The legislation required to stop money-laundering

by Edward Spannaus

The following analysis of currently pending money-laundering legislation and proposed alternative legislation was released by the National Democratic Policy Committee at press conferences in Washington, D.C. and other cities Dec. 10.

The anti-money-laundering bill backed by Attorney General Meese and the administration is neither the toughest bill proposed, nor is most of it even necessary to fight money laundering. In fact, the administration's bill represents a continuation of the Justice Department's efforts to coverup and diffuse the issue of drug money laundering.

First of all, it should be stated that if the Justice Department were serious about shutting down the drug traffic and drug money laundering, it could do most or all of the job with existing legislation already on the books. It is mostly a question of having the will to do so. As the Abscam cases show, when the Justice Department wants to get somebody, they can get him. (However, we are not proposing that the Department perpetuate a pattern of violations of constitutional rights such as represented in the Abscam prosecutions; rather, the point is that existing criminal laws are extremely comprehensive and wide-ranging and—with one exception—perfectly adequate to do the job.

The most glaring case of the unwillingness to apply existing law was the Bank of Boston case: Under existing law, on the books, the Bank of Boston could have been fined $10,000 civil penalties, and $10,000 criminally, for each of 1,200 counts of failure to report cash transactions, or $24 million. Beyond this, the bank could have been fined an amount equal to the amount laundered, that is, an additional $1.2 *billion*. Any bank official involved in a willful violation could have been sentenced to five years in prison.

There is one gap in existing federal law: money laundering *per se* is not a crime. The Currency and Foreign Transactions Reporting Act (31 U.S. Code 5311 et seq.) makes it a crime not to report cash transactions over $10,000, or to report cash transfers out of the country of over $5,000. If a banker reports the transactions involving laundered money, he has complied with the law. Changing this is the only major modification of federal law which is needed.

Making money laundering by bankers a crime, combined with vigorous enforcement of laws already on the books, would be sufficient to shut down all large-scale drug trafficking within a matter of weeks. It could be done, if the administration and the Justice Department were willing to do it.

Pending legislation

In October 1984, the President's Commission on Organized Crime issued an interim report on money laundering, called "The Cash Connection." The report contained recommended legislation.

However, when Attorney General Edwin Meese sent his proposed bill to Congress on June 13, 1985, it was substantially changed from that recommended by the Commission. It was significantly changed in two respects: 1) The standard of proof to hold a person criminally liable was much stricter than in the Commission recommendation, thus making it harder to obtain a conviction for money laundering, and 2) it broadened the definition of money laundering to include money derived from any illegal activity—thus taking the emphasis away from drug money laundering and organized crime.

At least two other bills were introduced which were almost the same as the Commission's recommendations—by Senator Dennis DiConcini (D-Ariz.) and Senator Alfonse D'Amato (R-N.Y.), which are not backed by the Justice

Department and the Reagan administration.

1) Standard of Proof: The recommendations of the President's Commission on Organized Crime, embodied in the DiConcini and D'Amato bills, state that whoever "launders" monetary instruments

> . . . with knowledge or reason to know that such monetary instruments represent income derived, directly or indirectly, from any unlawful activity, or the proceeds of such income, shall be sentenced. . .

The Meese/administration version says that whoever "launders" monetary instruments

> . . .knowing or with reckless disregard of the fact that such monetary instruments or funds represent the proceeds of, or are derived directly from the proceeds of, any unlawful activity, shall be sentenced. . . .

The distinction is significant, as the administration's own "Section by Section Analysis" shows:

> The new section . .
> other bills which would have imposed criminal liability on a person *who merely had a "reason to know"* that a transaction in which he took part involved monetary instruments which represent the proceeds of unlawful activity. Rather, criminal liability and civil sanctions under the new section may only be imposed if the government can show that the person had actual knowledge or acted with reckless disregard. . . .
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> The term "reckless disregard" means that the person . . . is aware of a substantial risk that the funds represent the proceeds of or are directly or i from an unlawful activity but disregards the risk. Thus the required state of mind involves a consciousness of the substantial possibility that the funds are tainted and *is far removed* from the standard of mere negligence or "reason to know." (emphasis added).

Contrasting this with the recommendations of the President's Commission on Organized Crime, it is clear that the Justice Department has in fact watered down this provision. The Commission's analysis of its recommended bill stated:

> The second formulation [knowledge or reason to know] is expressly intended to include the concepts of "conscious avoidance of knowledge," "deliberate ignorance," and "willful blindness" in the terms "knowledge or reason to know." . . .This formulation is intended to make clear that either a subjective or an objective standard of intent may be chosen for proof: *that the person either knew in his own mind, or ought to have known* (i.e., that a reasonable man in that person's position would have known) that the monetary instruments were income or proceeds of unlawful activity. . . .

It is this problem of "deliberate ignorance" and "willful blindness" which the adminstration bill explicitly rejects. The proper standard is "knew or should have known";; anything else puts an almost-impossible burden of proof on a government prosecutor.

2) 'A Prosecutor's Wish List.' At the same time, the Justice Department was taking the teeth out of any provision which would have enabled it to convict a banker for money-laundering, it was broadening the scope of the bill so that the bill has almost nothing to do with drug-money laundering anymore.

The Commission version somewhat restricted the definition of money laundering, nevertheless including transactions related to racketeering, gambling activity, extortion, bribery, embezzlement from union pension and welfare funds, violations of the Labor Management Relations Act, and so forth. The administration bill makes no such limitation at all—it defines money laundering as transactions involving any unlawful activity.

All this does is to add the new crime of money laundering to acts already defined as illegal—which is totally unnecessary. Not only is it unnecessary, but it is downright dangerous, for, as we have seen over recent years, the Justice Department much prefers to prosecute its political enemies—political figures, labor officials, etc.—than to prosecute drug traffickers. The government does not need any new laws to prosecute organized crime or criminal activity in general. What we need is for the government to prosecute drug traffickers and those who launder their money: This is our number-one national law-enforcement priority.

One has to ask why the Justice Department sought to so broaden—and thereby weaken—the much more limited and stricter recommendations of the President's Commission. Is it because the Justice Department is more interested in adding new weapons in its arsenal to prosecute its targeted enemies, than it is in shutting down the drug traffic?

It is no wonder that one knowledgable senator's office described the administration bill as a "prosecutor's wish list."

Even stranger still is the section on extraterritorial jurisdiction. Whereas the Commission's recommendations, and the DiConcini and D'Amato bills, simply provide for extraterritorial jurisdiction for any conduct prohibited by their bill, the Meese bill goes on to list the National Security Act of 1947, the Subversive Activities Control Act of 1950, the Intelligence Agents Identities Act, and the section of the Atomic Energy Act under which the government attempted to prosecute *The Progressive* magazine a few years ago. What does all this have to do with money laundering anyway?

The only conclusion which can be reached is that the Justice Department is trying to take advantage of the current concern over drug-money laundering to broaden its own arsenal of prosecutorial armament, while watering down the recommendations of the President's own Commission on Organized Crime.

NDPC model legislation

All that is needed with respect to new legislation is to add a very simple provision which explicitly makes money laundering a crime, and which provides stiff criminal penalties against banks and against bank officials who facilitate or tolerate it. That is all we need.

The NDPC has found a great deal of interest among state legislators in such legislation. If the federal government will not shut down the money laundries, then many states are ready and willing to do so. The states can enact their own criminal laws, making money laundering a crime and containing tough forfeiture provisions. The states could thereby confiscate the proceeds of money laundering, and thus raise billions of dollars which could be used to pay off state and local debts and meet their own financial needs.

Proposed resolution for state legislative bodies

WHEREAS a state of emergency exists within the United States banking system as a result of the laundering of drug profits through legitimate financial institutions; and

WHEREAS the United States Department of Justice, currently under the direction of Attorney-General Edwin Meese, has consistently refrained from prosecuting chief executive officers and other directing officials of some of America's largest banks for their protection of laundered drug profits; and

WHEREAS it has been found in repeated government investigations and prosecutions of drug traffickers that federal and state banks are being used to launder profits and proceeds from drug trafficking, particularly through deposits of cash and subsequent wire transfer of said profits and proceeds to foreign territories; and

WHEREAS nations such as Colombia, Peru, Guatemala, Bolivia, and Mexico are now engaged in a war on the growth and production of illegal narcotics within their own borders;

THEREFORE be it resolved that the Governor and Legislature of the State of _____hereby demand the federal government to vigorously enforce all existing laws against drug trafficking and money laundering, and that the Congress of the United States of America enact legislation to explicitly make the laundering of drug money a criminal offense.

Proposed amendments to criminal codes

Both federal and state criminal codes should be amended to make money laundering a *criminal offense*:

I. Any financial institution, which conducts a transaction or series of transactions involving one or more monetary instruments, involving instruments with a value in excess of $100,000, any part of which is derived from unlawful production or sales of narcotics and dangerous drugs, shall be fined not more than $250,000 or twice the value of the monetary instruments, whichever is greater, for the first such offense, and shall be fined not more than $1,000,000 or five times the value of the monetary instruments, whichever is greater, for each such offense thereafter.

Comment: This provision is very simple—any bank or other institution which launders money is guilty of a crime. There is absolutely no excuse for any bank to be processing large cash transactions—here defined as those in excess of $100,000—without conducting a diligent and prudent investigation as to the source of the funds. There are numerous, obvious indicators of money laundering, which any competent bank official should be aware of, such as accounts showing no normal business activity, but which are used as temporary repositories before funds are transfered to foreign accounts, transactions involving large numbers of small bills, wire transfers to countries whose secrecy laws are known to facilitate money laundering, etc.]

II. Any officer, director, or employee of a financial institution which launders money, as defined above, with knowledge or reason to know that such monetary instruments represent income derived, directly or indirectly, from unlawful production or trafficking in illegal narcotics and dangerous drugs, shall be imprisoned for a period of five years for the first such offense, and for a period of ten years for each offense thereafter.

Comment: This provision is intended to make criminally liable, all those in the line of authority and responsibility of a financial institution. The standard of "knowledge or reason to know" is intended to include the concepts of "knew or should have known," "conscious avoidance of knowledge," "deliberate ignorance," and "willful blindness." This is the standard recommended by the President's Commission on Organized Crime. Here this provision is intended specifically to cover top-level officials of banks and other financial institutions who are responsible for the institutions affairs, not just lower-level employees.]

Other specifically federal provisions: There should be extraterritorial jurisdiction over the offense of money laundering.

There should begin immediate computer monitoring of deposits and withdrawals of all $100 bills. The monitoring will be continued for not less than 18 months, and during such time monthly reports shall be filed with the Enforcement and Operations Division of the United States Treasury Department. All violations of the Currency and Foreign Transactions Reporting Act detected from these monitoring reports will be immediately prosecuted by the federal government.

The Currency and Foreign Transactions Reporting Act should be amended, so as to limit what exemptions the Treasury Secretary may grant and specify that casinos, racetracks, sports concessions, amusement parks, and department stores may not be exempted.

Other specifically state provisions: State laws should include stiff forfeiture provisions which would confiscate all monies laundered, plus any proceeds and profits deriving therefrom.