THE PROCEEDS OF CRIME : PROBLEMS OF INVESTIGATION AND PROSECUTION

International Centre for Criminal Law Reform
and Criminal Justice Policy
at The University of British Columbia
1822 East Mall
Vancouver, B.C., Canada
V6T 1Z1

THE PROCEEDS OF CRIME :
PROBLEMS OF INVESTIGATION AND PROSECUTION[1]

John L. Evans, Ph.D.

TABLE OF CONTENTS

INTRODUCTIONINTRODUCTION

Criminals engage in money laundering to thwart investigation and make prosecution impossible. Their goal is to protect themselves and the proceeds of their criminal operations from the reach of courts and tax authorities. In this pursuit criminals have had the advantage. They have learned to manipulate and use financial systems and standard business practices to disguise the origin of capital. They have learned to use professional advisers and develop complex structures that make detection unlikely and the collection of evidence particularly onerous. They have learned to operate internationally to compound the difficulty of tracing proceeds of crime.

The international community and countries around the world have responded with new international conventions[2] and domestic laws to take the profit out of crime, to make it possible to get at the proceeds of criminal activity.

This paper reviews money laundering techniques and the problems of investigation and prosecution commonly encountered as criminal justice systems seek to take the profit out of crime. The paper makes a number of recommendations and concludes with observations on the role of the criminal law and other policy areas.

Examples are drawn from several jurisdictions but Canada is the primary point of reference. Because of Canada's federal structure, the Canadian proceeds of crime legislation has some unique features.[3] It does not, for example, include civil forfeiture procedures. Nonetheless, the Canadian experience is instructive in an international context since such a high percentage of Canadian cases have cross-border components.

MONEY LAUNDERING PROCESSES AND PRACTICESMONEY LAUNDERING PROCESSES AND PRACTICES

The more popular processes and practices involved in money laundering and the problems of investigation and prosecution related to them are reviewed here. There are many excellent sources for those wanting a more comprehensive catalogue.[4]

Cash, cash economies, currency exchange and deposit Cash, cash economies, currency exchange and deposit

For many small-time criminals no elaborate "washing" is required. They deal in cash and avoid financial institutions as much as possible. Their criminal associates and suppliers expect cash and they pay cash for most living expenses. If they do have bank accounts, they make small deposits so that larger expenses can be handled without arousing suspicion. Much criminal activity, whether drug related or not, is of this type. The criminals engaged in such low-level ventures provide most of the cases processed by criminal justice systems around the world.

In some countries larger-scale ventures use cash, with little risk of inviting official scrutiny. Many countries of Eastern Europe function largely in cash as do countries that are experiencing high inflation. In economies of this type, where average citizens deal in cash, so too do dishonest citizens. To do otherwise would invite suspicion.

When the focus shifts from small-scale criminal ventures to more organized criminal enterprises, the nature of the law enforcement problems shifts as well. From the standpoint of investigation and prosecution, the problem has long been that the major figures in criminal ventures could insulate themselves from the crimes committed by subordinates. If convictions were obtained, it was the "soldiers" who suffered the consequences, the "generals" were far from the scene. They tend, however, to be closer to the money. Cash Reporting, and Proceeds of Crime legislation are designed to allow governments to get at the financiers and the finance. For many crimes, and particularly for crimes which result in cumbersome amounts of cash, criminals are most vulnerable when they deal with cash. That is at the placement stage when bulk cash is combined with legitimate income, smuggled out of the country, or converted into deposits in financial institutions.

While cash transactions are very common in many jurisdictions[5], the amounts of money generated by drug operations are so large that small denominations, which are usually used for drug purchases, must be converted into larger denominations. Frequently the conversion will be into American dollars, the preferred currency of drug traffic. Nearly every jurisdiction has its share of cases to illustrate the point. In the United States, for example, one Anthony Castelbuono arrived at a casino with 280 pounds of currency, a value of $1,180,450.[6] With similar brazenness, a drug trafficker deposited $810,000 (U.S.) in a Canadian bank in Vancouver. The deposit included 25,700 twenty-dollar bills and filled three substantial cardboard boxes.[7]

More sophisticated operations abound. Many of these were discovered by accident. This has provided additional impetus for many countries to enact legislation making it compulsory to report cash deposits over a certain threshold amount and transfers of currency into or out of the country. Cases such as "Polar Cap," in which the Medellin drug cartel, in a single operation, laundered $1.2 billion over a three-year period, have also stimulated and justified new legislation. The American and Australian regimes are the most fully developed.[8] The United States now has laws requiring that currency transactions over $10,000 be reported, that make it illegal to structure deposits and other transactions to avoid the reporting requirements, and that make money laundering a crime. Australia has similar robust statutes and, following the Vienna Convention[9], many other states have passed or are considering similar legislation.[10]

Not all countries are convinced of the merits of cash reporting systems. There is some controversy in the United States about the efficacy of the American system since it is voluminous, largely manual, and slow. The Australian system, by contrast, receives over 90% of its data electronically and has developed computerized means of flagging suspicious transactions. The Australian legislation targets both tax evasion and money laundering. Its currency reporting system and suspicious transaction reporting systems have brought to light numerous cases that would not likely have been detected previously. For example, over 8,000 suspect transactions were identified in the first 18 months of the requirement for reports. Of these

> ...the majority involve low to medium tax cheats under $50,000.00, 1,881 cases involved money laundering. There are more than 20 cases which appear to involve high level corporate tax cheating and fraud worth more than $30 million and also 30 to 40 transactions at the organized crime end of the scale indicating major tax evasion and significant drug money laundering.[11]

Although it is too early to judge the effectiveness of the Australian system, it has clearly provided law enforcement with a set of powerful new investigative tools. Since the system is so comprehensive it is picking up cases, not just of money laundering and tax evasion, but also frauds both complex and simple. While the Australian example appears to be worth emulating, few countries have the

combination of circumstances necessary for such a scheme to succeed. Australia is a country with a relatively small population and a highly centralized and efficient banking system. There are a small number of banks and they are extensively computerized, allowing filing electronically on a daily basis.

Other countries, Canada for example, have chosen to rely on a system of regulation and voluntary co-operation of financial institutions. The banks and other financial institutions have been responsive. The Canadian Banker's Association and its member banks have instituted policies and practices to allow suspicious transactions to be reported to the authorities. The most important policies are those that stipulate what should be done to "know the customer." In addition, the measures include having policies and procedures regarding the detection and reporting of suspicious transactions in each branch, including foreign branches and correspondent banks; having forms and procedures for reporting and keeping records of suspicious transactions; and conducting ongoing training for staff. The initiatives of the banker's association and the five largest banks are beginning to be followed by smaller banks and trust companies.

In addition to these voluntary measures being adopted by financial institutions, The Proceeds of Crime (money laundering) Act [12] and associated regulations provide record-keeping requirements to facilitate investigation and prosecution.

The effectiveness of the voluntary measures and the regulations is difficult to assess at this stage. The policies seem to be in place but major police forces report that the information supplied frequently provides an inadequate basis to know whether to investigate further.[13] On occasion, however, good cases have resulted from suspicious transaction reports from financial institutions. Although police are critical of the information they are receiving, they confess that they do not have the resources to handle the number of cases that would result from more complete reports. Nonetheless, better reports would allow better targeting and some redeployment of resources.

One interesting consequence of the training given to bank employees is that, once they learn what to watch for and appreciate the significance of money laundering, they have more than one reporting option. If they sense that senior management in their financial institution is not keen on reporting suspicious transactions, or that the process is too slow, they can report directly to law enforcement personnel. Just this

kind of information led to a recent case in Vancouver in which the Royal Canadian Mounted Police executed a search warrant on a trust company and seized an extensive array of evidence. This included records and documents from the foreign exchange department, business records, company documents, banking documents, and computer programs and documentation. The case has yet to go to trial but it is alleged that some officers of the trust company accepted Canadian currency, literally through the back door, and exchanged it for U.S. currency. This was then wire-transferred to financial institutions in other countries, deposited in various accounts, or simply converted to U.S.funds.. Several millions of dollars were handled in this way. For example, it is alleged that in twenty days in 1991, $1,562,600(U.S.) was purchased with Canadian currency and that a company, which seems to have been completely fictitious, brought in sufficient Canadian dollars over four months to purchase $4,940,000 (U.S.).[14] Whatever the outcome of the case, news of the police operation spread quickly in financial circles in Canada and beyond, and will likely have a salutary effect on internal vigilance and reporting behaviour. Thirty-five police officers entered the premises before the start of business one day and seized thousands of documents and copies of computer systems and records. This is an object lesson even slow learners will appreciate.

Another example that reinforces the need for vigilance is provided by a recent case in the United States. In December of 1993, the Banque Lew (Luxembourg) S.A. pled guilty in California to one count of money laundering and agreed to the forfeiture of $2.3 million. An employee of the bank, now facing charges in Luxembourg, had enabled the deposit of more than four hundred U.S. cashiers' cheques. The money was from drug sales in the U.S. The cheques were purchased with cash in the United States, sent to Columbia, and then on to Luxembourg for deposit.

The plea arrangement had several unique features:

> In addition to the forfeiture, the bank agreed to pay a $60,000 fine, to relinquish any right it might have and accede to the forfeiture of $1,038,587.34 that has been frozen by the Luxembourg authorities; to engage an auditing firm to prepare three Special Purpose Reports (one for each of the 3 years following the sentence) which will assess the bank's accounting systems and internal accounting controls relevant to money

> laundering (and to take corrective action within 60 days if necessary); to publish, at its own expense, within 8 months of sentencing (and to update 1 and 2 years after it is published) a monograph about money laundering laws and methods to prevent money laundering, which will be distributed to its employees, its correspondent banks and other financial institutions; and to post a Letter of Credit in the amount of $250,000, which will become payable to the United States if the bank fails to satisfactorily comply with either of the two previous terms of the agreement.[15]

Although, as these cases illustrate, there is room for improvement, many financial institutions are being more vigilant and suspicious transactions are being reported. But, as with hydraulic systems, if the pressure is capped in one place it builds up elsewhere. Thus, other cash dealers that are essentially unregulated are now handling more illicit funds. These include currency exchange houses that offer cash-for-cash currency exchange, electronic wire transfers, and the issuance of negotiable instruments such as traveller's cheques, bank drafts, cashier's cheques and precious metals.[16]

Besides deposit-taking institutions and currency-exchange companies, most countries have a variety of other financial institutions that can accept and transform cash. Many countries have credit unions, Casas de Cambios, remittance corporations, Bureaux de Change, and wire-transfer companies. As the laws are tightened and enforced, new, or variations on the old, techniques arise. For example, Colombian drug cartels have a system of "currency swapping" by which U.S. currency located in the United States is sold for Colombian pesos located in Columbia. The practice is similar to the ancient underground banking systems used extensively by Asian organized crime groups.

Asian-crime groups resident in North America appear to make extensive use of underground banking. The case of Johnny Kyong provides an interesting illustration. Mr. Kyong was convicted of supplying heroin to the New York mafia in 1990. He repatriated his profits through bulk shipments of cash to Hong Kong or through a Venezuelan company to bank accounts in Hong Kong. Money was then sent through underground banking systems to Burma and Thailand to purchase additional drugs. Kyong used small denomination, consecutively numbered Thai

currency that, when presented in Burma, would be redeemed for vastly greater sums. Fax machines and verbal telephone instructions were also used to move money through the underground banking systems. More generally, American and Canadian law enforcement agencies have noted North American Asian organized crime groups using Indian and Pakistani underground banking systems located in Vancouver, Canada, to move money to Hong Kong and other jurisdictions.[17]

Before examining more sophisticated schemes, it is worth noting that bulk smuggling of cash across borders remains common, and is perhaps even more frequent, following the introduction of money-laundering legislation. It is of interest that the United States' embargo on high-technology exports to the Soviet Union caused the customs service to examine more cargo leaving the United States. Because of the importation of drugs, most customs attention had been directed to cargo entering the country. When the customs service stepped up scrutiny of exports, little illegally-exported technology was intercepted. Instead, cartons of U.S. $100 notes were frequently discovered.[18]

Bulk movement of cash may be unsophisticated but it is frequently easy, inexpensive, and relatively low risk. The vast increases in world trade make it impossible to examine more than a fraction of the cargo crossing frontiers. Spot checks, and developing intelligence allowing special attention to particular targets, are the best that most jurisdictions can do. Customs services have too few resources to deal with increased trade and the relaxation of border controls in many regions. This means that smuggling will continue and likely increase.

Layering and IntegrationLayering and Integration

While cash is freely used in many economies, most large criminal operations eventually must devise money-laundering schemes that give an appearance of legitimacy to the proceeds of crime. Unfortunately for those seeking to detect money laundering, nearly any legitimate business or financial arrangement can be adapted and used for laundering money. The range of possibilities is very wide.
An attractive vehicle for money laundering is the stock exchange. Cash or other tainted assets can be transformed into alternate financial instruments, ownership of stocks and bonds. Brokerage firms can function as deposit-taking institutions. Cash or other securities can be deposited to a trading account and then used to buy stocks or other financial instruments. Cash deposits are, however, rare in the securities

industry, most criminals seeking to launder funds through a brokerage house will find a way to place the cash in a more usual deposit-taking institution.

In most countries it is unlikely that new customers of brokerage houses will undergo much scrutiny concerning their identity or the source of their funds. If asked, there will be little or no attempt at verification. Even where there is an attempt to know the customer, this can be relatively easily circumvented. Where there is a requirement that beneficial owners be registered, a "respectable" front can be so declared. Or the "owners" of the tainted asset can simply pose as legitimate investors. Further insulation can be achieved by using legitimate or shell companies. If suspicious activity is then avoided and accounts are not overdrawn, there will be little reason to investigate further.

It should be noted that the proceeds of any crime, not just drug offenses can be laundered through stock exchanges. Indeed, profits from insider trading and other stock market manipulations are frequently invested in other, presumably more secure vehicles. A Canadian case with international overtones provides a useful illustration:

> During the mid-1980s Edward Carter and David Ward manipulated, through 100 trading accounts distributed among 15 brokerage firms in Canada, the U.S. and the Cayman Islands, the shares of 19 public companies listed on the Vancouver Stock Exchange. In addition, Carter and Ward paid secret commissions to the portfolio manager of an American-based mutual fund in return for his purchase of large volumes of stock in the target companies.
>
> Many of the trading accounts were registered in the name of beneficial owners and numbered companies incorporated in the Cayman Islands. One of the accounts Carter utilized to sell stock to the Mutual Fund was located at the Cayman Island branch of the Canadian brokerage firm Richardson Greenshields Ltd. This account was in the name of the Cayman Island branch office of the Royal Bank of Canada, and it was used for more than just the manipulation of the target companies' securities.

> Through this account such investments as silver and gold bullion, Government of Canada Bonds, U.S. Treasury bills, and a number of blue chip securities were purchased. In short, by funnelling the illicit proceeds of Carter and Ward's market manipulation into commodities and other securities, this trading account was utilized as a central laundering conduit.
>
> It is estimated that over $15 million (CDN) in illicit profit was generated through the manipulation of these shares and mutual funds which in turn was laundered through securities and other vehicles.[19]

Cases of laundering through the stock exchange are not rare and many that have come to the attention of law enforcement were investigated based on information from individuals rather than from securities firms or securities regulators. Very few police forces have developed the expertise to detect and investigate stock market violations. Although securities commissions in many countries have powers that exceed those of the police, the dominant view is to keep cases in-house and not refer them to law enforcement unless there is no alternative. Typically this occurs when the case has become public and the immediate victims of the fraud are clamouring for action. The result is that the securities industry continues to be extensively used as a means both of generating and concealing the proceeds of crime. The case cited above is one example of many financial frauds and laundering operations. The wild excesses of the junk bond and takeover craze of the late 1970s and 1980s may be over[20] but routine stock-market fraud continues apace.

Moreover, given the increasing internationalization of the financial services sector and the ease of buying stocks in any market in the world, the opportunities to move the proceeds of crime across borders have expanded. Thus, to take a simple example, once a trading account is established with a firm having offices in other countries, the account can be transferred and used, or closed out, in another jurisdiction. Unless the individual involved was already a target of law-enforcement attention or was in some other way behaving very suspiciously it is unlikely that any problems would arise.

Another popular method of laundering money is to buy or establish private companies. The time-honoured technique is to operate a cash-intensive business. Laundromats in some U.S. cities were one-favourite and inspired the first use of the term "money laundering." More usual now are restaurants, bars, travel agencies, construction companies, jewellery stores, and so on. Any business that routinely deals in cash can have its receipts inflated by running tainted cash through the till. When large volumes of cash are laundered in this way, however, the web of deception becomes complex and thus more open to detection by law enforcement or tax authorities. False invoicing, ghost employees, inflated expenses and inflated revenues all leave a paper trial and require accountants and others to be involved. Not only are there more people to betray the deception but there is more paper required and, potentially at least, more investigators from law enforcement and tax departments who will have an interest in the business.

The cost of such laundering is therefore more expensive and carries a higher risk of detection than alternate methods. Nonetheless, it is popular, since, if successful, it allows criminals to have a "legitimate" business as a cover and a source of status in the community. Moreover, the legitimate business may flourish since its competitive advantage can be so great. Having tax-free capital and "loans" that do not have to be repaid provides advantages that in themselves should ensure a business is successful. Many such businesses also have accountants and other professionals who are already used to breaking the law and are further employed to evade tax, thereby providing additional competitive advantage. In other cases, lawyers and accountants will be hired to carry out professional duties on one end of a transaction without having actual knowledge of the laundering operation.

If circumstances also provide lax law enforcement and corrupt officials criminal enterprises can flourish. Consider, for example, the western Sicilian Salvos cousins described by Santino and Giovanni La Fiura [1990]. Vitiello summarizes as follows:

> ...the Salvos [were] tax collectors "serving the Public" during the 1970s and 1980s. Using citizens' tax dollars and Mafia linkages to build a virtual empire, these cousins came to own twenty-four agricultural "cooperatives" (mostly of the shadow variety designed to sell drugs), an insurance company and a bank (to launder money), four tax offices, four finance companies (for

> Mafia enterprises), a computer firm...six brokerage firms, nine construction (i.e., building speculation) companies and three tourist enterprises....[21]

In recent years real estate investment has been a popular money laundering vehicle in many jurisdictions. Real estate offers a variety of advantages, not the least of which is its tendency to appreciate. It is relatively liquid and can be held in a variety of ways that obscure the sources of funds and the beneficial owners. The range of techniques is very broad and includes simple purchases of residential or business properties with no particular attempt to hide ownership; complex schemes where real estate investment is part of a much larger operation involving shell companies in tax haven countries; and the use of nominees and the involvement of both shell and legitimate companies to handle investment, development, rentals and sales. Many intermediaries may be legitimate business persons or professionals who do not know that they are aiding and abetting laundering. Others will knowingly be so employed. In other cases lawyers have been extensively, and knowingly involved in real estate laundering schemes. They have the technical and legal knowledge to assist in the creation of companies and in the purchase, development and sale of real estate. They have the option of conducting business transactions in their own names. Beneficial ownership is thereby hidden and with reasonable care no suspicion will be aroused. Solicitor-client privilege provides a further shield, or at least a delaying tactic.

Moreover, real estate can frequently be developed using government subsidy and tax advantages such as the deduction of interest payments and depreciation from income tax. This is a considerable advantage if "loans" are a way of repatriating proceeds of crime already lodged in another company, frequently registered abroad.

Investigating such companies is labour intensive and requires knowledge of corporate structures and strategies, bookkeeping, accounting, computer science, and tax law. The expertise of forensic accountants and lawyers is frequently required to assist police investigators. This is expensive with the result that police forces in most jurisdictions have more leads than they can properly investigate. Developing informants and intelligence to support more efficient targeting of scarce resources should therefore be a priority everywhere. Accountants and other professionals employed by organized crime, or operating their own criminal venture, are unlikely to leave a trail that can be easily detected. Fraud and money laundering are after all

carried out by people who know more about the accounting systems and other practices than auditors or police investigators. It is striking how many cases of fraud[22] and money laundering have survived a series of audits and were discovered only through informants' leads, accidents, or simple blunders.[23]

INTERNATIONAL LAUNDERINGINTERNATIONAL LAUNDERING

Several recent trends, taken together, have greatly increased the scope of international crime. In addition to the international drug trade, these include the continued growth in world travel and immigration, the growth in world trade in goods and services, the communications revolution, and the relaxation of border controls in many countries. Whereas only a few years ago international crimes were novel, they are now commonplace.

In Canada a recent study of police cases involving money laundering found that 80% of them had an international component.[24] The percentage of cases with an international element may be higher in Canada than elsewhere because of Canada's proximity to the United States, its openness, and the fact that it has a very efficient and international banking system. Canada may not, however, be that unusual. In 1991, 80% of the serious securities fraud investigated by the London, England, police had some cross-border aspects. The estimates in the United States are smaller;[25] in 1984, a Presidential Commission report speculated that 10 to 15% of the drug money moved into the international arena. At the same time, cocaine, heroin, and many other drugs come from other countries and, therefore, are international. Whatever the actual percentage, clearly crime, like much else, is increasingly international.

It has been noted that money is moved offshore by smuggling cash, by various money transfer mechanisms of financial institutions, via the securities markets, and through the purchase of assets elsewhere. Add to these the use of courier services, the post, currency exchanges and underground banking. There is no shortage of methods and the volume of legitimate international financial transactions makes it difficult to distinguish between legitimate finance and proceeds of crime.

There is no methodologically clear procedure for estimating the extent of the illegitimate proceeds of crime but it is clearly very high and growing. Fortunately there is no particularly compelling reason to spend much time on estimates. Clearly

the proceeds of crime have reached unacceptable levels[26] and action must be taken to contain criminal profits. The sums involved finance, domestically and internationally, extensive criminal operations in drugs, arms, exploitation of women and children, manipulation of markets, infiltration of business, commercial frauds, corruption of officials and politicians and destabilization of nations.

We list a variety of crimes along with drug crimes to make several points. First, few large criminal organizations restrict their activities to drugs. Drugs may provide the bulk of the initial funds but, through money laundering, many become involved in other crimes, either through investing the proceeds of crime in legitimate markets or to finance additional criminal operations. Second, there is compelling evidence that the traditional organized crime groups are deeply involved in large-scale commercial fraud. For example, organized crime was found to have been involved in 35% of more than 1,000 cases referred to the Commonwealth Commercial Crime Unit since 1981. The involvement of organized crime was suspected in a further 25% of cases.[27] Third, so-called white-collar criminals are quickly involved in other types of crime, frequently by engaging others to ensure successful operations. This can range from using collectors, enforcers and money laundering specialists, to contracting to have evidence, or worse, even witnesses, disappear. Also, for example, when a modest embezzlement from a trust account goes awry, a little drug smuggling, or selling, may be seen as the remedy. Fourth, to reiterate a point made earlier, most big cases involving both economic and drug crimes will have international components. In some cases international connections will be necessary to secure the supply of illicit goods, drugs and arms, for example. In other cases, illicit or counterfeit goods or services are sold offshore, for example, supplying fake pharmaceuticals or customers for offshore centres for the exploitation of women and children. And, in most large cases, offshore laundering facilities will be used, frequently involving tax-haven countries with bank secrecy laws and efficient money transfer facilities. Most of these countries will have regulations that allow for the easy establishment of shell companies and the use of nominees. Many allow the issuance of bearer shares.

The use of multiple jurisdictions greatly exacerbates problems of investigation and prosecution. But, in most jurisdictions, serious problems of investigation begin long before money is moved offshore. Many police forces are poorly equipped to investigate sophisticated criminal operations. Their training, funding and rewards are tied to operations against violent crime, street-level drug dealing, and the

ubiquitous property offenses. With some notable exceptions they do not have the resources to either employ, or buy, the forensic accounting, financial analysis, computer skills, and ongoing legal advice to unravel sophisticated criminal networks. The result is that if the operation hasn't been detected, and a successful counter strike made before the proceeds of crime are moved around even within the domestic sphere, there will be little chance of a successful prosecution resulting in convictions, much less of the forfeiture of proceeds. It should be noted that this is not to disparage what police forces can do. As was pointed out above, many significant cases detected by the police through developing good intelligence or though following leads and exploiting lucky breaks have exposed operations that had successfully survived repeated audits by professional auditors. It should be stressed that sophisticated criminal operations are frequently run by practitioners who are themselves very skilled, or who hire skilled help.

Once the proceeds of crime are successfully deposited in the financial system many laundering operators take the precaution of moving money, not just offshore, but through more than one tax haven and through a maze of shell companies and respectable nominees. Investigators run into obstacles that are nearly impossible to penetrate, even if they get co-operation from their opposite numbers in the jurisdictions in question. Fortunately, not all laundering operations go to such lengths. The more steps in the operation, the more expensive it is and the more opportunities criminal colleagues have to take a portion for themselves.

Although the most sophisticated operations may effectively be immune from prosecution, there is room for optimism. Laws have been strengthened and several countries have had notable success in convicting those higher up in criminal networks. The United States and Italy are the leading examples. Much of their success is due to the resolve and dedication that an epidemic of crime has created. More importantly, the recent string of successful cases mounted against major crime figures is due to appropriate resourcing of investigations and prosecutions and the specialization necessary to carry out the full range of investigations, and evidence gathering, called for by proceeds of crime legislation.

Successful operations against criminal networks require specialization by both the police and the prosecutor's office. Moreover, they need to work together from the outset so that investigators can get continuing legal advice regarding evidence. Further, usually parallel files should be created from the start: one aimed at

obtaining criminal convictions on the specific criminal offenses; another at the proceeds, which, depending on the particular legislation, may be handled either criminally or civilly. Unfortunately, very few police and prosecutors proceed this way. It is not just a question of resources, although there is no denying that resource levels are frequently the determining factor in decisions to pursue or abandon cases. Tradition, and the endemic tensions between segments of the criminal justice system frequently create other difficulties.

In many jurisdictions, the police assigned to work drug money laundering cases are those officers who have handled drug cases on the street. There is no question that such experience is valuable but unless they can work effectively with forensic accountants, lawyers, computer experts, and other specialists there is little chance that effective forfeiture cases will proceed. Police forces and prosecutors frequently complain that the legislation is too cumbersome and unworkable. Perhaps, but some police forces and prosecution offices are making it work despite the difficulties. Too often police investigators do not want what they call "paper cases." They have, as a result, to be content with small operations that net a few street dealers and low-level suppliers, but do not attack the proceeds and do not make use of the more powerful features of proceeds of crime legislation.

The prosecution also needs specialists to handle forfeiture and complex money laundering cases. In cases where forfeiture of the proceeds is possible, prosecution specialists should be involved from the outset of the investigation. Some jurisdictions will have more options than others[28] but success comes to those who integrate forfeiture considerations early and think through the issues carefully. Practical questions of exactly what is to be seized and when[29] cannot be neglected and should not conflict with other aspects of the game plan. Similarly other aspects of the case[30] should be alive to developing evidence in support of seizing, freezing and eventual forfeiture.

There is no question that proceeds of crime cases can be complex and difficult to prepare. In jurisdictions that do not have procedures for civil forfeiture a conviction must be obtained for a predicate offence prior to triggering a proceeds case. The criminal profits must have been traced and frozen or at least found. And all legal and logistical hurdles for a seizure and forfeiture must have been cleared. When investigations are well handled and the cases are properly presented, the courts have not had great difficulty with the various proceeds of crime statutes. This has

certainly been the case in the United States, Australia, Italy and Canada. In these jurisdictions, and likely in others with which we are less familiar, the courts have seen fit to order the forfeiture of the proceeds of crime when well-prepared cases are presented. Courts have, for the most part, had little difficulty with the lower standard of proof that generally applies to forfeiture.

Consider, for example, the following Canadian case. Following a conviction on a charge of forgery of Pharmacare[31] claim forms and Pharmacare Prescription Invoices, the Crown prosecutor applied for forfeiture of the proceeds of crime. In brief, the Crown alleged that at least $635,000 was illegally obtained; that these funds were moved through 36 bank accounts in Canada and then transferred offshore, some to England, some to the Isle of Man and some to the Channel Islands; and that the illegal funds were co-mingled with legitimate funds, making it impossible to determine exactly what was legitimate and what was not. The defense responded by an application that, among other things, challenged the appropriateness of using civil standards of proof in criminal court.

In refusing the defense application Judge W. J. Kitchen addressed the standard of proof:

> The objective of the lower standard of proof is to resolve the difficulty of proving matters of which only the criminal likely has knowledge. The Crown must prove beyond a reasonable doubt the fact of the crime and the quantum of proceeds. But proof of the identification of the proceeds of crime is a different matter. The disposition of the proceeds by the accused will have been a manipulation of the property when it was likely well beyond the control and observation of others. Such surreptitious activity is becoming easier with the increasing sophistication of commercial transactions and the capability to make computer and electronic dispositions of property on a national and international level.[32]

Further, Judge Kitchen observes at page 23 that:

> The accused has a correlative burden - to prove on the balance of probabilities that the subject property is <u>not</u> the proceeds of

> crime. If such is not done, the facts are "presumed." Placing a burden on the accused to prove this furthers the objective of not putting a burden on the Crown which is virtually impossible to meet.

There will no doubt be further constitutional challenges to the use of a lesser burden of proof in criminal proceedings but thus far Canadian courts have not had difficulty in accepting a lower standard as provided for by the Proceeds of Crime legislation. The Supreme Court of Canada has not yet considered a case on the issue.[33]

MUTUAL LEGAL ASSISTANCE

An additional order of complexity is introduced when jurisdictional considerations enter the picture. Consider, for example, a drug-trafficking operation conceived of by citizens of two or more countries, with financing and direction coming from players in a third jurisdiction, and the execution of the crime using associates in supplying countries, with couriers to transport the drugs to one or more additional countries. Add to this the distribution and money laundering operations, which will almost certainly involve additional jurisdictions. If the organized crime group is at all skilful, associates at each stage of the operation will know just enough to do their part, but not enough to betray other parts of the operation.

Leaving aside for the moment questions of cost, and assuming a solid basis for suspecting a particular group, investigators are going to face problems of co-operation with police and regulatory bodies, and bank secrecy laws. They will have to cope with delays, language barriers, and perhaps corrupt police or other officials. If they manage to overcome these difficulties and collect evidence they may face even more serious problems. In most common-law jurisdictions, for example, only evidence that can be tested through cross examination before the court is admissible. Many expensive, and time consuming, investigations have foundered on this offshore rock.

There has been progress, however. Informal co-operation among police forces and regulatory bodies continues and is being strengthened. This kind of co-operation depends, however, on personal contacts, which can be effective, but are frequently short-term due to personnel changes. As invaluable as the informal arrangements

are, they can also lead to procedures being short-circuited, resulting in, for example, evidence being collected that is inadmissible. Beyond informal co-operation, letters rogatory and commission evidence provide modest and slow assistance in many jurisdictions.

Given the growth in international crime and the many difficulties of international investigations, many bilateral and multilateral mutual legal assistance treaties have been negotiated and ratified in recent years. The United Nations has developed model treaties that can be used by Member States in negotiating such arrangements. The Model Treaty on Mutual Assistance in Criminal Matters contains provisions that deal with, among other things: the scope of application; the designation of competent authorities, the contents of requests; refusal of assistance; the protection of confidentiality; service of documents; obtaining of evidence; availability of persons in and out of custody to give evidence; safe conduct; search and seizure; certification and authentication; and costs. Treaties based on this model will contribute to improvements in international investigations.[34]

For example, Canada has eight bilateral treaties in force, two more are awaiting ratification and ten are being negotiated. In addition, Canada has ratified the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and nearly 100 countries are party to the convention in force. The convention includes provisions related to mutual legal assistance. Canada has also contributed to the development of the Organization of American States Convention on Mutual Legal Assistance. With respect to the proceeds of crime, the Canadian policy allows for execution of orders related to the proceeds of crime. The treaty with the United States includes the provision that:

> 1. The Central Authority of either Party shall notify the Central authority of the other party of proceeds of crime believed to be located in the territory of the other party.
>
> 2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings related to the forfeiture of the proceeds of crime, restitution to the victims of crime, and the collection of fines imposed as a sentence in a criminal prosecution.[35]

Consequently, the proceeds of crime can be pursued regardless of whether a conviction was obtained in Canada or in the United States.[36]

Mutual Legal Assistance Treaties can also be negotiated to deal with special difficulties. As noted above, letters rogatory can provide modest assistance in some circumstances but they can also frustrate investigations. For example, several recent Canadian cases have involved Canadian authorities taking commission evidence in civil-law countries and having to work with the civil-law procedure for taking evidence. This can have the unfortunate consequence that the evidence is then inadmissible in a common-law jurisdiction.

It is possible, however, to fashion an agreement to overcome this serious obstacle. The Mutual Legal Assistance Treaty between Canada and the Netherlands, which came into force on May 1, 1992, provides that:

> Whether or not the testimony of a person is requested to be taken under oath or affirmation:
> a. the requesting State may specify any particular questions to be put to that person;
> b. the requested State may permit the presence of the accused, counsel for the accused and any competent authority of the requesting State, as specified in the request, at the execution of the request;
> c. the competent authority of the requested State shall permit questions to be put to the person called to testify by any persons allowed to be present at the execution of the request.[37]

It is worth emphasizing the importance of this kind of provision.[38] If letters rogatory and informal arrangements lend themselves to processes that frequently cannot be concluded and result in cases that must be abandoned, those authorities responsible for assigning resources will not support what they will increasingly see as international adventures and a waste of scarce resources. This is precisely the opposite reaction to that required to deal with the increasing internationalization of criminal enterprises.

More treaties are being negotiated which will provide additional incentive to pursue difficult international crime cases that are not now considered or have to be abandoned after significant expenditure of time and money. This, in turn,

corroborates the tacit decision to avoid investing resources in international cases unless there is significant national self interest and a set of circumstances that produce the following elusive combination: good intelligence, likely involving an inside informant; co-operation from all the relevant authorities; the right personal contacts; the appropriate Mutual Legal Assistance Treaty; extradition agreements; appropriate budgets; and management willing to authorize international investigations and travel.

Given all this it is not surprising to find that so few international cases are pursued. Moreover, without sustained and meaningful international pursuit, we should not be surprised to find criminal enterprises becoming increasingly international. If the growth in international crime is to be contained, more cases must be investigated and prosecuted, even if the odds are long. This is fundamental to preserving trust in the international financial and economic structures.

ENTERPRISE CRIMEENTERPRISE CRIME

The trade in illegal drugs has provided the primary incentive for the enactment of proceeds of crime legislation and many countries have essentially limited the application of proceeds statues to drug cases. Other countries have stipulated a broader range of crimes that can trigger a proceeds of crime action leading to forfeiture of criminal profits. In Canada, for example, the provisions of the proceeds legislation apply to designated drug offenses and to enterprise crime offenses. An enterprise crime offence is defined as an offence against twenty-four Criminal Code offenses. The list is reasonably comprehensive, covering most economically motivated crimes. Thus, murder fraud, robbery, theft, fraudulent manipulation of stock exchange transactions, procuring, keeping a common bawdy-house, forgery, laundering the proceeds of crime, and so on are included.[39]

As argued above, many career criminals, and most organized crime groups, are no longer narrow specialists. Some groups may limit their criminal operations to drugs but when they become at all successful the range of offenses widens, including for a start, money laundering. Traffic in drugs provides funds for other crimes and yields the capital for infiltration of legitimate business and the corruption of officials and politicians. The ills of the drug trade are well known and have motivated the

extraordinary international effort to curtail drug trafficking witnessed in the last few years.

Drugs offenses are not, however, the only significant domestic and international crime problem worthy of intensive investigation and the application of proceeds of crime legislation. Enterprise crimes of various kinds are equally threatening to many states and threaten the international financial and economic system.

In addition to the drug trade, the threat is concentrated in three areas, each requiring intensive investigation. First, enterprise crimes of all sorts benefit from, and frequently depend upon, the corruption of officials and politicians. A second area requiring increased attention is the corrosive effect of enterprise crime infiltration of legitimate business, whether funded by drug traffic or other enterprise crimes. A third broad area is the continued operation of organized crime in traditional areas in addition to drugs. Many crimes simply require that groups be organized internationally. Smuggling of all kinds is flourishing and includes traffic in drugs, arms, illegal immigrants, human and animal body parts, tobacco, pharmaceutical products, art and archeological treasures, and so on. Other traditional crimes also require organized enterprises: protection rackets; disposing of stolen goods; gambling; the production and distribution of pornography; the procurement of women and children for the sex trade.

If, along with drugs, these three broad areas present the best opportunities for organized criminal activity, it is fair to ask if we have structured our search for criminal events appropriately. In many countries it seems fair to say that the fight against drug trafficking has received the bulk of public attention and government resources. Moreover, traditional targets have received the bulk of investigative attention. Thus, mafia groups and their rivals have been the focus of law enforcement efforts on organized crime. This has frequently meant that low-level criminals were convicted but those directing the ventures were seldom caught.

More recently law enforcement in some countries has been much more successful in penetrating criminal enterprises. The Federal Bureau of Investigation in the United States has, in the last decade or so, had unprecedented success in convicting the bosses of crime families in major American cities. The investigative strategy that has guided FBI work against organized crime is called the enterprise theory of investigation.[40] In this approach the focus is on identifying the hierarchy.

Investigative techniques that seem routine to North Americans are essential, including the use of co-operating witnesses, sometimes requiring the use of a witness protection program; informants; undercover agents; and, particularly important, court approved electronic surveillance. These techniques, coupled with the power of the United States Racketeer Influenced and Corrupt Organizations Statute,[41] have led to significant success in prosecuting crime bosses.

Although the investigative techniques listed above are common in some jurisdictions, their use is forbidden in others. Most civil law countries do not allow such investigative techniques. A notable exception is Italy,[42] which has passed legislation providing greater investigative powers. These new powers, with the strong sense of public outrage against crime and corrupt politicians, have led to dramatic improvements in the anti-mafia, anti-corruption, crusade.

The general point here is that success against the leaders of criminal enterprises requires the skilful use of intrusive investigative techniques. Many countries cannot use them, and others do so with little skill and against a backdrop of corruption, which nullifies their effect in any case. As a consequence, there is no doubt very much more enterprise crime than is commonly believed.

Moreover, we know very little about the magnitude of newer crimes committed by corporations and professionals. The kinds of offenses included under terms such as "economic," "corporate," or "white collar crime," have received too little attention. This holds for most countries, even for those that are attending to traditional organized crime. It is partly a question of resources, partly one of ideology. Many people, particularly the rich and powerful, do not see that the behaviour of the rich and powerful is sometimes profoundly criminal, not just sharp practice or the necessities of business, and deserves the same treatment as other serious crime. Some even believe that the economic system could not sustain a profound scrutiny of business since so much "legitimate" business is questionable, depending for example on corrupt regulators and such practices as having loans guaranteed by stolen assets or by assets, (i.e., real estate holdings), which are knowingly overvalued.

Recent cases underscore the need to look more carefully for violations of the law by professional and business interests, and not just when they are in active collaboration with, for example, drug traffickers to launder money. The Bank of

Credit and Commerce International and the Savings and Loan cases[43] in the United States illustrate that the potential damage from such criminal abuse to national economies, individual victims, and international commerce often exceeds the harm most organized crime groups can inflict.

Although, as noted above, proceeds of crime statues were primarily designed with drug profits in mind, in many states they can be triggered by a wide range of other enterprise crimes as well. In Canada, and in other countries, as police and prosecutors gain more experience with the proceeds legislation more non-drug cases are attracting efforts to seize and forfeit criminal proceeds. In Canada the proceeds of crime legislation is being used more frequently in drug cases. Applications for forfeiture have also been made in enterprise crime cases including commercial fraud, forgery, and keeping a common bawdy-house.

This is a trend that should be continued. The criminal law is likely more effective against enterprise crimes when the general deterrence effect is not overwhelmed by a lucrative drug trade. Ironically, as many have observed, the very vigour of the "war on drugs" has driven the price up and provided, in effect, an incentive to traffic and a continuing subsidy once established in the trade.

SUMMARY AND CONCLUSIONSSUMMARY AND CONCLUSIONS

The nature and extent of organized crime, and particularly international organized crime, fuelled largely by the traffic in illicit drugs, have prompted an unprecedented response from nation states and the international community. The list of international conventions and other mechanisms of co-operation is impressive and is complemented by changes in domestic legislation in countries around the world. This wealth of international and domestic action has provided new tools for the investigation and prosecution of drug offenses and other enterprise crimes. It has also imposed new requirements on investigators and prosecutors.

Enterprise crime has become international and sophisticated, making use of improvements in computers, telecommunications, international financial services and taking advantage of increased openness in trade and the mass movement of people. Moreover, many enterprise crime groups hire specialists for various aspects of each operation. These specialists have come to include money-laundering experts

who knowingly provide such services and others, such as lawyers and accountants, who may not know that they are part of a larger laundering operation.

Money laundering operations have developed a variety of methods of moving money around the world. Smuggling cash, wire transfers, the use of underground banking, and so on, are common. In addition, money laundering operations routinely use tax-haven countries with bank secrecy laws and regulations allowing the easy establishment of shell companies, the use of nominee shareholders, and the issue of bearer shares.

Faced with a nearly inexhaustible list of money laundering techniques and specialists, investigators and prosecutors similarly need to specialize and form teams of investigators who, together, can provide the necessary mix of skills. Often experienced police investigators need to have the ongoing assistance of lawyers, forensic accountants, computer experts, and specialists in corporate practices, banking, and international money-transfer procedures. Depending on the case, other specialized expertise must be available as well.

Typically it will be necessary to run parallel files: one aimed at a conviction for a crime predicate to a proceeds case; the other to identify and trace the assets of the criminal enterprise leading to an application to seize and forfeit. There will be variations on this in states that allow for civil forfeiture or in rem proceedings, but even where this is the case, parallel files may be advisable. Often the decision to proceed civilly will be made only after it is clear that evidence for a criminal prosecution is lacking.

None of this is simple, nor is it inexpensive.[44] Specialists cost money. Running parallel files costs money. International investigations cost money. As always, it is a question of priorities and political will. Politicians and international public servants have been persuaded that the threat posed by organized crime is greater now than it has ever been. In response, international co-operation has been improved and domestic legislation enacted to enable criminal justice to take the profit out of crime. What is required now is to negotiate the priority that confiscating the proceeds of crime will have where it counts: in the resourcing provided to investigate and prosecute money laundering cases domestically and internationally.

There is no question that international investigations can be difficult and complex. But there is promise in the new mechanisms of co-operation that have been developed, and are being improved upon, since the Vienna Convention. Of particular importance are Mutual Legal Assistance Treaties. Such treaties need to be negotiated and refined but they can assist in surmounting difficulties that have too often meant abandoning important cases because of technical problems such as the procedures to be followed in collecting evidence.

Although many police investigators and prosecutors are, perhaps justifiably, sceptical about the utility of such treaties, they can be made to work. They should be seen not as substitutes for good informal contacts and international working relationships which investigators so value, but as mechanisms that can be used when there is a problem and a need for a formal, clear procedure.

Proceeds of crime legislation is new in most jurisdictions and there is not yet an established body of jurisprudence to provide complete guidance. Nonetheless, there has been sufficient experience across many jurisdictions to show that well-prepared cases can succeed. Proceeds of crime legislation is robust and can sometimes take the profit out of drug trafficking and other enterprise crime.

Note that this conclusion does not depend on the view that the criminal law can carry the burden of containing, much less reducing, international organized crime. Even with greatly increased resources law enforcement is not going to be able to investigate a significant proportion of international commerce. Certainty, or even a significant probability of punishment, will continue to be absent. Moreover, the effectiveness of deterrence, overestimated at the best of times, is likely least effective when applied to organized crime. But, if general deterrence is never as effective as we would like, neither is it completely ineffective. At the same time we should acknowledge specific deterrence and the symbolic importance of convictions for organized crime and particularly international organized crime. Criminal law, for all its weakness, is nonetheless an essential feature of the larger international effort.

The criminal law cannot by itself carry the burden of reducing, or even containing, money laundering. A broad range of measures is required. They are beyond the scope of this paper, which has focused on problems of investigation and prosecution. Nevertheless, it is important to mention some of the other supporting pillars of a sensible anti-money laundering policy in closing.

First, there must be greater involvement from industry and professional associations in self-regulation and in participating in industry-wide efforts to prevent the abuse of financial systems, stock markets, real-estate markets and other business sectors. Although complaints that "we are not the police," are heard less frequently there is still insufficient appreciation of the stakes involved. If, as argued, trust in key structures and financial systems is threatened, then industry and professional associations have everything to loose by not actively participating to reduce money laundering.

Second, there needs to be greater attention paid to prevention generally. Improved intelligence and greater sharing of information on specific techniques and organized crime groups are essential. The gathering and appropriate sharing of criminal intelligence are delicate tasks, requiring a balanced judgement about the quality of the information, the legitimate privacy interests of individuals and the trustworthiness of those with whom intelligence is to be shared. Organizations such as Interpol and the Commercial Fraud Unit of the Commonwealth Secretariat are examples of how this balance can be struck.

Third, given the nature of international commerce, national regulation and law enforcement are not sufficient. There is a role for regional and international regulation in various sectors to reduce, not just organized crime's participation in legitimate business, but also the corporate criminality of companies that manipulate the legal and regulatory regimes of national systems and, for example, do safety testing in countries with relaxed regulatory structures or shift profits around the world to evade tax.[45]

Sound public policy designed to contain organized crime depends upon, at least, these pillars in addition to the criminal law. We should be cautious then, when we evaluate the effectiveness of the new criminal-law powers provided by proceeds of crime legislation. Proceeds of crime legislation can take some profit out of crime. Prudence suggests that we learn to use the new tools the legislative regimes have provided and work on strengthening other pillars of public policy simultaneously.

ENDNOTES

1.Several colleagues provided useful comments. The author would like to thank Peter Burns, Patricia Donald, Ronald Gainer, Peter German, Michael Hale, John Hogarth, Marcia Kran, Liliana Longo, and Daniel PrJfontaine.

2. The list includes: The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Financial Action Task Force, the Basle Committee on Banking Regulations and Supervisory Practices, the Council or Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, the European Community Council Directive on prevention of the use of the financial system for the purpose of money laundering, the Organization of American States Model Regulations and Draft Mutual Legal Assistance Treaty. In addition, Interpol has become a significant player in providing model legislation to facilitate the obtaining of evidence for forfeiture proceedings. Interpol continues to facilitate co-operation in investigations and in tracing and arresting international offenders. All these agreements and mechanisms (and others not listed here) are conveniently available in Baldwin and Munro (1993).

3. S.C. 1988, c.51. The act was brought into force by proclamation on January 1, 1989.

4. An excellent overview is provided by the United Nations. See United Nations (1993) "Control of the Proceeds of Crime. Report of the Secretary-General." United Nations Document E/CN.15/1993/4. The reports of the Financial Action Task Force are also a good place to start. The recommendations and the subsequent activities of the group are published in three annual reports. See Organization for Economic Co-operation and Development, Directorate for Financial, Fiscal and Enterprise Affairs. "Financial Action Task Force on Money Laundering, Annual Reports and Annexes, 1991, 1992, 1993." Recommended as well is a Canadian report done by two researchers at the Department of the Solicitor General. See Margaret E. Beare and Stephen Schneider (1990).

5. Even in countries with well developed financial services the use of cheques and credit cards may be declining. In some jurisdictions there is a growing return to cash as tax levels stimulate underground economies, tax avoidance and evasion. In such circumstances governments stand to loose significant tax revenue but even more important is the erosion of traditions of honest reporting of income. When low-level laundering becomes common it is more difficult to detect and prosecute more serious cases. Information from, and the continuing co-operation of, the citizenry is essential to most law enforcement. When this erodes, the efficiency and

effectiveness of the entire structure is threatened. The result may be to exacerbate traditional difficulties of detecting and prosecuting money laundering.

6. See United States Senate (1985, 104).

7. Royal Canadian Mounted Police case files.

8. For an excellent review and commentary see Fisse, Fraser, and Coss (1992).

9. Formally, The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

10. Baldwin and Munro (1993) contains proceeds of crime legislation from around the world together with the relevant international agreements.

11. See Pinner (1992, 42).

12. Bill C-9 - passed by the House of Commons of Canada June 19, 1991. The regulations pursuant to the act entered into force on March 26, 1993. See S.C. 1991, c.26.

13.Personal interviews with officers in charge of economic crime units and anti-drug profiteering units.

14. See "Information to Obtain A Search Warrant" sworn in Vancouver, B.C., December 5, 1993 relating to Citizens Trust Company, Intercontinental Currency and Bullion and several individuals.

15.The Money Laundering Monitor October- December 1993. Washington, D.C: U.S. Department of Justice, p4.

16. From notes of a meeting organized by the Co-ordinated Law Enforcement Unit, Ministry of the Attorney General of British Columbia, November, 1993.

17. Personal interviews with U.S. customs personnel.

18. RCMP case files as summarized by Beare and Schneider (1990).

19. For an excellent history of just how excessive see James B. Stewart's 1991 account "Den of Thieves." New York: Touchstone Books.

20. Vitiello, Justin. (1992).

21. For an excellent brief review of the role of accountancy in white collar crime investigations see Wells (1993).

22. See Beare and Schneider (1990, 240).

23. See Michael Levi (1993, 80).

24. See the United States President's Commission on Organized Crime (1984).

25. For those who cannot resist estimates, however problematic: An estimate from the Financial Action Task Force has it that illicit drug sales in Europe and North America amount to $122 billion (U.S.) annually [Lascelles, 1990]. This is approximately equal to the projected total annual expenditure of the Government of Canada for 1993/1994.

26. See Shipman and Rider (1988).
27. In the United States most assets can be forfeited either civilly, or criminally, or both. Moreover, anything used to facilitate the commission of a crime and any asset which is the proceeds of crime, may be forfeited.
28. What is it? What is it worth? Who is going to manage it while the case is pending? (One prosecutor's shorthand for this was "If it eats, don't seize it".) Are there storage problems? What third party rights are there likely to be?
29. For example, during undercover operations or when debriefing informants.
30. A provincial government plan subsidizing prescription drugs.
31. Regina v. Nayanchandra Shah, Provincial Court of British Columbia, November 30, 1992. Vancouver Registry No. 40437T3, p.22.
32. R.vs.Tortone, 1993 23 C.R.(4th) does not call into question the proceeds of crime legislation. Rather, the case turned on the question of whether or not the trial judge should have ordered a mistrial because of comments he had made about the difficulty in appreciating the evidence in the case.
33. The Government of Canada is preparing an implementation manual to assist Member States of the United Nations in negotiations based on the United Nations Model Treaty on Mutual Assistance in Criminal Matters. The Government of Australia is preparing an implementation manual on the United Nations Treaty on Extradition.
34. 1990 Canada Gazette, Part 1, p953. See also Mutual Legal Assistance in Criminal Matters Act (R.S. 1985, c.30 (4th Supp.) and Statutes 1988, c. 37, assented to 28th July, 1988).
35. Some refinement and interpretation will be required. For example, Canadian Judges cannot order the forfeiture of assets ordered forfeited by a court of criminal jurisdiction in the foreign state. They have the power, however, to enforce the payment of fines to represent the value of any property, benefit, or advantage. See S.C. 1988, c. 37, s. 9.
36. Mutual Legal Assistance Treaty between Canada and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters. Treaty Series 1992/9. Ottawa: Queens Printer for Canada.
37. Some additional refinement will be required here. One of the first investigations seeking to use the new treaty floundered when defense counsel asked to see police notebooks, a practice common in Canada, but not in the Netherlands. Treaty negotiators do not think of everything the first time.
38. For the complete list see section 462.3, Criminal Code of Canada. Patricia J. Donald (1993,18) points out that "The list of predicate offenses is fairly

comprehensive but has some surprising omissions,. considering the philosophy behind the legislation which is to confiscate the proceeds of crime. Not included are such Criminal Code offenses as charging a criminal rate of interest (s.347), break and enter (s. 348), mail fraud (s.381), and publishing a false prospectus (s. 400)."

39. See U.S. Department of Justice (1988).

40. Title 1X of the Organized Crime Control Act, 18 U.S.C. ss. 1961.

41. See Papa (1993).

42. For two excellent accounts of the Savings and Loan case see Seidman [1993] and Day [1993].

43. Some jurisdictions, including Canada and the United States, have procedures so that some of the forfeited profits are directed to law enforcement and do not simply disappear into the general revenue account. Even proponents of these policies acknowledge that the amounts forfeited (as distinct from the amount seized) are insufficient to make much of a difference to law enforcement budgets. Nonetheless, there is something satisfying about using criminal proceeds to combat crime.

44. See Braithewaite [1984, 1993] for an analysis of corporate crime in the international pharmaceutical industry.

REFERENCESREFERENCES

Balwin, Jr., Fletcher N. and Munro, Robert J. (1993) Money Laundering, Asset Forfeiture and International Financial Crimes. New York: Oceana Publications.

Beare, Margaret E. and Schneider, Stephen (1990) Tracing of Illicit Funds: Money Laundering in Canada. Ottawa: Department of the Solicitor General.

Braithwaite, John (1984) Corporate Crime in the Pharmaceutical Industry. London: Routledge & Kegan Paul.

Braithwaite, John (1993) Transnational Regulation of the Pharmaceutical Industry. Annals of the American Academy of Political and Social Science, Volume 525.

Canada (1992) Mutual Legal Assistance Treaty between Canada and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters. Treaty Series 1992/9. Ottawa: Queens Printer for Canada.

Day, Kathleen (1993) The People and Politics Behind the $1 Trillion Savings and Loan Scandal. New York: W.W. Norton & Company.

Donald, Patricia J. (1993) Money Laundering - A Legislative Response. Unpublished paper prepared for the International Investigational Techniques Course on Money Laundering (sponsored by the United Nations), Malta, March 1 -12, 1993.

Fisse, Brent; Fraser, David; Coss, Graeme, eds. (1992) The Money Trail: Confiscation of Proceeds of Crime, Money Laundering and Cash Transaction Reporting. Sydney: The Law Book Company Limited.

La Fuira, Santino and Giovanni (1990) L'Impresa mafiosa. Milan: Franco Angeli.

Lascelles (1990) Money Laundering Under Seige. Financial Times, April 20, 1990, at 39, col.5.

Levi, Michael (1993) White-Collar Crime: The British Scene. Annals of the American Academy of Political and Social Science, Vol. 525.

Organization for Economic Co-operation and Development, Directorate for Financial, Fiscal and Enterprise Affairs. (1991) Financial Action Task Force on Money Laundering, Annual Reports and Annexes, 1991, 1992, 1993.

Papa, Michele (1993) La Nouvelle Législation Italienne en Matière de Criminalité Organisée. Revue de Sciences Criminelles et de Droit Pénal Comparé (4) Oct-Déc. p.725.

Pinner, Graham (1992) Cash Transaction Reporting and Money Laundering Legislation in The Money Trail, edited by Brent Fisse, David Fraser and Graeme Coss. Sydney: The Law Book Company Limited, 1992.

United States, President's Commission on Organized Crime (1984) Cash Connection: Organized Crime, Financial Institutions and Money Laundering. Washington, D.C.: Government Printer.

Seidman, William L. (1993) The Great S&L Debacle and Other Washington Sagas. New York: Times Books/Random House.

Shipman, Anthony M. and Rider, Barry A.K. (1988) Organized Crime International: Fraud in the Securities Markets. Toronto: Crown Agents Training Services and the Commonwealth Secretariat Commercial Crime Unit.

Stewart, James B. (1991) Den of Thieves. New York: Touchstone Books.

United Nations (1989) The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Vienna: United Nations.

United Nations (1993) Control of the Proceeds of Crime. Report of the Secretary-General. United Nations Document E/CN.15/1993/4.

United States Senate, Committee on the Judiciary (1985) Money Laundering Legislation, Hearing, 99th Congress, Ist Session.

United States, Department of Justice (1988) Wanted by the FBI: The Mob. (FBI Organized Crime Report- 25 years After Valachi). Washington, D.C.: Department of Justice.

United States, Department of Justice (1993) The Money Laundering Monitor October- December. Washington, D.C: U.S. Department of Justice.

Vitiello, Justin. (1992) The new world order - from fraud and force to business as usual in the Global Free Market: The up-to-date evidence. Crime, Law and Social Change: An International Journal, Vol. 17, No.3.

Wells, Joseph T. (1993) Accountancy and White-Collar Crime. Annals of the American Association of Political and Social Science, 525.

[1.]Several colleagues provided useful comments. The author would like to thank Peter Burns, Patricia Donald, Ronald Gainer, Peter German, Michael Hale, John Hogarth, Marcia Kran, Liliana Longo, and Daniel Préfontaine.

2.The list includes: The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Financial Action Task Force, the Basle Committee on Banking Regulations and Supervisory Practices, the Council or Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, the European Community Council Directive on prevention of the use of the financial system for the purpose of money laundering, the Organization of American States Model Regulations and Draft Mutual Legal Assistance Treaty. In addition, Interpol has become a significant player in providing model legislation to facilitate the obtaining of evidence for forfeiture proceedings. Interpol continues to facilitate co-operation in investigations and in tracing and arresting international offenders. All these agreements and mechanisms (and others not listed here) are conveniently available in Baldwin and Munro (1993).

[3.]S.C. 1988, c.51. The act was brought into force by proclamation on January 1, 1989.

[4.] An excellent overview is provided by the United Nations. See United Nations (1993) "Control of the Proceeds of Crime. Report of the Secretary-General." United Nations Document E/CN.15/1993/4. The reports of the Financial Action Task Force are also a good place to start. The recommendations and the subsequent activities of the group are published in three annual reports. See Organization for Economic Co-operation and Development, Directorate for Financial, Fiscal and Enterprise Affairs. "Financial Action Task Force on Money Laundering, Annual Reports and Annexes, 1991, 1992, 1993." Recommended as well is a Canadian report done by two researchers at the Department of the Solicitor General. See Margaret E. Beare and Stephen Schneider (1990).

5.

[6.]See United States Senate (1985, 104).

[7.] Royal Canadian Mounted Police case files.

[8.] For an excellent review and commentary see Fisse, Fraser, and Coss (1992).

[9.] Formally, The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

10.

11 See Pinner (1992, 42).

[12.] Bill C-9 - passed by the House of Commons of Canada June 19, 1991. The regulations pursuant to the act entered into force on March 26, 1993. See S.C. 1991, c.26.

13.

14.

15.

16.

17.

18.

19.

20.

21.

22.

23.

24.

25.

26.

27.

28.

29.

30.

31.

32.

33.

34.

35.

36.

37.

38.

39.

40.

41.

42.

43.

44.

45.