Testimony of Mary Lee Warren

Deputy Assistant Attorney General, Criminal Division

United States Department of Justice

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Chairman Collins, Senator Levin, and Members of the Subcommittee, I am pleased to appear before the Permanent Subcommittee on Investigations to offer the Department of Justice's views regarding the use and abuse of correspondent banking relationships in the United States. I serve as Deputy Assistant Attorney General, overseeing money laundering and asset forfeiture issues for the Criminal Division. Prior to this position, I was Chief of the Narcotic and Dangerous Drug Section. Before that, I was an Assistant U.S. Attorney in the Southern District of New York for 11 years, prosecuting drugs, money laundering and other cases.

The Criminal Division has been pleased to provide the Subcommittee with information concerning U.S. law enforcement activities related to our anti-money laundering efforts and correspondent bank relationships, and to share our views and insights on the prosecutive and investigative obstacles and hindrances presented by correspondent bank accounts. Further, we look forward to continuing our cooperative efforts with the Subcommittee to work towards the best possible statutory and regulatory framework to support our anti-money laundering enforcement efforts.

Today, you have asked the Department of Justice to focus its remarks in three main areas identified in the Subcommittee's Minority Staff Report: (1) the extent to which money laundering through U.S. correspondent bank accounts is a significant law enforcement concern; (2) the legal and practical challenges in seizing putative illicit funds and identifying beneficial owners of and depositors into such accounts; and (3) our views on recommended amendments of forfeiture law related to correspondent bank accounts and other Subcommittee recommendations.

Subcommittee Minority Staff Report on Correspondent Banking

At the outset, the Department would like to commend the Subcommittee for its fine efforts in carefully researching and producing the report on correspondent banking. As the Subcommittee members and your staff know, money laundering is an increasingly international phenomenon, involving trillions of legitimate dollars masking hundreds of

millions of dollars of illicit proceeds flowing through the same international and domestic clearinghouses every day.

Access to the U.S. financial system through dollar-currency clearinghouses is fundamental to the world's legitimate financial markets, and correspondent banking is an essential service that financial institutions provide to legitimate customers around the globe. Unfortunately, permitting legitimate account-holders to have access to these financial services also necessarily exposes the same financial system to access by international money launderers and other criminals. Your report has correctly identified and highlighted this significant vulnerability of our financial system that has been and continues to be exploited by money launderers and other financial criminals worldwide. Infiltration of the global financial markets by substantial sums of illicit proceeds erodes the integrity of the entire system, as well as erodes the tax base of the affected countries. The Subcommittee's report on correspondent banking, as well as the previous one on private banking, make clear that without the proper monitoring and supervision, the legitimate and necessary financial mechanisms can and undoubtedly will become corrupted.

Impact of Correspondent Banking on Law Enforcement

The international movement of illicit proceeds through correspondent bank accounts servicing foreign institutions is often difficult to detect. Further, even when detected, law enforcement may encounter significant hurdles in tracing, seizing, and forfeiting such funds.

Typically, correspondent bank accounts are used in the "layering" or "integration" stages of money laundering, in which the criminal financiers attempt to mask the origin and nature of the underlying funds, after the proceeds have already been "placed" into the financial system. Determining the true beneficial owner of funds being transferred through a correspondent account can be a very difficult challenge for investigators in these second and third stages of money laundering.

Again and again, law enforcement investigations – despite best efforts by dedicated professionals – continue to be frustrated by the movements of criminally-derived funds into and through certain jurisdictions where our ability to identify the true beneficial owner is impaired or prevented. Most often, this frustration occurs, as noted in your report, when U.S. financial institutions offer banking relations to foreign "shell" banks, "offshore" banks, and other banks located in countries that provide broad bank secrecy protections for customers and that have little or no effective anti-money laundering or forfeiture laws or regulations.

In addition, in many cases, a foreign bank may claim ownership of the entire amount in a correspondent account, thus protecting and shielding the actual identity of the underlying owner of the funds and allowing the owner to be shielded by the facade of the bank. Some foreign governments also impose legal restrictions and obstacles making it more difficult – if not impossible – to determine the true identity of the owner of the funds. In short, overly broad bank secrecy, ineffective licensing and regulatory

oversight, and lack of effective anti-money laundering controls combine to make such cases a sometimes insurmountable challenge to financial crime investigators and regulators.

In foreign jurisdictions where "shell" banks or "offshore" banks operate with impunity, banks must be required to keep and maintain proper account and transaction records – particularly, as they relate to the true beneficial owners of funds or property – as banks are required to do in the U.S. It is important to keep such records to protect the bank against any liabilities assumed from questionable customers and to facilitate responses to the legitimate inquiries of effective law enforcement. The U.S. Government regularly works with a number of foreign governments to help establish anti-money laundering controls over their financial institutions.

Understanding that there are locations where foreign banks are not required to maintain banking records, U.S. institutions must then take all reasonable steps to ensure the bona fides of the foreign bank account-holder. U.S. institutions must understand the scope and rigor, if any, of the anti-money laundering and forfeiture regime under which the foreign institution operates – as well as the risks and consequences resulting from doing business with such entities. In addition, U.S. institutions should monitor their correspondent banking relationships on an ongoing basis, including the transaction activity and the legitimacy of the underlying account-holder(s). Further, law enforcement must be permitted to pierce bank secrecy laws, where appropriate, in order to obtain important financial records.

In sum, U.S. financial institutions must be vigilant, and the U.S. Government must ensure that our laws provide the necessary tools to prosecute individuals who knowingly facilitate the transfer of illicit funds through correspondent bank accounts, and to identify, seize, freeze, and forfeit criminal proceeds transacted through such accounts.

Successes in the Fight Against International Money Laundering

In the context of to the Subcommittee's focus today on correspondent bank accounts and their potential threat to the integrity of the international financial system and legitimate needs of law enforcement, I would be remiss if I did not outline the general facts of a few major successes at the Departments of Justice and the Treasury in our coordinated fight against international financial crime. As the Subcommittee is aware, the two Departments have worked hard together and scored important recent successes in the fight against money laundering.

"Operation Skymaster" was a highly successful undercover operation attacking money laundering that was taking place through the Black Market Peso Exchange (BMPE). From March 1997 through May 1999, Operation Skymaster undercover agents and informants managed to gain the trust of Colombian peso brokers working for Colombian narcotics traffickers. The BMPE system relies on peso brokers in Colombia who convert drug dollars collected and held in the United States into pesos for the Colombian drug suppliers in Colombia through the use of U.S. consumer goods imported into Colombia for Colombian businesses and paid for in U.S. drug dollars.

In this case, the peso brokers directed the undercover agents to pick up the proceeds from drug sales at particular locations and at particular times. The undercover agents then deposited the drug cash into government-controlled bank accounts and wire transferred such funds to bank accounts designated by the peso brokers. Using the Colombian BMPE system, the peso brokers, in turn, wire transferred the dollars to U.S. exporters as payment for goods received by the Colombian importers. Continuing the laundering cycle, the importers received confirmation that the wire transfers were sent and paid the peso brokers the equivalent amount in pesos in Colombia. Thereafter, the peso brokers delivered the pesos to the Colombian drug trafficking groups to complete the cycle.

Operation Skymaster combined the strengths of the U.S. Customs Service, U.S. Attorney's Office in Mobile, Alabama, and Department of Justice's Criminal Division, and has already resulted in 12 convictions on money laundering and drug conspiracy charges.

Similarly, in December 1999, five defendants were indicted in Atlanta, as part of the Organized Crime Drug Enforcement Task Force (OCDETF) anti-money laundering investigation entitled "Operation Juno," which involved a multi-million dollar money laundering scheme. Undercover agents participating in Operation Juno picked up drug proceeds at the direction of the money launderers usually ranging between $100,000 and $500,000 in U.S. currency in Dallas, Houston, New York, Newark, Providence, and Chicago, as well as Madrid and Rome. These funds were subsequently wire-transferred from the originating (collection) city to an undercover bank account in Atlanta and then distributed to various accounts in the U.S. and around the world. As in Operation Skymaster, the drug proceeds in Operation Juno were laundered through the Colombian Black Market Peso Exchange, as peso brokers "exchanged" the dollars on deposit in the undercover bank accounts for Colombian pesos obtained from Colombian importers of U.S. goods. Operation Juno combined the investigative and prosecutive efforts of the Drug Enforcement Administration (DEA), Internal Revenue Service-Criminal Investigation Division (IRS-CID) and U.S. Attorney's Office in Atlanta.

While these cases provide examples of successful investigations in terms of indictments, convictions, and forfeiture of assets, they also have revealed and highlighted some problems facing law enforcement in tracing and forfeiting criminal proceeds in foreign countries. Our money laundering laws, first enacted in 1986 to address a primarily domestic problem, have not kept pace with the developments in technology and international commerce since that time. The forfeiture cases spawned by Operations Skymaster and Juno investigations underscore the difficulties in forfeiting illegal proceeds transferred through correspondent bank accounts.

The problems encountered fall into three categories. First, due to the existence of offshore banks with representative offices in other foreign countries, it is difficult for U.S. law enforcement to determine the actual location of the funds and in which jurisdiction we should focus our forfeiture efforts. Even where U.S. law enforcement requests the assistance of the correct foreign jurisdiction, our ability to forfeit these funds depends

upon the strength of the forfeiture laws in that jurisdiction, which, if available, are frequently incompatible with ours, and upon the cooperation of the foreign government.

The second category of problems arises from the limitations of domestic U.S. forfeiture law that can open to complex, time-consuming legal issues with respect to jurisdiction and venue for the forfeiture case. This is particularly true in cases when U.S. law enforcement does not know initially the final destination or beneficiary of the funds sent through a correspondent account and only determines this fact at a later point in time.

Finally, these problems are exacerbated by the statutory limitations that require the Government to bring forfeiture actions against "fungible property" – such as funds in a bank account – within one year from the date of a money laundering offense (Title 18 U.S.C. Section 984(b)). If the Government does not file its forfeiture action within that time, the Government is required to meet strict tracing requirements that can rarely be satisfied in cases involving correspondent bank accounts. Depending upon who claims a property interest in the funds seized from correspondent bank accounts, the Government may be required to prove that the respondent-bank itself was involved in the money laundering offense (18 U.S.C. Section 984(c)(1)) – often, a very difficult, if not impossible, task.

Problems presented by correspondent bank accounts in forfeiture cases have arisen not only in Operations Skymaster and Juno, but in other cases as well. For example, in Operation Casablanca, a money laundering prosecution based in Los Angeles involving foreign banks and their correspondent accounts, Criminal Division prosecutors in Washington, D.C. filed civil forfeiture complaints in the District of Columbia against the funds wire transferred to foreign accounts, pursuant to the authority granted in Title 18, U.S. Code, Sections 981(a) and 984, and Title 28 U.S. Code, Section 1355(b). Our efforts to have these funds frozen and forfeited met with a variety of results, depending upon the jurisdiction to which they were transmitted. In some cases, we received cooperation from our foreign counterparts and in others, we did not. In some cases where there was cooperation, challenges and questions were raised as to the appropriate venue and jurisdiction for the action, as well as to the actual location of the funds.

In Operation Casablanca, funds had been wire transferred to a bank account in a foreign location. After filing a civil forfeiture complaint, the Department requested assistance from the foreign government in freezing these funds, pursuant to the 1988 U.N. Vienna Convention. As a result, our foreign counterparts interviewed employees of the bank and determined that the bank, as well as the account to which the funds had been transferred, were actually located in another jurisdiction.

Pursuant to a mutual legal assistance treaty with the second country, the Department advised authorities that we had information concerning the transfer of drug proceeds to bank accounts within its jurisdiction. Because the laws of this second country only recognized criminal forfeiture and did not allow for assistance to the United States in a civil forfeiture action, the government of the second country opened its own investigation based on the information we provided, and subsequently froze the

accounts. However, because the defendants were not then before that court, it was unclear whether the funds could be forfeited criminally. In addition, the bank did not appear to have any actual buildings or branches within the court's jurisdiction, and the assets securing the bank's obligations were not located in the country. Finally, having come almost full circle, it was determined that the assets we were pursuing were likely located in the foreign bank's correspondent account in a U.S. bank in New York City.

Indeed, there remains a great deal of uncertainty today as to the prospects for success in the U.S. civil forfeiture action, because there is a potential claim that the assets in question were actually "located" in the foreign bank's correspondent account in New York. This fact draws into question whether the District of Columbia is the appropriate jurisdiction for purposes of the underlying civil forfeiture action. Unfortunately, however, the Government is now precluded from filing a complaint in New York because of the one-year limitation under Section 984, discussed previously.

This scenario is one of many examples which illustrates the difficulties we face in tracing, seizing, and forfeiting assets held in correspondent accounts of foreign banks. One should further note that the above example described a situation where the foreign governments were cooperative with the U.S. requests. In many cases, such cooperation cannot be obtained, and the difficulties are further exacerbated if we are dealing with a non-cooperative bank secrecy jurisdiction.

Report Recommendations

Having described these cases, I would now like to shift my remarks to some of the recommendations in the Subcommittee's Minority Staff Report and other suggested solutions. The Minority Staff Report includes six recommendations "to reduce the use of U.S. correspondent banks for money laundering [purposes]." We believe that the first four of these recommendations are primarily regulatory in nature and are therefore best addressed by the bank regulators and supervisors. The final two recommendations, however, deal with law enforcement issues; they suggest that: (1) the U.S. Government "should offer improved assistance to U.S. banks in identifying and evaluating high[-]risk foreign banks," and (2) "forfeiture protections [provisions] in U.S. law [should] be amended" to enhance our ability to seize and forfeit illicit funds flowing through correspondent bank accounts. These are valuable recommendations, and we agree that they warrant further study and review. We would be pleased to work with the Subcommittee members and staff in revising forfeiture legislation to accomplish these worthy goals.

With respect to the part of the recommendation relating to improving communication channels between the U.S. Government and U.S. banks, it is important to note that U.S. law enforcement currently participates with banks and other representatives from the financial community in an effort to disseminate anti-money laundering and financial crime-related information. The Departments of Justice and the Treasury are actively engaged with bank regulators and the banking community. For example, the Department participates in: (1) the Bank Secrecy Act Advisory Group with representatives from the banking and securities industry and money service

businesses; (2) the Suspicious Activities Review group that recently produced the "SAR Activity Review," a series of anti-money laundering publications; and (3) outreach groups concerning the operation of the Black Market Peso Exchange system.

As to the portion of the recommendation regarding advising banks of specific high-risk activities, the Departments of Justice, the Treasury, and State have been active participants in the Financial Action Task Force's (FATF's) initiative on "Non-Cooperative Countries and Territories." In an effort to encourage other countries to strengthen their anti-money laundering regime, the Department of Justice's Criminal Division works multilaterally to bolster coordinated worldwide enforcement efforts against financial crimes. This program endeavors to identify publicly the locations of the most prevalent money laundering activities in the world and the jurisdictions with the weakest anti-money laundering legal and regulatory framework. Indeed the FATF has identified 15 jurisdictions recently-named by the FATF as being "noncooperative" in money laundering matters. As well, the Department worked well with the Treasury Department and other federal regulators on FinCEN Advisory warnings explaining the shortcomings relating to these 15 jurisdictions.

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. The Criminal Division also works extensively to provide assistance to countries that seek to improve their money laundering and asset forfeiture laws and enhance their enforcement programs.

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. We need the cooperation of our foreign counterparts to disrupt the flow of criminal proceeds around the globe and deprive criminal organizations of their ill-gotten gains. We must continue to work, in concert, with our international partners to break down the obstacles and barriers that insulate, protect, and disguise the ill-gotten gains from detection in those jurisdictions where adequate anti-money laundering controls are lacking.

With respect to the last recommendation amending our asset forfeiture laws as you suggest, we believe that such a provision could be beneficial in terms of pursuing and prosecuting forfeiture cases and would, as noted previously, be worthy of further study and review. A provision of this kind could eliminate the need to depend upon the enactment of foreign forfeiture law and the willingness of foreign authorities to cooperate. In addition, such a provision could disrupt criminals' attempting to shield their ill-gotten gains behind bank secrecy laws of uncooperative jurisdictions. We strongly believe, as mentioned previously, that illicit proceeds – wherever located in the world – should not be hidden from detection or immune from prosecution based upon weak anti-money laundering enforcement. There should, in our view, be "no safe haven" for money that is the proceeds of crime. Of course, any such provision would have to be

carefully balanced to take into account not just the needs of law enforcement but also concerns about the competitiveness of the U.S. financial system.

Conclusion

Once again, I commend the Subcommittee and your staff for focusing attention on this important issue and preparing this report. We look forward to working with you on solutions to the problems highlighted in your report. I will be happy to respond to any questions you might have.