



**Testimony of Michael Morehart
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Good morning Chairman Shelby, Ranking Member Sarbanes and distinguished members of the Committee. On behalf of the Federal Bureau of Investigation, I am honored to appear before you today to discuss the FBI's efforts to disrupt and dismantle national and international money laundering operations and the operational impact of the successful utilization of information obtained from the financial sector.

Introduction

Chief among the investigative responsibilities of the FBI is the mission to proactively neutralize threats to the economic and national security of the United States of America. Whether motivated by criminal greed or a radical ideology, the activity underlying both criminal and counterterrorism investigations is best prevented by access to financial information by law enforcement and the intelligence community.

In the "criminal greed" model, the FBI utilizes a two-step approach to deprive the criminal of the proceeds of his crime. The first step involves aggressively investigating the underlying criminal activity, which establishes the specified unlawful activity requirement of the federal money laundering statutes, and the second step involves following the money to identify the financial infrastructures used to launder proceeds of criminal activity. In the counterterrorism model, the keystone of the FBI's strategy against terrorism is countering the manner in which terror networks recruit, train, plan and effect operations, each of which requires a measure of financial support. The FBI established the Terrorist Financing Operations Section (TFOS) of the Counterterrorism Division on the premise that the required

financial support of terrorism inherently includes the generation, movement and expenditure of resources, which are oftentimes identifiable and traceable through records published by financial institutions.

The analysis of financial records provides law enforcement and the intelligence community real opportunities to proactively identify criminal enterprises and terrorist networks and disrupt their nefarious designs.

Traditional Criminal Money Laundering Investigations

Money laundering has a significant impact on the global economy and can contribute to political and social instability as well, especially in developing countries or those historically associated with the drug trade. The International Monetary Fund estimates that money laundering could account for two to five percent of the world's gross domestic product. In some countries, people eschew formal banking systems in favor of Informal Value Transfer systems such as hawalas or trade-based money laundering schemes such as the Colombian Black Market Peso Exchange, which the Drug Enforcement Administration estimates is responsible for moving \$5 billion worth of drug proceeds per year from the United States to Colombia. Hawalas are centuries-old remittance systems located primarily in ethnic communities and based on trust. In countries where modern financial services are unavailable or unreliable, hawalas fill the void for immigrants wanting to send money home to family members, or unfortunately, for the criminal element to launder the proceeds of illegal activity.

There are several more formalized venues that criminals use to launder the proceeds of their crimes, the most common of which is the United States banking system, followed by cash intensive businesses like gas stations and convenience stores, offshore banking, shell companies, bulk cash smuggling operations, and casinos. Money services businesses such as money transmitters and issuers of money orders or stored value cards serve an important and useful role in our society, but are also particularly vulnerable to money laundering activities. A review of Suspicious Activity Reports filed with the Financial Crimes Enforcement Network (FinCEN) indicated that approximately 73 percent of money services business filings involved money laundering or structuring.

The transfer of funds to foreign bank accounts still presents a major problem for law enforcement. Statistical analysis indicates that the most common destinations for international fund transfers are Mexico,

Switzerland, and Colombia. As electronic banking becomes more common, traditional fraud detection measures become less effective, as customers open accounts, transfer funds, and layer their transactions via the Internet or telephone with little regulatory oversight. The farther removed an individual or business entity is from a traditional bank, the more difficult it is to verify the customer's identity. With the relatively new problem of "nesting" through correspondent bank accounts, a whole array of unknown individuals suddenly have access to the U.S. banking system through a single correspondent account. Nesting occurs when a foreign bank uses the U.S. correspondent account of another foreign bank to accommodate its customers. A foreign bank can conduct dollar-denominated transactions and move funds into and out of the United States by simply paying a wire processing fee to a U.S. bank. This eliminates the need for the foreign bank to maintain a branch in the United States. For example, a foreign bank could open a correspondent account at a U.S. bank and then invite other foreign banks to use the account. The second-tier banks then solicit individual customers, all of whom would have signatory authority over the single U.S. correspondent account.

The FBI currently has over 1,200 pending cases involving some aspect of money laundering, with proceeds drawn from criminal activities including organized crime, drug trafficking, fraud against the government, securities fraud, health care fraud, mortgage fraud, and domestic and international terrorism. By first addressing the underlying criminal activity and then following the money, the FBI has been able to make significant inroads into the financial infrastructure of domestic and international criminal and terrorist organizations, thereby depriving the criminal element of illegal profits from their schemes.

In recent years the international community has become more aware of the economic and political dangers of money laundering and has formed alliances on several fronts to share information and conduct joint investigations. Members of the Egmont Group, a consortium of Financial Intelligence Units of which the United States is a member, can access a secure website developed by FinCEN to share vital information on money laundering between participating countries. In a further demonstration of international cooperation, over 150 nations have now adopted stringent anti-money laundering standards promulgated by international Financial Action Task Forces. Congress has also assisted our efforts by passage of the USA PATRIOT Act, as Section 319(a) of the Act now permits the government to

seize assets held in an U.S. correspondent account in lieu of criminal proceeds deposited abroad in a foreign bank. Illegal proceeds deposited in offshore accounts are much more difficult for U.S. law enforcement to reach.

As it relates to international money laundering enforcement, the FBI is an active participant in the Financial Action Task Force (FATF). Since its creation, the FATF has spearheaded the effort to adopt and implement measures designed to counter the use of the financial system by criminals. It established a series of recommendations in 1990, which were revised in 1996 and in 2003, to ensure that they remain up to date and relevant to the evolving threat of money laundering. These recommendations set out the basic framework for anti-money laundering efforts and are intended to be of universal application. 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. The FBI participated in the recent FATF mutual evaluation of the United States anti-money laundering compliance.

Terrorism Investigations

Access to financial information significantly enhances the ability of law enforcement and members of the intelligence community to thwart the efforts of terrorists. The lack of complete transparency in the financial regulatory system is a weakness on which money launderers and facilitators of terrorism rely and has proven to be critical to the financing of global terrorism and the provision of funds for terrorist attacks. Limited access to financial records inhibits law enforcement's ability to identify the financial activities of terror networks. Efforts to detect terrorist activity through financial analysis are further complicated by the fact that the funding of terrorism may differ from traditional money laundering because funds used to support terrorism are sometimes legitimately acquired, *e.g.*, charitable contributions and business proceeds. Overcoming these challenges in our efforts to prevent acts of terror has required increased cooperation with partner law enforcement agencies, the intelligence community, and the private financial and charitable sectors.

Records produced and maintained by financial institutions pursuant to the Bank Secrecy Act (BSA) are of considerable value to these critical efforts. As I have previously testified to the United States House of Representatives Committee on Financial Services, the FBI enjoys a

cooperative and productive relationship with FinCEN, the purveyor of BSA information. This cooperation has broadened the FBI's access to BSA information which, in turn, has allowed us to analyze this data in ways not previously possible. When BSA data is combined with the sum of information collected by the law enforcement and the intelligence communities, investigators are better able to “connect the dots” and, thus, are able to identify the methodology employed to transfer currency or move value. The result of this collaborative relationship and access to financial intelligence is a significant improvement in the efficiency with which we interact to address the investigation of terrorist financing matters.

The ability to quickly and securely access and compare BSA data to classified intelligence and law enforcement information is critical. Sometimes the investigative significance of a BSA filing cannot be appreciated until the items included on the document are compared against predicated law enforcement or intelligence information that may not be of public record. Such critical information can be biographical and descriptive information, the identification of previously unknown associates and co-conspirators, and, in certain instances, the location of a subject by time and place. Abundant examples exist of activities noted in BSA reports which have added value to counterterrorism investigations, oftentimes in ways that could not have been predicted from the reports alone. BSA data allows for a more complete identification of the respective subjects such as personal information, non-terrorism related criminal activity, previously unknown businesses and personal associations, travel patterns, communication methods, resource procurement, and Internet service providers.

The value of BSA data to our efforts cannot be overstated; the importance of access to that information has already proven invaluable on the micro, or individual case level, as well as the macro, or strategic level. BSA data has proven its great utility for counterterrorism matters, and any contemplated change to the underlying reporting requirements of the BSA should be measured and carefully considered before such action is taken. Either increasing the transaction amount at which a Currency Transaction Report (CTR) would be generated or abolishing the recordation requirement altogether would deprive law enforcement of what has proven to be valuable intelligence.

Recent analysis on the macro level of the impact of BSA data provided by FinCEN to the FBI reinforces the investigative significance of the BSA data as follows:

- For the years 2000 through 2005, 38.6% of all the CTRs filed reported amounts between \$10,000 and \$14,999.
- For the same time period, 18.5% of all the CTRs filed reported amounts between \$15,000 and \$19,999.
- CTRs reporting amounts between \$20,000 and \$24,999 comprised 10.8% of all CTRs filed during the time period.
- CTRs reporting amounts between \$25,000 and \$29,999 comprised 6.2% of all CTRs filed.
- CTRs in the amounts between \$30,000 and \$34,999 comprised 4.7% of all CTRs filed.
- Transaction amounts reported between \$35,000 and \$100,000 comprised 19% of the total CTRs.
- CTRs reporting \$100,000 and more equaled less than 2% of all CTRs filed.

To determine the operational impact of BSA data relative to FBI investigations, a sample of FBI records for the years 2000 through 2005 were matched by exact name and date of birth or by exact Social Security Number to almost 13,000 CTRs reported in the same time period.¹ This statistical sample, when extrapolated to the universe of CTRs, concludes that in excess of 3.1 million CTRs were pertinent to FBI investigations during that time period. The breakdown of the sampled CTRs deemed relevant to FBI investigations reveals:

¹ Based on the random sampling of FBI investigative records from the whole of FBI investigative records for the years 2000 through 2005, it is statistically attestable that a comparison of each investigative record to all CTRs for the years 2000 through 2005 would demonstrate that more than 3.1 million CTRs directly impact FBI investigations with an error rate of less than one percent, plus or minus. This number is conservative as the matching process used exact name and date of birth or exact social security number and not the host of other identifiers available to investigators, such as telephone numbers or addresses.

- 29.2% of the CTRs reported transactions in amounts between \$10,000 and \$14,999.
- 20.2% reported transactions in amounts between \$15,000 and \$19,999.
- 10.2% reported amounts between \$20,000 and \$24,999.
- 6.2% reported amounts between \$25,000 and \$29,999.
- 6.0% reported amounts between \$30,000 and \$34,999.
- 28% reported between \$35,000 and \$100,000.
- Less than 1% that reported over \$100,000.
- 72% of the reported CTRs deemed pertinent to FBI investigations were in amounts less than \$35,000.

The \$10,000 CTR reporting threshold was established in 1973. Since that time, technology associated with the movement of money has advanced significantly. As a result, the movement of funds through electronic means has now become the standard. It should be noted that CTRs are not required for the electronic movement of funds. The practical effect on law enforcement activities of an increase to the CTR threshold reporting amount would be to severely limit or even preclude law enforcement access to financial data associated with cash transactions that are not otherwise documented. In other words, the filing of CTRs, at the current reporting threshold, ensures a degree of transparency in the financial system that would not otherwise be available.

Another topic of importance with respect to the filing of CTRs is the “seasoned customer” exemption. As you are aware, the BSA allows financial institutions to seek CTR filing exemptions pursuant to the “Designated Exempt Persons” (DEP) protocol. We are opposed to any such exemptions for long-term, well-established, and documented customers that would be for a class of customer beyond the current regulatory regime, which includes ineligible non-listed business, such as money service

businesses. We would also caution against the use of a specified time period as the only requirement for exemption under the DEP.

While Section 314(a) requests and Suspicious Activity Reports (SARs) are extremely valuable tools, the notion that these tools are a substitute for the intelligence gleaned from currency transaction reporting is inaccurate. CTRs are objective reports that document an event in time, providing such information as the identity of the transactor, the bank name, account number, account owner, and dollar amount. Additionally, these reports are available for at least a ten year period, and investigators and analysts have the ability to directly query these reports when necessary.

In contrast, the 314(a) process can only be used on the most significant terrorism and money laundering investigations, and only after all other financial leads have been exhausted, which include reviewing CTRs. The banks are only required to review accounts maintained by the named subject during the preceding 12 months and transactions conducted within the last 6 months, in sharp contrast to the ten years of data provided by the CTRs. Moreover, SARs are only available on select matters where a bank official has made the subjective determination that a particular transaction or activity is suspicious. Although the banks are doing an outstanding job on reporting suspicious activity, SARs are not a substitute for the objective transaction reporting provided by CTRs. All three tools, collectively, are of tremendous value.

Any decision to change the working of the seasoned customer exemption should be undertaken with great care, so as not to deprive our law enforcement and intelligence personnel of highly valuable data points. This is particularly so because of the steadily increasing ability of the Bureau to use these data points to meaningfully track national security threats and criminal activity. Though information on the evolution of this capability is not appropriate for public discussion, we are happy to provide nonpublic briefings on it and have done so already for some members of your staffs.

The Bureau and the Administration are committed to working with this Committee and the Congress to ascertain whether certain categories of CTRs can be eliminated without harm to our investigative capabilities and, if so, to find effective methods to stop the filing of those, and only those, CTRs. But we should not eliminate the filing of any category of CTRs absent study of the utility of that category. Simply put, our adversaries are patient and will wait years, if necessary, to accomplish their mission.

Conclusion

In conclusion, BSA data has proven invaluable to our counterterrorism efforts and has also proven its worth in traditional criminal investigations. Our experience shows that terrorism activities are relatively inexpensive to carry out and that the majority of CTRs of value to the law enforcement and intelligence communities are typically those that are prepared at or near the current reporting requirements. To dramatically alter currency transaction reporting requirements -- without careful, independent study -- could be devastating and a significant setback to investigative and intelligence efforts relative to both the global war on terrorism and traditional criminal activities.