

## TESTIMONY



**Testimony of Michael Chertoff**  
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**United States Department of Justice**  
**on July 18, 2001**  
**Before the Permanent Subcommittee on Investigations**  
**of the**  
**Committee on Governmental Affairs**  
**United States Senate**

Chairman Levin, Ranking Minority Senator Collins, members of the Subcommittee, I am pleased and honored to appear before the Permanent Subcommittee on Investigations in support of Secretary O'Neill's strong focus on international cooperation and transparency in the OECD tax haven process as these same principles apply to the important related and vital issue of money laundering. I am not here as a tax expert, but rather as a representative of law enforcement. In my position as Assistant Attorney General of the Criminal Division, and from my perspective as a long-time federal prosecutor, I appreciate the opportunity afforded by this Subcommittee to provide some thoughts and insights on Justice and Treasury's fight against money laundering from the law enforcement perspective.

As the members of this Subcommittee are well aware and, indeed, have played a significant role in publicizing, money laundering constitutes a threat to the safety of our communities, to the integrity of our financial institutions and to our national security. The members of this Senate Subcommittee are to be credited for having done much to bring this critical issue before the public. In order to address this serious threat, we must apply and coordinate all the efforts and available resources of the federal government, along with those of our state and local authorities, as well as our foreign counterparts, if we are to be effective in our campaign against domestic and international money launderers. For this reason, I am pleased to appear with Secretary O'Neill to demonstrate the commitment of this Administration to fighting this battle. The Department of Justice is fully committed to using our money laundering statutes to the fullest extent possible to identify, investigate, and prosecute those who would launder the illegal proceeds of

drug traffickers, fraud perpetrators, organized crime groups, international terrorists and other criminals, and to seize and forfeit their ill-gotten assets.

### **Threats Posed by the Globalization of Crime**

When the money laundering laws were first enacted in 1986, they were designed to address what was primarily a domestic problem. Since 1986, money laundering increasingly has become a global problem, involving international financial transactions, the smuggling of currency across borders, and the laundering in one country of the proceeds of crimes committed in another country. Currency, monetary instruments and electronic funds flow easily across international borders allowing criminals in foreign countries to hide their money in the United States, and allowing criminals in this country to conceal their illicit funds in any one of hundreds of countries around the world with scant concern that their activities will be detected by law enforcement.

These new opportunities for international money laundering have been seized upon by international organized criminal groups based in Russia, China, Italy, Nigeria and Japan, among other countries, who look upon globalization as an invitation to vastly expand the size and scope of their criminal activities – whether these organized criminal groups engage in narcotics trafficking, securities fraud, bank fraud and other white collar crimes, trafficking in people, as well as more traditional violent crime offenses, such as extortion and murders. With their expanded power and reach, international organized criminals seek to corrupt police and public officials in countries around the world to protect their criminal enterprises and enhance their money-making opportunities. Foreign organized crime groups today threaten Americans, their businesses, and their property, as these groups work to expand their influence into this country.

The advent of new computer technology also offers new opportunities for criminal exploitation in the area of cybercrime. One area of particular concern is the emergence of Internet gambling businesses. Because the Internet allows instantaneous and anonymous communications that are difficult to trace to a particular individual or organization, the medium is attractive to organized crime and other bad actors. Criminals wanting to launder illegally-received profits can do so through the anonymity of Internet casinos, which typically exercise

little control over money movement through their facilities, and make it difficult to identify and locate exactly which jurisdiction has authority over their activities. In addition, cybercriminals may also launder money through the use of "e-cash" and "smart card" manipulations that allow transactions on Internet gambling, as well as on other websites. Given the anonymous nature of these operations, law enforcement officials are severely hampered in their efforts to detect and prevent crimes being committed by unknown and untraceable persons.

In this kind of environment, law enforcement is challenged to the utmost. The criminals hold the advantage in almost every respect. Criminals are able to adapt to changing circumstances quickly. They pay no heed to the requirements of laws and regulations and recognize no sovereign's borders. Further, these criminal groups have learned to be adaptable and innovative and as we succeed in a new enforcement effort or implement a new regulatory regime, they quickly alter their methods and modes of operation to adapt to the new circumstances.

### **The Money Laundering Statutes**

The challenges facing law enforcement in this environment make it necessary that our investigators and prosecutors have all of the legal and regulatory tools, as well as international legal assistance mechanisms they need to keep up with and ahead of those who launder the proceeds of crime. Consequently, the message I wish to convey today is that we need, and are committed to using, all of the legal and regulatory tools we have at our disposal today as we seek to keep up with this challenge. Moreover, some of these tools, such as our money laundering statutes themselves, need to be updated in order to keep pace with the globalization of commerce and crime. I look forward to working with you during my term in office to update those laws, especially with respect to how they operate in the international money laundering arena.

The money laundering statutes which Congress has provided for us, both in the Bank Secrecy Act and the Criminal Code, are major weapons in our war against the laundering of proceeds of drug trafficking and other serious crimes. Over the past five years, the Department of Justice has prosecuted more than 2,000 defendants each year for violations of those statutes.

Approximately 50 percent of these cases involve the proceeds of drug trafficking. The remainder involve the proceeds of white collar crimes, such as health care fraud and telemarketing fraud, as well as the proceeds of organized crime activity such as prostitution, gambling and extortion. These money laundering statutes carry substantial sentences and also include forfeiture provisions that are used to forfeit the profits made and property traceable to this criminal activity.

### **The Importance of Regulatory and Reporting Requirements**

Merely criminalizing financial crimes and money laundering, however, is not enough. Any nation serious about detecting, investigating, targeting and prosecuting these crimes, and seizing and forfeiting the proceeds and instrumentalities of such criminal conduct, must establish a record keeping and reporting regime, commensurate with the nature of that nation's financial crimes and money laundering activities, to ensure that financial information revealing suspected criminal abuse of financial systems is made available in a timely manner to law enforcement and regulators.

The recording and reporting are triggered by the would-be criminal's activities, and serve the purpose not only to alert federal, as well as state and local law enforcement to these potentially criminal activities, but also to protect the safety and soundness of the reporting institutions themselves. No legitimate financial institution wants to facilitate the receipt or movement of illicit proceeds.

Large value reporting such as the \$10,000 Currency Transaction Report (CTR) and the Currency and Monetary Instruments Reports (CMIR) drive cash-based money launderers to "smurf" their illicit currency in amounts below the reporting requirements and to smuggle the currency in every conceivable conveyance and product. Utilizing these CTRs and CMIRs, law enforcement has targeted illicit cash that moves directly into the U.S. financial system.

Money laundering schemes are successful as long as they go undetected. Without Suspicious Activity Reporting, which is used for reporting suspected currency transactions and suspected financial crime, a substantial amount of financial crime and money laundering would not come to the attention of law enforcement. Suspicious Activity Reports (SARs) are filed

for individual suspicious financial transactions, but following the leads provided in SARs allows law enforcement to identify both abuse of financial institutions to launder money and eventually the underlying criminal activity. Without those leads, much of that activity would continue unchecked. Whatever the nature of the underlying criminal activity, the entities in the best position to enable law enforcement to "notice" this criminal activity are the financial institutions with whom the money launderers are forced to deal. These SARs have become an invaluable tool for our law enforcement agencies to target criminals and uncover money laundering schemes, and we are getting better every day, especially with enhanced computer capabilities, in making effective use of these SARs. Examples of law enforcement's successful use of SARs can be found in FinCEN's two editions of the "Review of the Suspicious Activity Reporting System."

### **The Importance of International Cooperation in Fighting Money Laundering**

Of course, all of our efforts in the United States to detect and prevent money laundering are rendered moot if criminals can simply smuggle their illegal proceeds in bulk into another country and deposit the proceeds into the banking system of that country, and thereby into the international financial system, with impunity. That is why there must be no break in the chain of effective anti-money laundering regimes around the world. It is therefore critical that the United States work on the bilateral and multilateral levels to promote effective anti-money laundering regimes in other countries. All these regimes must include the criminalization of money laundering and an effective regulatory and reporting regime with effective bank supervision. They must also provide for the timely exchange of financial information between countries. We must work to ensure that there are no safe havens for dirty money and that communication and cooperation among law enforcement authorities around the world work easily and well.

The Criminal Division works extensively to provide assistance to countries intent on improving their money laundering and asset forfeiture laws and enhancing their enforcement programs. Nevertheless, while many jurisdictions do not have the proper anti-money laundering statutes and regulations in place, the U.S. Government, on its own, cannot compel the necessary changes. It is by working in concert with our international partners that together we are able to promote

greater and greater compliance and thus, in the end, will be able to disrupt the flow of criminal proceeds around the globe and deprive criminal organizations of their accumulated wealth.

In order to promote this international mandate, the Department of Justice joins with the Departments of the Treasury and State to play a leading role in the G-7 Financial Action Task Force against Money Laundering (FATF). In addition to adopting and promoting the 40 Recommendations on Money Laundering, which have become the global standard for an effective anti-money laundering regime, the FATF last year implemented its initiative on "Non-Cooperative Countries and Territories" (NCCT), in order to spotlight publicly those jurisdictions with the highest levels of money laundering and the weakest anti-money laundering legal and regulatory framework. Last year, the FATF identified 15 jurisdictions as being "noncooperative" in money laundering matters. At that time, the Department worked with the Treasury Department and other federal regulators on the drafting of FinCEN Advisory warnings explaining in detail the shortcomings relating to these 15 jurisdictions. Last month, the FATF removed four countries (the Bahamas, the Cayman Islands, Liechtenstein and Panama) from the list because of the substantial steps they have taken to improve their anti-money laundering regimes. But, at the same time, six new countries (Burma, Egypt, Guatemala, Hungary, Indonesia and Nigeria) were added to the list.

This multilateral effort has proven to be successful in focusing the world's attention on countries that do not have adequate standards in anti-money laundering enforcement and inspiring named countries to address their shortcomings in this area. In fact, the NCCT exercise has been uniquely successful and the most important international anti-money laundering development since the promulgation of the 40 Recommendations and the beginning of the FATF's mutual evaluation program ten years ago. This effort has changed the way the world fights money laundering - eleven countries changed some or all of their laws in response to the NCCT list in less than a year - and it will continue to have the same impact as we go through the second round. The Department is proud to play a significant role in this and other FATF endeavors.

## **Conclusion**

I would like to conclude by expressing the gratitude of the Department of Justice for the continuing support that this Subcommittee has demonstrated for our anti-money laundering activities. The Department believes that we must continue to strengthen our anti-money laundering laws, not only to fight drug trafficking but also to fight terrorism, white collar crime and all forms of criminal activity which generate or utilize illegal proceeds. Again, we in the Department of Justice look forward to working alongside our Treasury colleagues with this Subcommittee and with your colleagues in the Senate and the House in making our shared vision of anti-money laundering a strong and effective reality.

I would welcome any questions you may have at this time.

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