accompanying notes 75-78.

recognized tenets has not always been consistent.[242] While domestic and international agencies and organizations work together for common goals, they are based on cooperation, and are only as strong as their subdivisions and contributing partners allow. The international community must change its attitude towards lax legal and regulatory arenas, as diminishing terrorists' ability to sponsor their objectives necessitates a "multi-dimensional approach."[243] The United States, or any organization, cannot accomplish this alone: "There is an absolute need for continuing action at the international level to deepen and widen the fight against money laundering and terrorist financing."[244]

Currently, efforts vary at each level, from international to individual U.S. states. The existing patchwork system of countries and organizations continues to frustrate international efforts to combat terrorist financing.[245] Contemporary counter-measures would benefit from a dedicated and specialized international organization, and the targeting of logistical cells as well as operational cells to address those who sponsor terrorism.[246] Domestically, institutions and law enforcement must use a coordinated and extensive approach from the federal level to individual states legislating to allow the freezing of assets and penalties at the state level.[247]

Recent changes to U.S. initiatives, such as the restructuring of many projects and agendas into the currently developing Department of Homeland Security (DHS),[248] are not reflected in this note. In recognition of the governmental collage of efforts to address domestic security concerns, President George Bush formed the new department to consolidate the responsibilities of over 100 different organizations into a concentrated division.[249] Additionally, U.S.

242. *See* discussion *supra* text accompanying notes 38-39, 91-115, 133-38, 141-50.

243. *National Money Laundering Strategy* at 3-4.

244. Annual Report, *supra* note 127, at 29. *See* Alan K. Henrikson, *Henry Kissinger, Geopolitics, and Globalization*, 27-SPG Fletcher F. World Aff. 95, 120-21 (2003) (calling for Americans and American institutions to lead world efforts for economic globalization consensus, solutions, and reform).

245. Matthew Levitt, *Stemming the Flow of Terrorist Financing: Practical and Conceptual Challenges*, 27-SPG Fletcher F. World Aff. 59, 62 (Winter/Spring 2003).

246. *Id.* at 63-65.

247. *Id. See id.* at 62-63, 68 (arguing for greater international cooperation and attention to inter-connected webs of terrorist organizations).

248. *See generally* Department of Homeland Security, *at* http://www.dhs.gov/dhspublic/index.jsp.

249. George W. Bush, *Department of Homeland Security*, 2 (June 2002) *at* http://www.dhs.gov/interweb/assetlibrary/book.pdf. The proposal was for "the most significant transformation of the U.S. government in over half-century by

Customs and Treasury's initiatives on money laundering were brought under DHS's "largest investigative arm," the subdivision of U.S. Immigration and Customs Enforcement (ICE).[250] Considering the magnitude, both in depth and width, of this restructuring, the organization and its agenda need time to gather speed and create significant change. It remains to be seen whether these changes will adequately address the concerns of this note.

Battling money laundering is an "unconventional war."[251] Our offensive and defensive tactics must be as responsive and flexible as the maneuvers of launderers, terrorists or otherwise. Without such comprehensive and pervasive efforts arising out of a new paradigm of money laundering that considers the methodologies of terrorist financing, the United States and international community will see little practical application of counter-money laundering statutes against future terrorist laundering.

largely transforming and realigning the current confusing patchwork of government activities into a single department whose primary mission is to protect our homeland." *Id.*

250. U.S. Immigration and Customs Enforcement, *ICE Mission*, *at* http://www.ice.gov/graphics/about/index.htm.

251. *National Money Laundering Strategy* at 8.