

MONEY LAUNDERING --- A CHALLENGE TO DEMOCRACY*

by

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I thank the officers and the members of the Asian Development Bank for this opportunity to speak today in *ADB's 2nd Workshop on Strengthening the Philippine Anti-Money Laundering (AML) Regime*. We are aware that money laundering is a scourge and we have established legal frameworks to minimize, if not eliminate, this problem. No ifs and buts about it, money laundering is a real scourge in society, because it allows its criminal perpetrators to prove that crime does pay, and that crime enables one to pole-vault society's ladder of success.

In 1998, an estimated five trillion US dollars in assets were held in the name of offshore entities. The traumatic truth is that the more significant portion of this amount constitutes illegal wealth, mostly drug money. Money laundering is big business, for it is an essential component of international financial fraud, market manipulation, illegal arms dealing, human smuggling, theft of intellectual property and corruption of government.¹

For petty criminals, money laundering is hardly necessary. By a mere handshake, in which paper money is folded, the proceeds can be transferred

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¹ Jack A. Blum, Esq. Testimony before the Committee on Banking and Financial Services of the U.S. House of Representatives on Efforts to Combat Money Laundering, 11 June 1998. Available at <http://www.financialservices.house.gov/banking/61198jab.htm>. (last accessed: May 17, 2005).

from one hand to another without much attention.² The proceeds of petty crimes likewise are not substantial. They are usually spent on bare necessities. But money laundering on a large scale, perpetrated by organized crime groups and white-collar criminals, is a different story. As their profits are substantial, breaking the connection between the crime and the money is a herculean task.

It is given that criminals engage in criminal acts to generate profit. For criminals to enjoy their profits without jeopardizing their source, they must first process the money to disguise its illegal origin.³ This process of making dirty money clean is the essence of money laundering. It involves moving money in and out of the financial system to obscure its origins. As experts know, money laundering has three stages, namely, placement, layering and integration.

Money laundering starts with the effort to convert cash into some other form of asset. At this stage, commonly referred to as placement, dirty money is most vulnerable to detection because of its proximate connection to the predicate crime. It is necessary at this time to destroy the link between the crime and its proceeds and thereafter introduce the money into the financial system. Criminals employ numerous tactics to accomplish these objectives. Some simply physically transport the cash out of the venue of the crime. But commingling the dirty money with income from cash-rich

² This practice is called *hawala* in Pakistani. A federal grand jury in Baltimore has indicted 39 people in an international money laundering scheme using an informal currency transfer system known as *hawala*. Available online at <http://www.reuters.com/article/domesticNews/idUSN2018250820070921> (last accessed: Sept. 20, 2007).

³ Financial Action Task Force, What is Money Laundering? Available at http://www1.oecd.org/fatf/MLaudering_en.htm#What%20is%20money%20lauding (last accessed: Sept. 20, 2007).

enterprises is undoubtedly still the most convenient way of embedding crime money into the global financial system, as it raises the least suspicion.

After a money launderer has introduced dirty money into the financial system, we know that the next step is to eliminate the thread of connections between the proceeds of the crime and its authors. During this stage, known as layering, the money launderer seeks to mask the ownership of funds. Over the years, there has been a bothersome, increasing use of legal entities to disguise the true ownership of illegal proceeds. Equally disquieting is the employment of gatekeepers or financial professionals who provide immoral advice in laundering criminal funds.⁴

If the placement and layering stages are successful, the money will appear clean as white and ready to be introduced into the mainstream of the regular economy. During this stage of integration, the laundered funds are sent back to their origins, so that the owners can freely invest or consume the funds.⁵ The laundered money may be sent back to its origins in the form of loans, investment profits, or capital gains from various transactions, amongst others.⁶

In the international front, concerted efforts by governments to fight money laundering have been relentless for the past fifteen years. As we know, the main international agreements addressing money laundering are the *United Nations Vienna Convention against Illicit Traffic in Narcotic*

⁴ FORTY RECOMMENDATIONS, Introduction.

⁵ *Id.*

⁶ *Id.*

Drugs and Psychotropic Substances (the Vienna Convention of 1998) and the ***1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime***.

The Vienna Convention was signed in 1988 under the auspices of the United Nations, and it became effective in November 1990. The signatories, which included the G7 and European Union countries, agreed to unite to combat the laundering of the proceeds of drug trafficking. The measures included the criminalization of money laundering and closer international cooperation. In addition, an international body was established to oversee the implementation of the principles of the Vienna Convention. This organization is the Financial Action Task Force (FATF) and is based in Paris. Later, the international effort to combat the laundering of proceeds of drug crime was extended to cover the laundering of proceeds of other serious offences, including terrorism.

In the Philippines, we have responded as best as we could to this clarion call to extirpate the evil of money laundering. On September 29, 2001, our Congress enacted Republic Act No. 9160⁷ or the ***Anti-Money Laundering Act of 2001*** (AMLA), which criminalized money laundering.

The Supreme Court, for its part, has promulgated the ***Rule of Procedure in Cases of Civil Forfeiture; Asset Preservation; and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense under***

⁷ An Act Defining the Crime of Money Laundering and Providing Penalties and for Other Purposes. [Republic Act No. 9160 as amended by Republic Act No. 9194].

Republic Act No. 9160, as Amended,⁸ which took effect on December 15, 2005. The Rule has provisions on the remedial actions that the government may initiate to prosecute money laundering cases. There are provisions on asset preservations, *ex parte* issuances, and the summary nature of the hearings—all in the hope of expediting the procedure while safeguarding the rights of those on the other side of the prosecution table. We also established special courts to handle anti-money laundering cases.

But even with these efforts, the fight against money laundering should be continuously waged by reviewing the strength and weakness of our legal arsenal of power. Crimes are undergoing a mega metamorphosis as to their evil nature and so, too, are the types and stripes of criminals. Gone was the time when crimes and criminals were but domestic concerns of states and governments: when the Mafia operated its evil empire only within the jurisdiction of the states of the United States; the Yakusa restricted its criminal tentacles to Japan; and the Triads confined their illicit activities to China and HongKong.

The 1990s saw the dramatic change in the theater of operation of these big-time money launderers. A crime expert, James Richard, noted that money laundering ceased to be local in character and took on a transnational character.⁹ In his studies, Richard cited some of the historical events that ushered this new specie of transnational crime and criminals, namely, the creation of free trade blocks such as the European Union and the 1986 North American Free Trade Agreement (NAFTA); the coming of the World Wide

⁸ A.M. No. 05-11-04-SC, promulgated November 15, 2005.

⁹ Richards, *Transnational Criminal Organizations, Cybercrime and Money Laundering*, 1898 ed., p. iii.

Web in 1990; the collapse of the Soviet Union in 1991; and the commercialization of China, including the hand-over of HongKong in 1997. With the inflow of these events, money launderers have gone global and, inevitably, the fight to contain them has gained added dimensions of difficulty.

Experts, for instance, stress the need to focus our sight on the escalating abuse of cyberbanking on the part of money launderers. Essentially, cyberbanking is the use of digital or electronic means of payment; it is simply, a payment message bearing a digital signature. Cyberbanks are mushrooming on the Internet, and we know that they are not banks in the traditional sense. They do not offer deposit services, but only act as intermediaries in financial transactions. They are hardly regulated and they operate in an environment where identities are concealed; they transcend state borders, and conclude instantaneous transactions involving unlimited amounts. A cyberbank can easily operate anywhere in the world, move digital currency or e-money from electronic home to electronic home, and use electronic forwarding systems without danger of detection. Indeed, some of these cyberbanks exist as mere websites on the Internet, with their main server plugged into a laptop/cellular telephone system. It is disturbing that cyberbanking allows any Tom, Dick and Harry to move billions of currency anywhere in the world, as fast as the wire transfer and computer banking systems allow. To money launderers, its beauty is that hardly is its transaction effectively covered by traditional banking regulations.

My short point is that law and law enforcement should, at the very least, keep pace with the fast changing nature of money laundering as a crime and the money launderer's evil imagination, which appears not to be restricted by any longitude or latitude. All these challenges demand that we examine our traditional concepts of law, especially its snail-paced speed and lack of universal reach. These limitations on reach should be re-studied in light of successful efforts to give a universal reach to laws governing crimes against humanity, genocide and terrorism. Looking back, these limitations on reach are what rulers in the medieval age agreed upon to protect the divine rights of kings, a doctrine which mothered the modern immunities of heads of state with all of its excesses. But today, the problem is worse, because with the weakness of hoary laws, real sovereignty is being grabbed from the people and their chosen representatives by international criminals. It is but proper, therefore, to have a paradigm shift in some of our legal concepts even if, for a long time, we have held them beyond change while professing the immutability of change.

I close with what the writer Mencken calls the "obvious of obviousities" – the challenge that unless we wake up, the day will dawn when weak democracies like the Philippines, will find themselves being run by money launderers, who slowly but surely are infiltrating and taking control of our economic and civil institutions. Money launderers are not ordinary criminals. They are drug traffickers, arms smugglers and terrorists who undoubtedly, pose the greatest threat to good governance. The time

when they take control of our government is the time to kiss our democracy goodbye.

Prescinding from these premises, this fight against money launderers ought to be the main event in our never-ending struggle to preserve our fragile democracy. For I respectfully maintain that if there is any clear and present danger to our democracy, it is the eminent threat of dirty money corrupting our government and poisoning the wellspring of our financial systems with its impurities. Unfortunately, our time, our energy, appear to be wasted on too many sideshows -- sideshows that take away our attention from the main enemies, sideshows that may momentarily entertain us, but where the last laugh may come from these money launderers. Our task is to deny them this last laugh.

Thank you and good day.mj