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Department of Justice

STATEMENT

OF

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CRIMINAL DIVISION

BEFORE

THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

MONEY LAUNDERING LEGISLATION

ON

OCTOBER 29, 1985

Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department of Justice on one of the biggest problems presently facing law enforcement, the laundering of money derived from criminal activity. Let me say initially that this is a difficult and complex subject as evidenced in part by the large number of bills that have been introduced. Today I am going to discuss three of those bills, S. 1335, S. 1385 and S. 572. The former bill was prepared by the Departments of Justice and Treasury and in our judgment represents the most effective legislative response to those who would seek to gain by dealing in the profits of crime.

As the Committee knows, money laundering -- the process by which one conceals the existence, illegal source, or illegal application of income and then disguises the source of that income to make it appear legitimate -- is big business. Just how big nobody knows for sure because drug rings and organized crime families don't prepare annual reports, but the Treasury Department has estimated that Americans spend more than $80 billion each year to buy illegal drugs. Sales of $80 billion would make the illegal drug trade a bigger operation than all but one of the Fortune 500 companies, larger even than General Motors. And that is just from drug trafficking. A recent Wall Street Journal article -- which editorially supported the Administration's money laundering bill that I will be describing in a minute -- contains an estimate that somewhere in the neighborhood of $150 billion is generated each year by drugs, gambling, and vice in general. We ourselves are unable to determine exactly how much is laundered, but obviously it is a multi-billion dollar figure.

The Attorney General summed up the problem earlier this year when he described money laundering as "the life blood of the drug syndicates and traditional organized crime." Unfortunately, this problem has grown in size and complexity. More people are involved, there is more money being laundered, and the schemes to wash "dirty money" are now often so sophisticated that they involve an intricate web of domestic and foreign bank accounts, shell corporations, and other business entities through which funds are moved by high speed electronic fund transfers.

Perhaps even more disturbing is the increasing willingness of professional persons such as lawyers, accountants, and bankers at all levels from tellers to senior officials to become active participants in money laundering. While some criminal organizations still wash their own illegally generated money by such relatively crude methods as one of their members' smuggling a suitcase full of currency out of the country for deposit in an offshore bank, a number of drug rings and other criminal syndicates now hire professionals to launder the money produced by their operations.

Consequently, this Administration has determined that what is needed is new legislation to directly prohibit the laundering of money. The three bills that I will be discussing today all would create such an offense. Before I do that, however, I think it would be helpful to review some of their background.

As you know, on July 28, 1983, the President established the Commission on Organized Crime. Among its other responsibilities, the Commission was charged with reporting to the President from time to time -- with a final report to be submitted by March 1, 1986 -- and with making recommendations concerning any legislative changes needed to better combat organized crime and to improve the administration of justice. In October of 1984, the Commission issued an interim report to the President and the Attorney General dealing specifically with money laundering. Entitled The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering, the report graphically illustrated the problem and set out draft legislation designed to deal with it. The suggested legislation contained a new money laundering offense in title 18, amendments to the Currency and Foreign Transactions Reporting Act in title 31, and Amendments to the Right to Financial Privacy Act located in title 12. 1/

The Department of Justice and the Treasury Department have thoroughly reviewed the proposals drafted by the Commission on Organized Crime and analyzed them in light of our experiences in

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1/ The Commission recommended other measures, such as a new bank bribery statute and an amendment of the federal wiretapping statute (18 U.S.C. 2510 et seq.) to allow law enforcement authorities to seek court orders authorizing the interception of communications involving criminal violations of the Currency and Foreign Transactions Reporting Act, which were enacted as part of the Comprehensive Crime Control Act of 1984 (P.L. 98-473). Moreover, a number of its recommended amendments to the Currency and Foreign Transactions Reporting Act, such as greatly increased fine levels and the addition of an attempt provision, were also enacted as part of the Comprehensive Crime Control Act.

investigating and prosecuting money laundering cases around the country. While the recommendations of the Commission provided an excellent starting point, we concluded that modifications and refinements were needed in a number of areas, and that certain additional provisions and offenses not discussed by the Commission would also be of great assistance in combatting money launderers.

Of primary importance is our agreement with the Commission that a new offense dealing specifically with money laundering is needed in title 18. As the Committee knows, at the present time we do not have such a statute and most prosecutions for this offense are brought under the Bank Secrecy Act provisions in title 31 that require the filing of various reports concerning certain monetary transactions with financial institutions and which punish the failure to file the reports or to do so truthfully.

That this approach is no longer adequate is vividly illustrated by a recent investigation of large scale money laundering in Puerto Rico. That situation involved a loose network of local financial institutions and illegal lottery ticket dealers known as "acapadores." The gist of the scheme was that the "acapadores" would buy winning lottery tickets from legitimate winners of the Puerto Rico lottery for a slight premium plus the value of the tickets. In turn, they would sell these winning tickets for a higher price to "clients" wishing to hide illicit income. While some of the "acapadores'" conduct was

punishable under local law, most of it was not prosecutable under current federal law.

For example, when the "acapadore" accepts substantial amounts of currency from a narcotics trafficker and gives the trafficker a winning lottery ticket, his conduct is not punishable under the Bank Secrecy Act. Before the government can prosecute an "acapadore" we would have to establish that he has been operating as a financial institution as this term is defined in the law. More importantly, and certainly more difficult to do, we would have to prove that the "acapadore" knew about the law, that his activity was covered under the law, and that he knew about his obligation to file the necessary reports and to keep records of his transactions. Further, we have no effective law with which to prosecute employees of businesses other than banks because of the necessity of proving that they were acting as employees of a financial institution and that therefore they had the obligation to file the required reports.

Simply put, the Bank Secrecy Act, while an effective law enforcement tool, is not enough, standing alone, to combat money laundering. As long as currency transactions are properly reported, the Bank Secrecy Act contains no sanction for washing dirty money. Consequently we think that a new provision should be added to title 18 making it an offense to conduct or attempt to conduct a transaction involving monetary instruments or the wire transfer of funds, if the transaction affects interstate or foreign commerce or is conducted through a financial institution the activities of which affect interstate or foreign commerce, provided that the government can show either of the following: first, that the person acted with the intent to promote, manage, establish, carry on, or facilitate an unlawful activity (defined as a state or federal felony), or, second, that the person knew or acted in reckless disregard of the fact that the monetary instruments or funds represent the proceeds of or are derived from the proceeds of an unlawful activity.

We have carefully drafted our bill, S. 1335, to include not only the person who, for example, deposits cash representing the proceeds of an unlawful drug transaction in a bank or uses such "dirty money" to buy a new car, but also the bank employee or car salesman who participated in the transaction by accepting the money if such a person can be proved to have known or to have acted in reckless disregard of the fact that the money involved was derived from criminal activity. Such persons, and in particular the employees of banks and other financial institutions who knowingly or recklessly help criminals dispose of the fruits of their crimes, facilitate criminal activity and are as deserving of punishment as the drug dealer or loan shark who brings them their ill-gotten cash or other monetary instruments derived from their cash. 2/

2/ S. 1335 would not apply to duly authorized government law enforcement or intelligence activities such as FBI undercover operations routinely described in annual appropriations bills. See, e.g., section 203(b) of P.L. 98-411 (98 Stat.1545, 1559).

The punishment for the new money laundering offense which we have proposed is appropriately severe: imprisonment for up to twenty years and a fine of up to the greater of $250,000 or twice the amount of money involved in the offense. S. 1335 also provides for a civil penalty of up to the greater of $10,000 or the amount involved in the transaction, and for the forfeiture of all funds involved in the offense. The civil penalty and the forfeiture provisions would be in addition to any fine imposed for a criminal conviction. In short, we intend to make the laundering of money derived from criminal activity an expensive proposition for those who would try it.

One aspect of the new money laundering offense which merits particular attention is the coverage of one who cannot be shown to have actual knowledge that the money he or she receives or handles in a transaction was derived from a crime but who acts in "reckless disregard" of the fact that the money was so obtained. Increasingly, with the enormous money derived from narcotics trafficking and organized crime, money launderers are persons such as lawyers and bankers who, for a price, launder money that is clearly the proceeds of a crime even though it cannot be proven that they have actual knowledge of its source.

Consider, for example, this actual case in the Southern District of Florida in 1982: One Beno Ghitis, a foreign national who operated a money exchange business in South America, opened an account in the Capital Bank in Miami in the name of an entity called Sonal. An agent of Ghitis, a person named Victor Eisenstein, deposited $242 million in cash in the Sonal account between January and August of 1981, most of it brought in in cardboard boxes and duffel bags. For handling the Sonal account, the bank charged a "service fee" of 1/8 of 1 percent of the total deposits which was subsequently raised to ¼ of 1 percent and then to a flat "fee" of $300,000 per month. In civil forfeiture actions brought against some of the money in the Sonal account and against some found in Eisenstein's office, the District Court found that although there was no indication that any of the principals were engaged in drug transactions, the volume, frequency, and other circumstances surrounding the cash deposits were such that Ghitis, Eisenstein, and others involved knew or should have known that the cash involved was drug tainted. Hence, nearly $8 million was forfeited to the government, $4,255,625.39 in the Sonal account and $3,686,639 found in Eisenstein's office which he had conveniently rented in the same building as the branch of the Capital Bank where he made most of his deposits. [3/] While the forfeiture of the money was most welcome, in our view this activity is deserving of criminal prosecution and a sentence of imprisonment. Any new money laundering offense that would not reach this kind of egregious conduct would be inadequate to address the real problem with which we are concerned.

3/ United States v. $4,255,625.39, 551 F. Supp. 314 (S.D. Fla. 1982), aff'd 762 F. 2d 895 (11th Cir. 1985).

Or take the hypothetical case of an attorney who, for a $50,000 fee, accepts a suitcase containing $500,000 in currency from a person who he knows is employed as a construction worker with instructions to deposit it in small amounts in several different banks in his own name and then wire the money in each of the accounts to the worker's bank account in a foreign country. As another example, consider a bank employee who, for the same ten percent fee, accepts the whole suitcase of cash from the construction laborer, distributes it among several accounts set up by the laborer, and then wire transfers it to the foreign Bank.

Most persons would agree that in these examples there is such a substantial risk that the money is derived from a crime that the attorney and the banker are acting reprehensibly in accepting it with "no questions asked." To ignore this risk is to act in reckless disregard of the fact that the money represents the proceeds of a crime. If such a "reckless disregard" standard were not included, persons such as those in the examples I have just described who were willfully blind to the obvious source of the money involved could not be prosecuted.

Accordingly, the term "reckless disregard" is defined in the new money laundering offense as an awareness of facts and circumstances that lead the person to believe that a substantial risk exists that the monetary instruments involved in the transaction represent the proceeds of, or are derived from, an unlawful activity, coupled with his conscious disregard of the risk in a manner that constitutes a gross deviation from the standard of care that a reasonable person would exercise under the circumstances. The term "reckless disregard" is used in at least three other statutes in title 18 4/ and is to be contrasted sharply with a mere "reason to know" or "negligence" standard which was recommended by the Commission on Organized Crime. After careful consideration, we concluded that a "reason to know" standard was not suitable for subjecting a person to either the serious criminal or civil sanctions set out in the new money laundering offense. 5/

4/ See 18 U.S.C. 1365, proscribing the tampering with consumer products; 18 U.S.C. 33, concerning the destruction of motor vehicles; and 18 U.S.C. 1861, prohibiting the deceiving of prospective land purchasers.

5/ In addition to the scienter element, the Department's bill differs in other ways from the proposal drafted by the Organized Crime Commission. First, the Department's bill covers money laundering that affects commerce whereas the Commission's bill was restricted to money laundering through financial institutions. Second, the Department's bill covers money laundering through wire transfers; the Commission's bill does not. Third, the Commission's bill did not contain a forfeiture provision or civil penalties. Fourth, the Commission's bill provides for general extraterritorial jurisdiction over the offense. The Department's bill provides for much more limited extraterritorial jurisdiction. Such jurisdiction would attach only if the the transaction constituting the offense involved the laundering of $10,000 or more derived from a violation of title 18 or from certain particularly serious offenses in other titles such as those involving drugs, tax evasion, and espionage; the conduct constituting the money laundering was by a United States person, or, if not by a United States person it occurred at least in part in the United States; and the defendant had actual knowledge that the money represented the proceeds of one of the covered types of unlawful activity. The requirement that the defendant have actual knowledge that the money was derived from a crime, as opposed to having acted with reckless disregard of that
(Footnote Continued)

Turning now to other provisions in the Administration's bill which are of primary concern to this Committee, section seven of S. 1335 would add a new criminal facilitation offense to title 18. It would accomplish this by adding a new subsection (c) to 18 U.S.C. 2 to provide that "whoever knowingly facilitates the commission by another person of an offense against the United States by providing assistance that is in fact substantial is punishable as a principal." This offense would not be limited just to money laundering but would be particularly applicable to money launderers. For example, the new offense would be committed by one who, for a fee, took currency that he knew was derived from a drug sale and exchanged it for cashier's checks to return to the drug dealer although the person took no part in the drug sale and was indifferent as to the source of the money. It would also be committed by a chemist who manufactures and sells a lawful but difficult to obtain ingredient to a person who he knows intends to use it to produce a controlled substance.

In short, one who provides substantial assistance to another in the commission of an offense engages in reprehensible conduct which should subject him to criminal liability as a principal. Yet some courts have held that such a person is not guilty as an aider and abettor under 18 U.S.C. 2(a) unless he consciously intends to make the criminal venture succeed. Other courts have

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(Footnote Continued)
fact, was added because of a concern that otherwise the new money laundering offense might impose a burden on foreign persons acting abroad to become aware of United States law.

held, however, that a person who knowingly furnishes material assistance such as bribe money or goods to a person who he is aware intends to use them in a crime has sufficient scienter for criminal liability under 18 U.S.C. 2. [6/] The facilitation offense is intended to clarify the case law to ensure that one who knowingly furnishes such assistance to a criminal is punishable.

Section eight of S. 1335 is also not confined strictly to money laundering but, like section seven, would be particularly useful in dealing with those who handle "dirty money." It would add a new section 2322 to title 18 setting out two related, but distinct, offenses. The first offense is knowingly receiving the proceeds of any federal felony. The offense would be committed, for example, by a money launderer who received the proceeds of any federal crime.

The second offense is bringing into the United States any money or other property which has been obtained in connection with the violation of any law of a foreign country proscribing narcotics trafficking for which the punishment under the foreign law is imprisonment for more than one year. This offense is intended to reach those foreign drug traffickers who would look

6/ See, for example, Backun v. United States, 112 F. 2d 635, 637 (4th Cir. 1940) where the court stated that "[g]uilt as an accessory depends, not on 'having a stake' in the outcome of crime ... but on aiding and assisting the perpetrators; and those who make a profit by furnishing to criminals, whether by sale or otherwise, the means to carry on their nefarious undertakings aid them just as truly as if they were actual partners with them having a stake in the fruits of their enterprise."

to the United States as a place in which to invest their illegal profits and to insure that the United States does not become a haven for such activity.

It is interesting to note that both Canada and Switzerland have analogous provisions in their laws. Just last month in Switzerland, three men were convicted and jailed for laundering $47 million obtained from heroin sales in United States pizza parlors. The scheme involved some 500 people in Switzerland, New York, Italy, and Turkey, who sold some $1.65 billion worth of heroin through the so-called "pizza connection." The sentences imposed ranged from two to 13 years, and the men were fined a total of $82,000.

Section nine of our bill sets out a new chapter 202 in title 18 dealing with criminal and civil forfeitures. (It is drafted in such a way that is is easily modifiable if at some later time the Congress thought another title 18 offense ought to have a forfeiture remedy). It provides for the civil forfeiture of all funds or monetary instruments involved in the violation of the money laundering offense, and of the receiving proceeds offense if the proceeds were obtained in violation of either a federal or foreign felony provision pertaining to controlled substances. The provisions for accomplishing civil forfeitures are patterned after the civil forfeiture provisions in title 21. The new chapter also provides for the criminal forfeiture of money or other property involved in a violation of the money laundering or receiving proceeds offense. Criminal forfeiture would apply to any violation of the new receiving proceeds offense, not just the receiving of money or property derived from a drug crime.

In addition to setting out new offenses and other sanctions, S. 1335 also contains several provisions designed to make easier the investigation of money laundering and the tracing of the proceeds of crime. 7/ These amendments generally concern the Currency and Foreign Transactions Reporting Act in title 31 and the Right to Financial Privacy Act in title 12 and will be discussed in further detail by Mr. Queen. However, I would point out that S. 1335 contains a procedural provision in section four that is a matter of concern to this Committee. Section four essentially complements the amendments to the Right to Financial Privacy Act made in section three.

Section three would amend the Right to Financial Privacy Act to define and clarify further the extent to which financial institutions may cooperate with federal law enforcement authorities in providing information which is relevant to crimes by or against financial institutions, violations of the Bank Secrecy Act in title 31, 8/ violations of the new money laundering offense, and violations of certain serious drug crimes. The effect of this amendment to the RFPA is to allow a bank or other financial institution to provide information which it has reason to believe may be relevant to one of these crimes without risking civil liability under the Act or entailing any obligation to notify the customer of such cooperation which the Act requires.

7/ To a lesser extent, S. 1385 contains certain procedural changes with the same objective. S. 572 is limited to a new money laundering offense.

8/ The Bank Secrecy Act includes the Currency and Foreign Transactions Reporting Act. The CFTRA was enacted as Title II of P.L. 91-508 and is now codified at 31 U.S.C. 5311-5322. Together with Title I of P.L. 91-508, it is commonly called the Bank Secrecy Act.

Section four contains an analogous provision that would amend Rule 17(c) of the Federal Rules of Criminal Procedure to clarify the authority of the United States District Courts to issue orders commanding a person to whom a subpoena duces tecum is directed not to notify, for a specified period, any other person of the existence of the subpoena. Like the amendment to the Right to Financial Privacy Act negating the financial institution's obligation in certain situations to notify the customer that it has provided evidence of crime to law enforcement authorities, this provision is intended to prevent disclosure by third party record holders, such as banks, of legitimate law enforcement interest in the records subpoenaed by a grand jury. Such premature disclosure obviously has a high potential for impairing the investigation and should not be tolerated.

Mr. Chairman, that concludes my discussion of the Administration's bill, S. 1335, and I would now like to address some features of the money laundering and related provisions in the other bills before the Committee, S. 572 and S. 1385.

Both S. 572 and S. 1285 are derived from the new money laundering offense recommended by the President's Commission on Organized Crime. In fact, S. 572 is virtually identical to the money laundering offense drafted by the Commission. While, as I have indicated, S. 1335 is also derived in part from this approach, there are significant differences.

First, the money laundering offense in S. 572 and S. 1385 would be limited to money laundering through financial institutions. S. 1385 also contains a very significant further restriction. It states the offense as "initiating or causing to be initiated a transaction ... involving monetary instruments in, or through a financial institution ..." The effect, if not the intent, of this provision may be to exclude financial institutions from the coverage of the new provision and reach only bank customers. 9/ This result is unacceptable. Events of the past few years have vividly illustrated that banks should be clearly covered by any new money laundering offense.

Even the approach of S. 572 of covering both banks and bank customers is too restrictive as it would not reach money laundering by such methods as directly purchasing businesses, real estate, jewelry, etc. Nor would it help in an actual case which I can describe only generally because certain aspects of it

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9/ The term "initiates" is not defined in the bill but apparently it would not include the situation where a bank willingly engaged in a transaction in obviously "dirty money" as long as the customer suggested or requested the transaction. Somewhat confusingly, S. 1385 defines the term "conducts" as "commencing, concluding, or participating in the commencement or conclusion of a transaction." At first glance, this would seem to include banks in its coverage. Unfortunately, the term "conducts" is not used in that part of S.1385 that states the offense (proposed subsection 1956(a) of title 18), so the definition is useless.

are unresolved. In this case an attorney, whose clients were drug traffickers who generated large amounts of cash, hired a private investigator to receive, hold, and distribute the cash at the attorney's direction. In fact, well over $1,000,000 of this money was handled by the investigator in a six month period. Some of it was used to acquire boats, aircraft, and real estate and to make improvemnets to this property. In our view, the new money laundering offense should be applicable to cases such as this even though a financial institution was not involved. Accordingly, the money laundering offense in the Administration's bill, S. 1335, would apply whenever the transaction involving the proceeds of a crime can be shown to affect interstate or foreign commerce or to be conducted through a financial institution which is engaged in or the activities of which affect interstate commerce.

Second, as I have already discussed, the scienter standard in S. 572 and S. 1385 is too broad. These bills would punish one who was merely negligent in engaging in a transaction involving the proceeds of a crime. Although negligence in this area is certainly reprehensible, we think criminal liability should be reserved for persons who had actual knowledge that the funds involved were derived from a crime or who acted in reckless disregard of that fact.

Third, S. 572 and S. 1385 would only proscribe the laundering of money derived from certain listed federal felonies. While both lists are long and cover offenses most likely to produce "dirty money" -- they differ slightly but both closely follow the list of crimes that are predicate offenses for the RICO statute, 18 U.S.C. 1961 -- we can see no valid reason to limit the offense to laundering money derived from these crimes while not covering money derived from such heinous federal offenses as Presidential assassination and espionage, and such state offenses as gambling and prostitution. In short, we would prefer the new money laundering offense to cover the proceeds of any federal or state felony. While it is true that the states could enact their own money laundering statutes to cover state offenses, we believe a federal statute is needed to cover those situations in which the laundering occurs in another state or even, under the extraterritorial provision, in another country.

Fourth, S. 572 and S. 1385 describe the offense as conducting "a transaction or series of transactions." By contrast, the Administration's bill eliminates the reference to a "series of transactions" because such a phrase makes the inclusion of multiple counts in an indictment more difficult and may allow certain money launderers to escape deserved punishment by casting several different crimes as but one.

Fifth, S. 1335, the Administration's bill, would reach money laundering through wire transfers, whereas S. 572 and S. 1385 would not. Both of these bills are limited to transactions involving monetary instruments which excludes the coverage of wire transferred funds. This is a potentially serious omission in light of the use of wire transfers in sending unlawfully obtained money out of the country and returning it thereafter.

Finally, the Administration's bill contains forfeiture and civil penalty provisions while S. 572 and S. 1385 do not.

I note, Mr. Chairman, that S. 1385 also contains various amendments to the Bank Secrecy Act in Title 31. These parts of the bill are of primary concern to the Treasury Department and Mr. Queen will be discussing them in some detail. But let me just say generally that we believe broader changes in the Bank Secrecy Act are needed than those set out in S. 1385 or in S. 571, a companion bill to S. 572. Most important, the Act needs to be revised to allow the Treasury Department to share more efficiently the information it obtains in reports filed under the Act with other federal and state law enforcement agencies. S.1335, the Administration's bill, adopts such a comprehensive approach. While many of the amendments to Title 31 in our bill are technical, staff members of the Justice and Treasury Departments are available to explain them to the Committee staff should you so desire.

In sum, Mr. Chairman, while we appreciate the introduction of bills such as S. 572 and S. 1385, which by and large contain recommendations of the Organized Crime Commission, we believe that our study of all of these bills and intensive consultation with all concerned federal agencies have enabled us to produce the type of comprehensive legislation that is needed in this area. We hope that the Administration's bill, S. 1335, will be carefully considered and then expeditiously processed.

Mr. Chairman, that concludes my prepared statement and I would be happy to answer any questions at this time.

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