

## **Banks Could Better Match End-of-Day Data to Uncover Laundering: Former U.S. Prosecutor**

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Banks should do a better job collating end-of-day transaction data to determine if their clients are micro-structuring deposits across several branch locations, according Lisa Noller, a former assistant U.S. attorney in Chicago.

Money launderers could be avoiding reporting thresholds by breaking up large deposits with different tellers or at different locations over the course of a single day, said Noller, now a lawyer at the Milwaukee, WI-based Foley & Lardner LLP. By better matching all of the transactions to the depositor, banks could more regularly report the suspicious activity, she said.

Noller, a former lecturer at the University of Chicago, recently spoke with reporter Larissa Bernardes about the role banks play in prosecutions and the need for Bank Secrecy Act reporting requirements for attorneys. What follows is an edited transcript of their conversation.

### **What are some the biggest challenges in prosecuting money launderers?**

Without having a confidential informant in the organization who can record conversations or provide a historical perspective, it's generally a difficult crime to uncover and pursue. The point of money laundering is to hide assets, so traditional investigative methods, such as serving subpoenas and interviewing people who supposedly have relevant information, aren't always fruitful without more. In addition, money launderers are getting increasingly creative in how they launder their illegal proceeds, such as incorporating entities to conceal their proceeds.

### **What was the most creative money laundering scheme you came across?**

The first was a physician who owned an out-patient psychotherapy clinic. We could prove he was overbilling Medicare by millions of dollars for services performed at that clinic. However, since he invested most of his illegal proceeds into a second clinic, and our investigation was conducted during the period of legal uncertainty following the Seventh Circuit's decision in Santos, his simple reinvestment prevented us from pursuing a money laundering investigation. He was convicted for his healthcare fraud.

The second involved two car dealers who ran a racketeering enterprise with three car dealerships, designed to conceal drug proceeds. The dealerships forged all paperwork associated with the drug dealers' luxury automobile purchases so each time a law enforcement agency would subpoena records from the dealerships it appeared as though the transaction was appropriate. In reality, the car dealers had agreed verbally with the drug dealers to accept over \$10,000 in [specified unlawful activity, or SUA, money] for

the cars, but structure the paperwork to make it appear as though the drug dealer put less than \$10,000 down and financed the automobiles. The car salesmen also agreed to place a false lien on the vehicles, to make it appear as though the alleged financing arrangement was legitimate. In this way, any time law enforcement agents subpoenaed records or seized the cars in connection with illegal activity, the car dealers were able to recover the vehicle and return it to the drug dealer. They were able to evade law enforcement for over a decade, even though they were regularly subpoenaed for records.

**How did the June 2008 Supreme Court rulings that narrowed the definition of money laundering affect prosecutions? Are things back to normal after the passage of legislation effectively reversing the decision?**

Yes, things are now back to normal. However, there was a period of time where money laundering cases were on hold, while prosecutors and the Justice Department waited for the Supreme Court's ruling. In the meantime, prosecutors and agents developed as much information as possible to prove the criminals were laundering their profits and not the money they needed to continue their legal or illegal operations. They will continue to present that information to juries because it makes the cases stronger.

**How would you characterize the role banks have played in rooting out dirty money?**

In my experience, they've been cooperative. They respond to subpoenas and provide witnesses who can testify to the records they provide. While they could improve their internal controls, given the goal of money laundering, banks are, on the whole, pretty good at filing SARs (suspicious activity reports) and CTRs (currency transaction reports).

**What can banks do better?**

I think banks can and should insist that every customer engaging in a suspicious transaction provide identification. Bank employees should also be sure to obtain, look at and copy all IDs associated with a new account to include the accountholder as well as any beneficiaries of the proceeds in the account. If someone tries to conduct a transaction without having their information on file first, the bank should require the accountholder to appear. They should also collect all information required when they fill out a CTR, and include as much information as possible on any SAR.

Banks could also do a lot more with end-of-day information coordination. For example, money launderers successfully conceal their transactions by using different tellers and/or different branches within the same bank. If bank branches and employees were better at matching the depositor to his several transactions in a single day, it would be easier to catch money launderers. In addition, if they realized their efforts were being monitored, they would likely be deterred and forced to provide information so banks could file CTRs.

**So, basically, banks should try to do a better job at looking at the overall bigger picture?**

Yes, that is correct. In many cases, they are not looking at the big picture, but rather individual transactions or branches. We investigated a criminal who had deposited just

under \$10,000 in proceeds in a 24-hour period at several different branches of one bank. The deposits, of course, all totaled more than \$10,000. But that particular bank did not pick up that kind of activity. I would be surprised if there was no way that bank could have coordinated its data collection efforts at the end of the day.

In addition, it would be great if banks gave law enforcement officers access to their internal velocity reports, which provide a 30-day snapshot of an individual account holder's activity.

**The Financial Crimes Enforcement Network (FinCEN) is currently revamping its Bank Secrecy Act database and its SAR forms. Is there anything in particular you think prosecutors would like to see done to better streamline the sharing of financial data?**

First of all, I think it's great FinCEN is coming up with a universal form. It would be even better if FinCEN made the form keyword searchable. I also think they should streamline the CTR process and make the CTR searchable as well.

**Despite the ramping up of anti-fraud and anti-money laundering laws over the past decade, the number of crimes clearly hasn't dramatically dropped. Is there something more that needs to be done in terms of prevention?**

Prosecutors need to begin following SUAs at the beginning of an investigation rather than as an afterthought. As they work up their case on the underlying criminal activity, they could thoroughly follow the money at the same time. Since prosecutors and agents are focused on the underlying crime, they often miss the money laundering that accompanies these crimes. However, that investigation can often improve the quality of the underlying evidence as well, especially to prove motive.

**In 2007, you were awarded the Department of Justice's Director's Award for Superior Performance as an Assistant U.S. Attorney for a guilty verdict on a 100-count racketeering case against the previously mentioned car dealers who laundered drug proceeds through car sales and sent the money to Iran. How was that case uncovered?**

Our office was prosecuting several different street gangs who dealt drugs. In the course of those prosecutions, different prosecutors noticed that although their narcotics trafficking was diffuse. Many of them purchased high-end cars from the same dealerships. Because the dealerships had provided false documents in response to prior law enforcement requests, we targeted them from different angles this time. We sent in a law enforcement officer undercover who recorded a structured deal. We reviewed prior interview reports from criminals who had described their purchases. We obtained a court order to install an undercover camera at one of the dealerships, which showed gang members and drug dealers dumping bags of crumpled up street money onto tables to buy cars. We subpoenaed and reviewed bank records from the many banks the individual defendants and their dealerships had opened and, in that way, we were able to see that the defendants structured their cash deposits every day. The bank records also showed only one deposit over \$10,000 in cash over several years, which was odd considering it's a cash business. We also prosecuted an individual who operated an overseas money remitting business, who informed agents he had sent the defendants' money overseas. As we traced that money through Canada, we discovered some of it

went to Iran. After awhile, we had developed probable cause to obtain search warrants for the dealerships. By that time, we had enough information about the criminals who purchased cars to show the paperwork was also false, designed to conceal SUA and launder the money. It was a long-term investigation that began by matching information provided from several different underlying cases.

**Using cash-intensive businesses seems like an easy method to hide dirty money. How do investigators usually uncover this type of laundering?**

It is difficult. I had another case also involving a car dealer who drug dealers and gang members had reported was engaged in the same kind of laundering activities. However, as we closed in on him, he claimed a fire destroyed all his records. Unfortunately, the case then rested on uncorroborated information provided by criminals. Nonetheless, the agents kept asking questions of the drug dealers, until one told us the same car dealer had accepted \$700,000 in drug money not for cars, but rather to invest in real estate. We shifted the focus of the investigation to property, obtained records and spoke to more witnesses until we were able to charge this car dealer with laundering drug proceeds through the purchase of houses. That case also led to a mortgage fraud case involving 25 additional defendants.

**In total, exactly how long did your investigation last?**

It took about five years.

**Now that you've retired as a prosecutor, how has the transition between public and private practice gone?**

I miss going to court everyday and actively litigating as a true trial attorney. When I worked in the U.S. Attorney's office, I worked on many different types of cases and was often working on several different cases in one day. The multi-tasking made the job interesting, but it is nice to now be able to focus on one topic at a time. I'm very pleased with the firm where I currently work, and I couldn't have picked a better environment to work in.

**As a lawyer, what do you think of FATF's recommendation that lawyers be subject to Bank Secrecy Act reporting requirements?**

This may be an unpopular opinion among lawyers, but I do believe lawyers should be required to report cash receipts over \$10,000. If there were no such requirement, criminals would use their attorneys to launder SUA and skip banks altogether. But I do think the government should respect the attorney-client privilege by not asking the attorneys to divulge any information other than what is required on the form. I also don't think law enforcement should be able to seize 100 percent of the assets reported by the attorney. Rather, defendants should be permitted to retain sufficient funds to defend themselves. In many instances, criminal defense attorneys and prosecutors can work an arrangement out ahead of time, provided the attorney proactively and truthfully discloses the cash he received.