

>From lkomisar@.MISSING-HOST-NAME. Mon Mar 22 13:15:21 1999  
 Date: Mon, 22 Mar 1999 12:53:52 -0500 (EST)  
 From: Lucy Komisar <lkomisar>  
 To: lkomisar@echonyc.com  
 Subject: hba49305\_0x.htm

SPEAKER INDEX	CONTENTS		INSERTS						
BACHUS	9	14							
BARR	115	130	131	132	133	139	140	141	
BEREUTER	136	137							
BIERN	74	88	89	90	91	101	102	103	106
	107	108	109	110	111	112	114		
BLUM	116	131	134	135	136	137	138	139	143
	144								
GRASSLEY	18	22							
HINCHEY	61	63	107	108	109	110	111	112	113
	114	115	137						
KELLY	23	28	41	42					
KILPATRICK	53	65	69	70	71	72			
KROLL	48	52							
LAFALCE	7	17	41	42	43	44	79	86	127
	128	129	130	142	143	144	145		
LAZIO	15								
LEACH	1	8	13	14	15	17	22	23	28
	29	33	36	38	40	41	44	46	47
	48	53	61	65	73	79	80	86	92
	107	115	116	119	120	126	130	133	136
	137	139	140	141	145				
LUCAS	139								
ROUKEMA	13	14	17	45	46	47	48	49	50
	52	53	92	104	105	106	107		
SANDLIN	142	144							
SAPHOS	119	120	127	128	129	130	132	139	142
	143	145							
SERINO	79	80	87	88	91	92	93	94	95
	96	97	98	99	100	105	106	107	108
	109	112	113	114					
VENTO	86	87	88	89	90	91	92		
WARREN	28	29	40	43	44	49	55	56	57
	58	59	60	61	68	69			
WATERS	46	53	55	56	57	58	59	60	61
	71	72	92	93	94	95	96	97	98
	99	100	101	102	103	104	133	134	135
	139								
WINER	33	36	39	44	50	52	63	69	70
	71	72							

CONTENTS      SPEAKERS      INSERTS  
 STATEMENT OF HON. CHARLES E. GRASSLEY, A UNITED STATES SENATOR FROM THE STATE OF IOWA

STATEMENT OF HON. RAYMOND W. KELLY, UNDER SECRETARY FOR ENFORCEMENT, DEPARTMENT OF THE TREASURY,  
ACCOMPANIED BY STEPHEN KROLL, CHIEF COUNSEL, FINANCIAL CRIMES ENFORCEMENT NETWORK

PAGE 23

STATEMENT OF MARY LEE WARREN, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

PAGE 28

STATEMENT OF JONATHAN WINER, DEPUTY ASSISTANT SECRETARY, BUREAU FOR INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS, U.S. DEPARTMENT OF STATE

PAGE 33

STATEMENT OF HERBERT A. BIERN, ASSOCIATE DIRECTOR, DIVISION OF BANKING SUPERVISION AND REGULATION, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PAGE 74

STATEMENT OF ROBERT B. SERINO, DEPUTY CHIEF COUNSEL, OFFICE OF THE COMPTROLLER OF THE CURRENCY

PAGE 79

STATEMENT OF JACK A. BLUM, ESQ., LOBEL, NOVINS & LAMONT

PAGE 115

STATEMENT OF CHARLES S. SAPHOS, ESQ., FILA & SAPHOS

PAGE 119

INSERTS      SPEAKERS      CONTENTS  
NO INSERTS IN THIS HEARING

SPEAKERS                      CONTENTS                      INSERTS  
Page 1                      TOP OF DOC

H.R. 4005-MONEY LAUNDERING DETERRENCE ACT OF 1998 AND H.R. 1756-MONEY LAUNDERING AND FINANCIAL CRIME STRATEGY ACT OF 1997  
THURSDAY, JUNE 11, 1998

U.S. House of Representatives,  
Committee on Banking and Financial Services,  
Washington, DC.

The committee met, pursuant to call, at 9:30 a.m., in room 2128, Rayburn House Office Building, Hon. James A. Leach, [chairman of the committee], presiding.

Present: Chairman Leach; Representatives Roukema, Bereuter, Lazio, Bachus, Royce, Lucas, Barr, Paul, Snowbarger, Riley, LaFalce, Vento, Waters, Roybal-Allard, Velazquez, Watt, Hinchey, Ackerman, Kilpatrick, J. Maloney of Connecticut, Weygand, Sherman, Sandlin, and Lee.

Chairman LEACH. The hearing will come to order. As Members were notified last week, the committee is meeting today to hold a hearing and mark up two bills, H.R. 4005, the Money Laundering Deterrence Act of 1998, and H.R. 1756, the Money Laundering and Financial Crime Strategy Act of 1997. Last week each Member was provided copies with H.R. 4005, a section-by-section analysis, and H.R. 1756 and a substitute version of that bill. Addition copies are placed before each Member today.

We will now turn to the first order of business, which is a hearing in review of the Federal efforts to combat money laundering, including regulatory issues, relating to anti-money laundering enforcement by Federal banking agencies in Operation Casablanca, which is a recently concluded undercover investigation of drug-related money laundering.

Page 2

PREV PAGE

TOP OF DOC

It should be stressed at the outset that while money laundering is typically viewed as part and parcel of the larger problem of narcotics trafficking, it is also closely connected to another issue of central concern to this committee, the assault on the integrity of financial systems around the world. In an era of rampant crony capitalism and corruption, with financial institutions from the Caribbean to Moscow increasingly becoming beltways for money laundering rather than vehicles for facilitating legitimate commerce, the efforts of policymakers and law enforcement officials to develop innovative approaches to fighting money laundering take on particular urgency.

In assessing the current status of Federal anti-money laundering initiatives, the committee confronts a 'good news-bad news' circumstance. The 'good news' is that U.S. law enforcement has in recent weeks scored significant successes in revealing channels and methodologies used by narco-trafficking organizations to launder the proceeds of their U.S. operations.

The committee will hear from the Federal law enforcement officials responsible for overseeing Operation Casablanca, a three-year undercover investigation which the Treasury Department has called the 'largest, most comprehensive drug money laundering case in the history of U.S. law enforcement.' We are here today in large part to recognize the outstanding efforts of law enforcement officials who planned and executed this operation, which to date has yielded indictments of a series of banks and over 100 individuals, as well as the seizure of about \$100 million in illicit drug proceeds.

The 'bad news' is that Operation Casablanca has exposed significant tensions in the important bilateral relationship between the U.S. and Mexico, which arise out of a Mexican contention that both its national sovereignty and its laws have been violated by the activities of U.S. law enforcement officials operating on Mexican soil. Some senior Mexican officials have even gone far as to suggest that their government will seek to prosecute U.S. Customs agents who conducted undercover investigative activity in Mexico.

Page 3

PREV PAGE

TOP OF DOC

The U.S. must, of course, be sensitive to sovereignty concerns of any country, especially one whose border we share and whose economic

stability and continued commitment to democratic principles are paramount to U.S. interests in this hemisphere. However, what is difficult for many Americans to understand is why sovereignty should be invoked in protest of a legitimate law enforcement operation that had as its ultimate targets the narco-traffickers who have wreaked such devastation on communities and families in both of our countries.

It goes without saying that any attempt by Mexico to extradite U.S. law enforcement agents who participated in Operation Casablanca would risk irreparable damage to relations between our two countries. On this question, there should be no mistaking the resolve of Congress to stand foursquare behind law enforcement officers as they participate in legitimate law enforcement efforts. They deserve our unqualified support.

On the matter of sovereignty, two separate issues present themselves. The first relates to the importance of sworn law enforcement officials abiding by the rule of law, both U.S. and Mexican, which I am assured was the case in Operation Casablanca. The second relates to national security, which is the fundamental element of national sovereignty. Arguably, for instance, in today's post-Cold War environment, U.S. national security is in greater jeopardy from international drug cartels than from any foreign army.

After all, the sovereignty of any nation is jeopardized when its social systems are undermined by those who would poison its citizenry. That is why this country has accorded so much attention to the interdiction issue. Those countries where narcotics are produced and transshipped may be correct in pointing out that the principal challenge for user countries such as the United States is to decrease demand. Certainly, we in this country have a grave responsibility to do everything in our power to stifle demand by educating our populace about the debilitating consequences of drug addiction. By the same token, we have a responsibility not to neglect the supply problem, which is why the effort in Operation Casablanca to identify drug traffickers and bring to justice those who launder their ill-gotten gains should be applauded.

Page 4           PREV PAGE           TOP OF DOC

Here, commonality rather than dissimilarity of Mexican and American interests should be stressed.

The history of the drug trade is that those countries whose citizens produce drugs and/or which serve as transshipment points for narcotics generally find the drug use increases among their own people as well, and that corruption inevitably follows. Indeed, there is no more corrupting influence on society than the drug trade. It inflicts damage both on countries with excess demand and countries whose citizens profit from that demand. Combating drug trafficking is an international responsibility, the failure of which jeopardizes the sovereignty of all nations.

The aspect of Operation Casablanca that has created particular controversy in Mexico is that it was a sting operation, in which Mexican bankers and financial intermediaries for drug cartels did business with U.S. customs agents posing as money launderers. Mexican officials have complained that they were given only minimal advance notification of the sting, and may not have been informed how

extensively U.S. agents were operating in undercover capacities on Mexican soil.

In this regard, let me simply say that sting operations are a legitimate law enforcement technique that can only succeed if conducted with a high degree of confidentiality and a minimum of disclosure. For example, when Members of Congress were ''stung'' by the FBI in the Abscam affair some years ago, the House leadership was not, to my knowledge, notified in advance that Members of this body were targets of a Government probe, nor should it have been. Moreover, Customs agents have been publicly quoted saying that the targets of Operation Casablanca were not entrapped or in any way coerced into committing unlawful acts. Rather, they were active and eager participants in the laundering of millions of dollars they clearly understood to be the proceeds of narcotics trafficking.

Page 5                   PREV PAGE                   TOP OF DOC

The results of Operation Casablanca, which disclosed complicity in drug-related money laundering by the employees of 12 of Mexico's 19 largest banks, suggest a pervasive problem, rather than an isolated or incidental one.

.....  
Here the obvious deserves underscoring: Law enforcement-especially drug-related-is dangerous business. While Mexican authorities were notified in broad outline of the Casablanca probe, they were not informed of the details of this money laundering investigation because such disclosure would have jeopardized the lives of law enforcement agents.

Page 6                   PREV PAGE                   TOP OF DOC

.....  
In this regard, it is encouraging that even as this committee convenes this morning, an interagency working group of U.S. and Mexican officials-established by President Clinton and President Zedillo in 1996 to develop a cooperative strategy for binational action against drug trafficking-is meeting in Washington. Hopefully, a candid exchange of views at that session on Operation Casablanca and the issues that have arisen in its aftermath will go a long way toward restoring the sense of trust and mutual respect that must exist if our two governments are to wage a successful battle against drug-related money laundering activities.

Page 7                   PREV PAGE                   TOP OF DOC

I would like to ask unanimous consent to extend these remarks, and I will turn at this point to Mr. LaFalce.

Mr. LAFALCE. Thank you very much, Mr. Chairman.

Today's hearing is as significant as any this committee has held on any of the provisions of the Bank Secrecy Act. For many years, Members of the Banking Committee have worked collegially to provide the law enforcement community with the necessary tools to combat money laundering because we know it is the enormous profits of the drug trade that motivate the drug trafficker. The \$20 bills that are exchanged are as much a part of the drug deal as the illegal drug itself. We know that if the drug lords are to enjoy their profits, those same \$20 bills must be laundered and deposited into legitimate

financial service institutions.

So why is today's hearing so significant? The answer is that in the past, anti-money laundering efforts have generally played a secondary role in the effort to combat drug dealing. Money laundering offenses were often added to the more dramatic smuggling and distribution charges.

Today that has changed, and we will hear about Operation Casablanca, a Federal law enforcement effort principally focused on the crime of money laundering. More importantly, however, we will learn that Operation Casablanca worked because the Bank Secrecy Act is working. The Bank Secrecy Act requires a sophisticated and extensive computerized reporting system. Its success depends on the competent cooperation of the financial institution community, upon whom we have imposed significant reporting requirements.

Page 8           PREV PAGE           TOP OF DOC

As legislators, we have an obligation to the taxpayer to make sure that the tax dollar is well spent on these systems, and we have a responsibility to the financial community to ensure the information they provide is used effectively. Today's hearing, I believe, will be dramatic proof for the taxpayer and the financial industry that we are succeeding.

Customs agents convinced cartel drug dealers that they had the means to launder money without the expense of smuggling cash into Mexico and without the prospects that cash transaction reports may be filed and traced back to the cartel. The financial costs to the money launderer and risk of arrest to the drug dealers are the costs and risks which result from the success of the Bank Secrecy Act. The drug dealers' efforts to lower these costs and their desire to reduce their exposure to arrest and conviction on money laundering charges are the fundamental reasons our Customs Department was able to carry out their impressive covert sting operation.

Chairman LEACH. I thank the gentleman. I would like to now turn to Spencer Bachus, whose subcommittee has held half a dozen or a dozen hearings to date and has led this committee in the money laundering area.

Mr. Bachus.

Page 9           PREV PAGE           TOP OF DOC

Mr. BACHUS. Thank you, Mr. Chairman. I want to commend you for holding this hearing, particularly as it provides a forum to review the recently concluded Operation Casablanca.

Almost three years ago the Oversight Subcommittee held a hearing to examine what I considered as the pressing issue of money laundering in Mexican financial institutions. That hearing painted a quite disturbing picture. Mexico was and is the money laundering haven of choice for drug cartels and other criminal organizations.

Mexico has recently enacted money laundering legislation, but it does not have the regulatory infrastructure nor the reliable personnel to enforce these new rules. It is simply not realistic to expect Mexico to clean up its financial institutions in the near term, even if one assumes that Mexico is somehow able to reverse its legendary

corruption problem.

The bottom line, Mexico is a money laundering 'black hole' and will remain so for the foreseeable future. As Oversight Chairman, I question, as do other U.S. officials, whether there is a single institution in Mexico that we can trust to be free of corruption.

The drug lords have essentially two choices after they receive payment for drug sales. They can smuggle the funds out, or they can utilize U.S. financial institutions, whether through smurfing, peso brokering or other techniques.

Our banks and other financial institutions here in the United States have done a fairly good job of closing the front door to money laundering by rigorous enforcement of the Bank Secrecy Act. However, the back door to Mexico remains wide open.

Page 10            PREV PAGE            TOP OF DOC

According to testimony before our subcommittee, and we did conduct six hearings, billions of dollars in dirty money are smuggled across the Mexican border each year, often going out in the same containers the drugs come in by. Trucks don't bother to slow down as they cross the borders because the Customs Service checks only in the neighborhood of 1 percent of outbound shipments. The drug lords recognize they face little chance of being caught while smuggling currency.

The depressing reality is that even if we reached a 100 percent compliance rate with the Bank Secrecy Act by U.S. financial institutions, the cartels still have the option of smuggling out their funds with very little cost. And this is true even though the money weighs five times what the drugs weigh and ought to be easily identified and uncovered.

Our best strategy in the short-term is law enforcement infiltration of criminal organizations and corrupt financial institutions. That is what Operation Casablanca did, and that is why Operation Casablanca is so significant. The Customs Service and other agencies are to be commended for undertaking this risky but courageous operation.

History will prove Operation Casablanca to be one of the important actions taken in the fight against drugs. In one operation the Customs Service was able to penetrate the Mexican and Colombian criminal organizations, and flushed out many of the financial institutions and bankers serving the Mexican and Colombian cartels. Over a dozen Mexican and Venezuelan banks will be implicated. It will be a long time before the banking friends of the narco-traffickers feel that laundering for the cartels is a relatively risk-free way to make a dirty fortune.

Page 11            PREV PAGE            TOP OF DOC

In the long run, Operation Casablanca will prove to be a watershed event in our joint fight against drugs. Mexico can no longer remain in a state of denial about complicity of their financial institutions with the drug trade. However, in the short run it is obviously an embarrassment for Mexico, as demonstrated by their angry reaction in the last few weeks.

While their shock is predictable, their threats against U.S. law

enforcement agencies are disappointing and should not be given credence. It is truly outrageous for the Government of Mexico to threaten to seek extradition of our law enforcement agents, even reportedly going to the ludicrous extreme of offering to swap narco-traffickers wanted by the United States for our law enforcement officers.

U.S. agents place their lives on the line to disrupt drug traffickers and protect the citizens in both our countries. One agent was shot, and survival was a true miracle. I introduced a resolution commending Operation Casablanca and expressing support for our law enforcement agents and the view that Congress should instruct the President not even to contemplate the extradition of these agents.

That resolution is House Concurrent Resolution 288, and Mr. Chairman, I would like to commend about twelve Members of the Banking Committee who signed on as cosponsors of that resolution: The Chairman, Mr. Leach; Mr. McCollum, the Vice Chairman of the Majority; Doug Bereuter; Mike Castle; Jon Fox; Vince Snowbarger; Bob Riley; and Walter Jones. On the Democratic side, and we have bipartisan support, we have Maurice Hinchey and Carolyn Kilpatrick who have signed the House Resolution.

Page 12            PREV PAGE            TOP OF DOC

I had sent a letter out to all the Members, and would hope that we would have unanimous participation in this resolution by the Members of the subcommittee. And Mr. Sanders, the Independent Member of the committee, was also an original cosponsor of this resolution.

Given the state of corruption in Mexico, prior notice to Mexico of Operation Casablanca--and we did give general notification of the action, we did not give specifics--would simply have put the lives of our agents at risk. The sad reality is that we cannot do this type of operation at this time and share specific or full information with Mexico.

One example of that is the death of Enrico Menendez, who we considered a prime actor in this and felt had more information, and when we gave Mexican authorities his name, he was taken into custody and beaten to death. They said he sustained injuries which caused his death, and therefore our law enforcement agencies will not be able to get any more information from him.

But neither can we halt the war against the drug cartels based on diplomatic concerns. We would not tolerate missiles being stationed in Mexico and aimed at the United States. Many would claim that the drug threat is just as sinister. I would hope that the United States and Mexico together will survive the drug threat and work together, but we cannot let fighting drugs take a back seat to diplomatic or other concerns.

Mr. Chairman, I want to commend you again for holding this hearing. I also want to commend the Banking Committee staff for their work over the last three years on not only legislation but also lengthy hearings which have been conducted, and particularly in this regard Mr. Win Yerby and Mr. Dave Cohen.

Page 13            PREV PAGE            TOP OF DOC

Thank you, Mr. Chairman.

Chairman LEACH. Thank you very much. Does anyone else wish to be recognized?

Ms. ROUKEMA. Please, Mr. Chairman. I will abbreviate my remarks in the interest of getting on with our panelists and the markup today, but I do want to associate myself with your outline of the problem before us, but particularly with what Mr. Bachus and his committee have just pointed out. I want to completely associate myself, and, Mr. Bachus, I can't account for the fact that I am not an original cosponsor, but I certainly will herein now indicate my strong support which has always been there.

But I also will acknowledge the fact that the President this week spoke to the U.N., and I expect that he is going to be direct and continue to hold forth against the actions of the Mexican government, and I certainly do want to support that. I think that is unanimous on this committee.

However, as much progress as we have been making, and as much I hope we hear about more progress and good recommendations today in this panel, we can't be left with the impression that everything is going along fine. We have to take far more extensive action.

Therefore, I am really pleased that we are going to be marking up these bills today. I would suggest that I for one am going to be asking a number of very close questions, I hope, if it is not clarified by the participants herein and the panelists, with respect to how we can truly close these loopholes that have promoted laundering, drug laundering, money laundering as the focus of our drug problem.

Page 14

PREV PAGE

TOP OF DOC

I think that the legislation here today, both H.R. 4005 and 1756, the Velazquez legislation, is obviously more than a small step, it is a large step in the right direction. But I want to state, perhaps now speaking as a member of the New Jersey delegation, where New Jersey over recent years has become evidently a corridor and a focus of laundering, a series of articles in the northern New Jersey major daily newspaper, The Record, has outlined it in quite specific detail and evidently unchallenged detail.

I want to commend The Record, and ask unanimous consent that the series of articles can be included in the record of this hearing because, Mr. Chairman, I think it very specifically points out why we have to relate the legislation we have here today with what is being done at the State level.

Mr. BACHUS. I would like to second that. The Bergen Record did a tremendously good job. I have not read it in more detail.

Ms. ROUKEMA. I will share it with you and send it to your office, and it is outstanding. I want to commend Mr. Zambedo, the author and the investigator and the reporter who did that series, for the work that he has done. He is here in our audience today, and I want to commend him.

Chairman LEACH. Did you want to put these articles in the record? Without objection.

Ms. ROUKEMA. Yes, I would like to put the series in the record. But he has pointed out, and I think that the legislation we have before us today-and I don't pretend to have the complete answer to the

fact that the legislation doesn't deal as directly with what is going on at the State level as we might do-but I think with the hearing today, we will be able to be more informed on that subject and work together to close whatever additional loopholes there are.

Page 15

PREV PAGE

TOP OF DOC

Because obviously if we are going to give more adequate attention at the State level, both with funds as well as personnel, I do not think it is beyond comprehension that we require the States to pull their weight. Now, in New Jersey we have already have some money laundering statutes, but I believe that now with the revelations and further understanding, that they can and will be improved. And I think they can be a lesson to other States, and I think a lesson to us as to how we relate the Federal action to what is being done at the State level.

So, Mr. Chairman, I really want to commend you for this hearing today, and want to pledge to work with you and Mr. Bachus and the Ranking Democrat on the committee to make this a truly forceful, out front improvement in our problem with drugs here and internationally, and the U.S. can continue to show the way in the international community.

I thank you very much.

Chairman LEACH. Thank you, Mrs. Roukema.

Mr. Lazio.

Mr. LAZIO. Thank you, Mr. Chairman. I will keep my remarks brief because I know we want to get to Senator Grassley, and I appreciate him coming in, being a partner in this. I just want to resonate on the point that the true importance of today's hearing and markup, while we are going to talk about money laundering and banking regulation, what we are really talking and fighting for are safer streets and peace of mind for our neighbors.

Page 16

PREV PAGE

TOP OF DOC

During the debate today, instead of archaic banking laws think of your son or your daughter walking to school in safety. Instead of shell businesses, you give a community where the residents sleep in peace. By shutting down the money laundering monies, we will cut off at the knees the dark princes of the drug underworld. We will attack the drug culture that kills so many of our children through overdosages and through violence, that throws drugs into our neighborhoods and into our schools.

We don't have to live in fear, we don't have to tolerate violence, but first we have to acknowledge that we are all at risk. We all share a responsibility for stopping the violence. The truth is it can happen to any of us, anytime, anywhere. The young mother in Washington whose child was killed in the cross-fire of a schoolyard shooting had the right to demand that her children go to schools free from the violence and the drugs.

Children who must live in fear learn the wrong lessons. We can create a better America, a safer, more secure country for our children and ourselves, but only if we refuse to accept violence and crime as an unalterable fact of life. As long as one neighborhood remains unsafe, and when one child goes to sleep at night hoping only to be

alive in the morning, then our job isn't done.

Today let us vote to remove the profit from crime. And let me just finally add, Mr. Chairman, in my years in prosecuting crimes, and particularly drug prosecution, I have come to a strong conviction that the money laundering money finances the drugs that flow through our streets, not just over the borders, but down main streets and into our schools. By undermining the ability of drug enterprises to finance their operations, we are ensuring that less of that flows through our streets, to our businesses, to our schools, down the main streets of America from coast to coast.

Page 17            PREV PAGE            TOP OF DOC

Chairman LEACH. Well, thank you very much, Mr. Lazio.

Does anyone else wish to make an opening statement?

Before turning to Senator Grassley, I would like to ask if Thomas Zambedo would please stand. Is Thomas with us? The reason I am asking Thomas to stand is that the series of articles you have written are some of the best that have been written in American journalism. We are very appreciative. Thank you.

Ms. ROUKEMA. Thank you, Mr. Chairman.

Chairman LEACH. Let me now turn to my favorite United States Senator, the distinguished senior Senator from the State of Iowa, who has been a former Member of this committee, and who has agreed to come over as the Chairman of the Senate Caucus on International Narcotics Control. Senator Grassley has probably spent as much time as any Member of Congress on narcotics issues, and we are particularly appreciative for his coming to us today, and particularly that he has a hearing that he is to chair very shortly.

So we are appreciative of your coming and making an opening statement, and I promised I would let you leave as soon as you can, Chuck. So if you would proceed.

Mr. LAFALCE. Mr. Chairman, can I just say 'welcome home' to the House Banking Committee where you first started, Senator.

Page 18            PREV PAGE            TOP OF DOC

STATEMENT OF HON. CHARLES E. GRASSLEY, A UNITED STATES SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY.

I don't bring through my statement anything that you folks probably don't already know, but I want you to know that as a Member of the Senate Judiciary Committee with jurisdiction over law enforcement, I want to be helpful to the effort that is being made this morning, and hopefully successful out of this committee with very important pieces of legislation; and, more importantly, from my chairmanship of the U.S. Senate Caucus on International Narcotics Control to bring the resources of that Senate agency to help in this effort, because we must move on legislation to be repetitive of the successful Casablanca operation.

I want to thank you-the committee, all of you here-for holding this hearing. It could not be more timely or deal with a more important issue, because we have seen the culmination of one of the most successful undercover operations in the history of the U.S.

Customs Service. Operation Casablanca infiltrated and dismantled a group of international bankers, mostly in Mexico, who have been laundering drug money.

Page 19

PREV PAGE

TOP OF DOC

The threat of drug traffickers is serious enough, but to have their financial advisers leading their efforts to facilitate the smuggling of illegal narcotics is much worse. Complicit bankers devising schemes can make it much easier to move and hide the ill-gotten gains of drug cartels. So I salute the agents and informants who risk their lives to defend our financial institutions and put these white collar criminals behind bars.

What I do not salute, and you folks have spoken eloquently about this, is the Government of Mexico's considering the idea of extraditing and prosecuting U.S. law enforcement officials engaged in this highly successful effort. To shield the criminal activities of bankers and drug traffickers charged with violating U.S., Mexican and international law behind the sovereignty issue of Mexico is very unfortunate.

I cannot believe that Mexico continues to criticize this effort based on sovereignty issues. And to make things worse, Cabinet members of this Administration seem to be apologizing for our good work. Secretary Albright apologized last week to Mexico's foreign minister and said that "there needs to be better cooperation." General McCaffrey recently commented saying, quote, "We'll just have to find a way to do this better in the future."

As this latest law enforcement operation illustrates, we must be sure that we are taking the necessary steps to protect the citizens of our Nation. We must prevent drug traffickers and organized crime groups from obtaining the profits of their illegal activities. Much has been done and said about the movement of illegal drugs into the United States. But the opposite side of the business does not always get the publicity, and is just as important. We need to go after the profits from drug sales and other illegal enterprises.

Page 20

PREV PAGE

TOP OF DOC

In an effort to strike another blow to drug traffickers and criminals who prey on our citizens by their ill-gotten gains, I introduced legislation last session, S. 1003-The Money Laundering and Financial Crimes Strategy Act of 1997, with Senator D'Amato. It is a companion bill to legislation offered by Congresswoman Velazquez of this committee. This legislation would authorize the Secretary of the Treasury, in consultation with the Attorney General and other relevant agencies, to coordinate and implement a national strategy to address the exploitation of our Nation's payment systems that facilitate money laundering and related financial crimes.

The strategy would enhance and would expand the Secretary's authority to ascertain criminal activity directed at our Nation's financial systems. It would determine the threat posed to the integrity of such systems, and develop regulatory and law enforcement initiatives to respond effectively. The bill would hit the criminals where they feel it the most, and that is, of course, in their pocketbooks.

By implementing a strategy on a national level, hundreds of communities across our country would no longer be held hostage by these criminal enterprises. This is a bipartisan bill. It has the support of the Administration. And as Operation Casablanca shows, this legislation is timely and it is needed.

As we know, money laundering involves disguising financial assets so they can be used without the detection of the illegal activity that produced them. Through money laundering, the criminal transforms the monetary proceeds derived from the criminal activity into funds with an apparently legal source. Money laundering provides the resources for drug dealers, for terrorists, for arms dealers and other criminals to operate and expand their criminal enterprises. Today, experts estimate money laundering has grown into a \$500 billion problem worldwide.

Page 21            PREV PAGE            TOP OF DOC

A significant component of the Grassley/Velazquez legislation would help define specific criminal activity affecting geographical areas, payment systems and financial institutions that are considered to have a high potential to be abused by criminal organizations. These 'high risk money laundering zones' would then be targeted for specific action, whether it is specific law enforcement operations or preventive efforts to insulate entire payment systems or industry sectors from being exploited by criminal elements. This bill would also help provide assistance to localities, such as State and local prosecutors and law enforcement officials, in the form of Federal financial crimes grants to any area designated as a high risk money laundering zone.

Last week, you, Chairman Leach, introduced legislation to amend Title 31 of our code. The bill, H.R. 4005-The Money Laundering Deterrence Act of 1998, would improve methods for preventing financial crimes. Today, after the hearing, I plan to introduce a companion bill to yours, Chairman Leach, in the U.S. Senate.

We need to tighten up our financial control capabilities to prevent criminal enterprises from abusing our financial and banking systems. The bill is supported by the American Banking Association, the Department of the Treasury, the Department of Justice and the Federal Reserve. Today, with both pieces of legislation that I have mentioned in my remarks, I hope that this would be a continuation of efforts by Congress to go after the growing threat of money laundering, not only to our Nation, but worldwide hopefully, and very hopefully to the entire world.

Thank you very much.

Page 22            PREV PAGE            TOP OF DOC

Chairman LEACH.

Chairman LEACH. Our second panel is composed of the Honorable Raymond W. Kelly, who is Under Secretary for Enforcement of the Department of the Treasury; Ms. Mary Lee Warren, who is the Deputy Assistant Attorney General of the Criminal Division, the Department of Justice; and Mr. Jonathan Winer, who is Deputy Assistant Secretary of the International Narcotics and Law Enforcement Division of the

And let me say I would like to go in the order that you were presented, and I would say to Secretary Kelly, recognizing that your confirmation hearing is in the process on the other side, at whatever point you feel you have to leave, you have the support of the committee and recognizing your personal dilemma.

Mr. KELLY. Thank you, Mr. Chairman.

Chairman LEACH. Please proceed, Mr. Kelly.  
STATEMENT OF HON. RAYMOND W. KELLY, UNDER SECRETARY FOR ENFORCEMENT,  
DEPARTMENT OF THE TREASURY, ACCOMPANIED BY STEPHEN KROLL, CHIEF  
COUNSEL, FINANCIAL CRIMES ENFORCEMENT NETWORK

Mr. KELLY. Thank you. Chairman Leach, Mr. LaFalce and Members of Congress, it is a pleasure to be here today to speak about a major priority for the Federal Government, combating money laundering. Our efforts in this area not only protect our financial institutions from illicit funds, but also provide a vital line of attack against drug traffickers and other criminal groups.

I have submitted a longer statement for the record, Mr. Chairman, and we will summarize it here. However, before I begin, I want to take this opportunity to extend my appreciation to this committee for its leadership in addressing money laundering, and I would also like to thank the committee for its support of Treasury enforcement programs. I will address some important recent efforts to counter money laundering, Operation Casablanca, as well as some of our investigative and regulatory strategies, and also comment on the legislative initiatives that have been proposed on the subject.

Many of you, I am sure, know of Operation Casablanca. While I cannot discuss the case in detail because of the ongoing investigation and prosecutions, I will provide a brief description of the operation based on information which has already been made public.

Operation Casablanca began in earnest in November of 1995, when agents assigned to Customs' Los Angeles office learned that drug cartel members were laundering proceeds of U.S. drug sales through branches of Mexican banks along the border. The investigation extended to include the financial infrastructure of the Juarez cartel, including its money manager, Victor Alcala Navarro, and a principal in the cartel, Jose Alvarez Tostado.

During the course of this investigation, undercover agents posed as money launderers for the cartels and met with Mexican and Venezuelan bankers who laundered the cartels' illicit funds. These bankers established fictitious accounts and used bank drafts to avoid anti-money laundering regulations. Thus, the investigation targeted both the financial infrastructure and the Juarez and Cali cartels, and the financial systems used by these cartels to launder their U.S. drug proceeds.

In this regard, indictments were brought against members of the Juarez and Cali cartels and their financial brokers and bankers. One indictment charged 26 Mexican bank officials and three Mexican banks, Confia, Bancomer and Banca Serfin, with money laundering.

To date, Operation Casablanca has resulted in the arrest of 167 individuals and the seizure of approximately \$100 million. We expect further arrests and seizures from this investigation.

Page 25

PREV PAGE

TOP OF DOC

We believe Operation Casablanca represents a significant step in curbing money laundering, and Treasury is very pleased with the success of Casablanca and proud of the law enforcement professionals who participated in this case. Yet, it is only the most recent example of our overall strategy to curb money laundering using regulation, investigation, and international cooperation.

On the regulatory side, we are developing more targeted regulations for banks and other financial institutions, as demonstrated by the recently revised Suspicious Activity Reporting System or SARS. This system now increases the utility of the information provided to law enforcement and streamlines the reporting process.

On the investigative side, the IRS and Customs alone dedicate some 1,100 expert financial investigators and staff to pure money laundering investigations. Last year these individuals conducted a total of almost 7,000 investigations. And just last week, Customs seized more than \$15 million in cash believed to be the proceeds of illegal drug transactions in four separate incidents in Houston, San Diego, Newark and Chicago.

Of course, our efforts are most successful when we can combine prevention with enforcement to shut down entire money laundering systems. This comprehensive approach can be seen most readily in Treasury's use of geographic targeting orders or GTOs.

For example, in New York City these GTOs required money remitters and their approximately 1,600 agents to obtain and report identifying information on all cash remittances of \$750 or more to Colombia. This order, which was prompted by the El Dorado investigation, led to 13 individuals and two corporations being indicted for structuring transactions to avoid the GTOs. As a result of this endeavor, there was a 400 percent increase in Customs currency seizures at East Coast ports of entry as traffickers were forced to move money in bulk.

Page 26

PREV PAGE

TOP OF DOC

On the international front, we know that no country's individual measures, whether in the legal, regulatory or law enforcement arena, will be sufficient given the relative ease with which money flows across borders. In this regard, important strides have been made through such multilateral initiatives as the Financial Action Task Force, or FATF, as well as through bilateral policy guidance, technical assistance and training offered to a host of nations.

Moreover, when cooperative efforts are simply insufficient, we will continue to review more strike measures such as those taken by President Clinton in October 1995 to block assets of and transactions with the Cali cartel of Columbia and those who front for it. While our integrated approaches have had many successes, we must remain vigilant in the face of new threats.

To this end, Treasury and Justice cosponsor a series of money laundering conferences for agents and prosecutors that cover the

latest investigative and policy approaches. Working closely with Congress, we also continually review the legislative framework for our efforts.

In this regard, I would like to encourage the committee to support President Clinton's International Crime Control Act, which includes among its anti-crime measures a provision permitting Customs to search outbound mail. Such a provision would be a valuable tool in preventing money launderers from using the mails to ship illicit assets out of the country.

I also want to take a moment to express a few thoughts on your proposed legislation, Mr. Chairman, as well as the bill introduced by Representative Velazquez. In doing so, however, I would only note that I must limit my comments to technical matters pending a more detailed analysis and articulation of a formal position by the Administration on each of these pieces of legislation.

Page 27

PREV PAGE

TOP OF DOC

The Money Laundering Deterrence Act contains a number of provisions whose objectives could further our fight against money laundering. In particular, we appreciate the attempt the bill makes to address the use of form 8300 to assist money laundering and financial crime investigations. This form is essentially the equivalent of a currency transaction report for nonfinancial businesses such as car dealerships. Changing the status of this form so that it is required by the Bank Secrecy Act rather than the Internal Revenue Code could provide valuable information to Federal, State, and local law enforcement organizations conducting money laundering investigations.

We also appreciate the effort made in this bill to extend a "safe harbor" from liability for reporting suspicious financial activity, as well as expanding the BSA summons authority and clarifying penalties for violations of GTO and fund transfer rules.

We support Congresswoman Velazquez's Money Laundering Strategy Act because it recognizes the scope of the money laundering problem and attempts to develop a mechanism to address it. An anti-money laundering strategy could prove to be useful in setting priorities and communicating them to Congress and the public. We also believe that the effort to make available additional resources for anti-money laundering activities at the State and local level would be very beneficial.

Another pending anti-money laundering bill that has been introduced by Congressman McCollum is certainly one that we support, but I would defer to Ms. Warren because the Justice Department has worked much more closely with Chairman McCollum on developing this legislation. It is my understanding that this bill includes provisions that are virtually identical to those in an Administration-endorsed bill.

Page 28

PREV PAGE

TOP OF DOC

Enforcement hopes to provide continued technical assistance as you review all relevant anti-money laundering legislation. Mr. Chairman, I look forward to working closely with the committee to combat money laundering in the U.S. Thank you very much.

Chairman LEACH. Ms. Warren.

STATEMENT OF MARY LEE WARREN, DEPUTY ASSISTANT ATTORNEY GENERAL,  
CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Ms. WARREN.

We seek to improve upon our joint abilities to identify, target and prosecute domestic and international money launderers, and to seize and forfeit the illicit profits.

Page 29                   PREV PAGE                   TOP OF DOC

I would like to review with you some of our working strategies. You have also requested our preliminary views on two pieces of anti-money laundering legislation you are reviewing today. Let me abbreviate my comments on that and echo the points just spoken by Under Secretary Kelly.

The Justice Department in its technical review supports those same provisions in H.R. 4005 as being very helpful to law enforcements efforts. Again, I speak only on a technical level there.

I will briefly comment, if I could, on the other money laundering legislation that the Administration is sponsoring, and if I may just ask to have my full written statement received into the record.

Ms. WARREN. Clearly, illicit proceeds generated from criminal activities serve as a rationale for any of these major crimes, particularly drug trafficking. One point not as easily seen by others not as educated as this committee is that the generation of cash proceeds, such as from drug traffickers, also creates a vulnerability for the drug traffickers and the money laundering networks that law enforcement can exploit.

Here in the U.S. the traffickers and their money launderers are confronted with an array of interlocking money laundering laws, stringent reporting regulations and vigorous enforcement. The Federal anti-money laundering objective is, as it should be, focused on the initial placement of illicit proceeds into our Nation's financial system, the point where the criminal organizations are most vulnerable to detection, investigation and thus prosecution, and their proceeds are most vulnerable to seizure and forfeiture.

Page 30                   PREV PAGE                   TOP OF DOC

Our banks and other depository institutions are our first line of defense against the placement of illicit cash proceeds into our financial system, and for the past two decades we have been working with these institutions to deny launderers easy access directly into those institutions. While exceptions still occur, as you mentioned, we have largely succeeded in barring launderers' direct access to our banks. As a result, illicit cash proceeds money launderers necessarily are looking more than ever before to other non-bank financial institutions such as wire remitters, casas de cambio, vendors of money orders, travelers checks, and check cashers to introduce these drug proceeds indirectly into our banks, in effect attempting to get into our banking system through the side doors.

We view these institutions as representing discrete financial sectors, and are continuing to work jointly with the Treasury Department and the Postal Inspection Service and Federal regulators to identify and locate any of these sectors that are being abused or

corrupted by the money launderers so that we may then deny these criminal organizations access to our financial system through these back or side doors.

We believe that the most important lesson we have learned from the GTOs in New York and New Jersey and Puerto Rico is the value of consistent and close interagency cooperation at all stages of the financial sector targeting. Prosecutors and investigators must work actively and in tandem to target the appropriate financial sector, to identify their targets, to obtain and analyze as many financial records as can be made available, and then take those steps up the ladder against the networks.

In addition to the specific efforts of the GTOs, Justice and Treasury are fostering a collaborative approach among the investigators and prosecutors of the major Federal judicial districts in order to share anti-money laundering techniques and money laundering trend information. Taking fullest advantage of those bank reporting records, the suspicious activity reports, and in particular, for example, an effort led in New Jersey in the first instance to an SAR review team established in the judicial district, with the lead money laundering prosecutor working with investigators from all of the agencies to review all SARs that are filed in that district each month.

Page 31

PREV PAGE

TOP OF DOC

We all recognize that the more we close the conduits for placing illicit proceeds into our financial system in this country, the more the traffickers and launderers will resort to smuggling this dirty cash out of the U.S. in bulk. Once it is outside the U.S., the criminals seek to enter it into another country's financial system and then ping-pong it back into the United States and around the world until it reaches its final destination. Detection within the U.S. financial system during this layering process is of course much more difficult. Therefore, we must improve upon our ability to detect outgoing bulk shipments of cash, and at the same time we must work with other countries as they develop their anti-money laundering capabilities so that we can build a cooperative, bilateral, multilateral framework for stopping the launderers and their illicit proceeds.

We are working in many ways in that bilateral effort, and have recently trained the new Colombian money laundering/asset forfeiture unit. We hope to see some success there. Again, I echo the comments made by the Under Secretary with regard to H.R. 4005 and H.R. 1756, and we appreciate the opportunity we have had to review this proposal in the past. Last year Treasury and Justice submitted a collectively produced revised proposal on this legislation, and we are pleased that at least some of our joint recommendations were accepted.

We believe the focus for a money laundering strategy under this bill should perhaps be more narrow, and it should focus at least initially on the placement of drug and other illicit proceeds into our financial system or its export in the form of bulk cash shipping. In any case, we look forward to working with you on that.

As I mentioned, the Department of Justice has drafted proposed money laundering legislation, most of which is incorporated in H.R.

3745-The Money Laundering Act of 1998, which was introduced by Judiciary Committee Chairman McCollum and is now pending before that committee. That bill would greatly improve upon our ability to investigate and prosecute money laundering cases, updating sections 1956 and 1957, the principal money laundering statutes which have remained virtually unchanged since they were enacted in 1986. Most importantly, the bill would expand those statutes and their related enforcement provisions to reach international money laundering.

Page 32            PREV PAGE            TOP OF DOC

There are many similar provisions in that bill contained in the International Crime Control Act which include a wide variety of foreign crimes. It would also clarify our authority to bring civil enforcement actions against foreign banks that launder money in the United States, to obtain access to foreign bank records, and to confiscate criminal proceeds being laundered through the peso exchange black market.

There is one provision in this category that is not included in H.R. 3745, that falls within this committee's jurisdiction, that we suggest might be appropriately included in H.R. 4005. That is the provision concerning the forfeiture of fungible property in a bank account. A key element of the Government's strategy for recovering the laundered funds in any money laundering case is Title XVIII, United States Code, Section 984.

That statute, which was drafted by this committee and enacted as part of the Annunzio-Wylie Money Laundering Act in 1992, provides that all deposits in a bank account are fungible and thus authorizes the forfeiture of money from a bank account without requiring the Government to prove that the money in the account today is the same money as was in the account at the time of the first commission of the offense. Because bank accounts to which laundered funds are transferred typically fluctuate broadly, with balances frequently falling to zero, recovery of the money would be impossible without Section 984.

However, Section 984 has only a one-year statute of limitations. In other words, under current law, bank deposits are only considered fungible if the Government initiates the forfeiture action within a year of the money laundering offense. Because money laundering investigations are complex and often involve the investigations extending beyond the one-year limit, we look for an extension of the limitation period, an extension to two years. We urge the committee to consider making this proposal part of the Money Laundering Deterrence Act of 1998.

Page 33            PREV PAGE            TOP OF DOC

I would like to conclude by expressing the appreciation of the Department of Justice for the firm support that the Chairman and this committee have demonstrated for our anti-money laundering and asset forfeiture activities. Stemming the level of drug proceeds money laundering in this country remains a top priority for the Administration. We appreciate and rely upon the tools and support that Congress has provided us. Thank you.

Chairman LEACH. Thank you very much, Ms. Warren.

Mr. Winer.

STATEMENT OF JONATHAN WINER, DEPUTY ASSISTANT SECRETARY, BUREAU FOR INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. WINER. Thank you very much, Mr. Chairman, Mr. LaFalce, and Members of the committee.

In large part as a result of your work over many years, one of the foundations of the United States' position as the strongest economy in the world is its system of financial services regulation and financial crime enforcement. Good legislation, strong regulation and examination, committed law enforcement, high quality private auditing firms, and private sector commitment to internal controls have combined in the United States to reduce our vulnerability to financial crime and money laundering and thereby strengthened our entire financial services system.

Page 34

PREV PAGE

TOP OF DOC

While we still have money laundered in the United States, literally billions of dollars leave our country to be laundered beyond our shores. For criminals, the risks and costs of moving the money beyond our borders are far outweighed by the risks of getting caught if they try to place the proceeds of crime in the U.S. financial system directly. As Ms. Warren has testified, we need to look further at how to enhance outbound detection mechanisms on bulk currency to close that particular loophole.

But the fact that the U.S. financial crime regulation and enforcement is stronger than that in many other countries creates a classic problem of differential regulation. This is sometimes called the 'balloon effect,' where dirty money that is squeezed out of one part of the system appears in another part.

The 'balloon effect' creates special national security problems for the United States as a consequence of the global integration of the financial services sector infrastructure. Well-regulated or not, clean or dirty, financial services providers in other countries have many means of achieving access to U.S. markets. Thus, financial services firms in our country are constantly in contact with their counterparts in other countries. When other systems' standard of regulation is different from ours, and worse than ours, we may as a result share the risks of these other systems in ways that can cause our citizens, businesses and institutions great harm. Differential regulation and enforcement against dirty money create three kinds of risk of financial crime which can each be difficult to predict, yet potentially very damaging to U.S. interests.

First, this problem creates a potential and difficult-to-assess transactional risk for every U.S. citizen or firm doing business with entities based in other countries. When financial regulation and anti-money laundering enforcement are inadequate, one's partner may well have hidden liabilities that one can't see. Few foreign firms resemble the notorious Bank of Credit and Commerce International (BCCI) of Pakistan, Luxembourg, the United Kingdom and the Cayman Islands, or the more recent European Bank of Antigua. But weakly regulated jurisdictions may harbor such entities for an extended period before they collapse and claim victims all over the world.

Second, there is the problem of systemic risk in connection with major financial crime and money laundering problems. The recent Asian financial crisis demonstrates what can happen when confidence breaks down. Crises of confidence caused by financial crime can be difficult to manage and costly to solve, and very damaging to ordinary people whose lives can be turned upside down by economic collapse associated with a financial scandal.

Third, there is the problem of reputational risk. When a business, industry or jurisdiction has a major financial crime scandal, it can be costly to that business, industry or jurisdiction's reputation for a long time, especially when the business, industry or jurisdiction has a history of inadequate regulation and enforcement.

Today, combating financial crime is necessarily a national security and foreign policy goal as well as a law enforcement goal. Combating these three kinds of risks on a global basis remains essential to increase global financial and political security, promote free markets, protect democracy and facilitate stability, in addition to protecting us from the threat of illegal drugs. The techniques for reducing these risks through better regulation, law enforcement and greater transparency apply to all kinds of financial money laundering and involve generally accepted international principles.

These principles, which begin with the 40 Recommendations of the Financial Task Force, are at the core of U.S. international efforts to combat money laundering. They are at the core of President Clinton's International Crime Control Strategy released last month, which sets out a four-part plan of action to counter international financial crime. Mr. Chairman, I request that the text of that strategy be entered into the record.

Chairman LEACH. Without objection, so ordered.

Mr. WINER. In the financial crime area this plan consists of the following steps:

First, combating money laundering by denying criminals access to financial institutions and by strengthening enforcement efforts to reduce inbound and outbound movement of criminal proceeds.

Second, seizing the assets of international criminals through aggressive use of forfeiture laws.

Third, enhancing bilateral and multilateral cooperation against all financial crime by working with foreign governments to establish or update enforcement tools and to implement multilateral anti-money laundering standards.

Fourth, targeting offshore centers of international fraud, counterfeiting, electronic access device schemes and other financial crimes.

When the President met with the heads of the G-8 in Birmingham, England in mid-May, the heads of state of the G-8 each agreed that financial crimes were among the most important they faced. They committed the G-8 to further emphasizing action against money laundering and financial crime, including issues raised by offshore financial centers. This decision was a first for the G-8 vis-a-vis

offshore.

Page 37

PREV PAGE

TOP OF DOC

The heads of the G-8 agreed to principles to facilitate asset confiscation from convicted criminals, including ways to help each other trace, freeze and confiscate assets and where possible, share seized assets with other nations. They agreed to intensify efforts to combat official corruption arising from the large flows of criminal money and endorsed further joint actions to target specific forms of financial fraud.

These recent events, which supplement the ongoing global money laundering training programs we have undertaken in the Americas and Asia and in Central Europe and in Africa and in the Middle East, are evidence of the growing intensity of our efforts against financial crime. Our ongoing enforcement actions, in which we bring money laundering cases wherever we find our laws being violated, are further evidence of our commitment to ensure that crime doesn't pay, that those who facilitate the laundering of criminal proceeds are tracked down and prosecuted, no matter where they are.

Neither the U.S. nor any other country can fight financial crime and money laundering alone. International coalitions need to be built. International standards need to be broadened, extended and implemented literally everywhere, in small developing countries as well as in large developed ones. Our interconnectivity requires such universal norms to combat financial crime. Building them is at the core of our international policy to combat financial crime and money laundering.

My full statement lays out in some detail the principal means by which we are carrying out this goal. I will be pleased to answer any questions you may have.

Page 38

PREV PAGE

TOP OF DOC

Chairman LEACH. Well, thank you very much. You have surveyed a number of aspects of this problem.

Let me just raise one somewhat humorously. It has been suggested that as we look at both sides of issues before committees, maybe there is another side to the money laundering issue; that is on the pro money laundering side. On the other hand, the fact that this has been suggested to the Chair in a note makes me think that there is a profoundness in the American system that is not generally accepted in many countries in the world.

That is, in many countries of the world finance is considered neutral, money is considered neutral. In our system, we believe that there is a moral element of money; that is, there is a distinction between ill-gotten gains and honestly derived currencies, and that anyone who touches ill-gotten gains can be and should be held accountable.

But that is not the psychology of many systems in the world. So it strikes us that there is an educative aspect of this that is of a larger dimension than is generally perceived in the American body politic, because what we take for granted, many other systems don't. And as we look at Operation Casablanca, to me that is one of the largest issues that appears to be rather evident.

Second, this issue of crime pays or crime doesn't pay, it appears

that crime pays big fees. It is astonishing, as I look at the Casablanca issues, what the fees are for simply the transfer of money. When you think of 4 or 5 percent of very substantial sums of money, those are rather large incentives to participate in the transfer of ill-gotten gains.

Page 39

PREV PAGE

TOP OF DOC

So the question I have relates to the international dimension of the problem. Just how extensively has the United States Government been consulting with foreign countries; how thoughtful is the development of international law in this area; do further steps need to be taken? How active has-particularly the Department of State, but as well the Department of Treasury and Justice Department, which also interrelate extensively with foreign counterparts-how aggressively are we pursuing this issue? I might begin with the Department of State, Mr. Winer.

Mr. WINER. Thank you, Mr. Chairman. This is actually a story in which U.S. values and U.S. approaches have really been pushed all over the world now for, I would say, over a decade.

Beginning in the Reagan Administration and intensifying in the first year of the Bush Administration, with a meeting of the G-7 which effectively established the Financial Action Task Force and put it into the OECD in Paris where it is housed, the U.S. approach to combating financial crime has essentially been internationalized and increasingly globalized. The 40 standards of the FATF which were updated by the U.S. chairmanship of the UATF almost two years ago, really do put into place the U.S. framework for meeting these challenges. It is not absolutely perfect. There are some areas that need more work.

I have highlighted the offshore that the head of the G-8 recently said needs further work, but there is rather remarkable international consensus. Justice, State and Treasury are now training in some 50 or 60 countries around the world a year in U.S. approaches to anti-money laundering. We are building partnerships as a result, we are making cases as a result, and bit by bit we are seeing regional accords to supplement the international accords, to push entire regions to a new level.

Page 40

PREV PAGE

TOP OF DOC

We are having a lot of action right now in the Americas as a result of the Organization of American States developing anti-money laundering principles which are guiding all countries in the OAS. The Caribbean Financial Action Task Force is starting a mutual evaluation process as well as a training process focused on the Caribbean, but also including Central America. We are supporting similar work in Europe, in Central Europe. We are having the first stirrings possibly in the Africa region, in the Middle East, although those areas are behind.

The Asia Pacific working group is similarly beginning to get such standards going in Asia, although that area is also behind. It is quite clear that the important work of the last ten years needs to be intensified and accelerated over the next ten years to complete a process which is well underway, but by no means complete. Thank you.

Chairman LEACH. Would the Department of Justice care to comment?

Ms. WARREN. Perhaps just a comment, and I firmly agree with your proposition that the incentives are enormous. Four percent of many millions of dollars is a great carrot that is held out in front of, whether it is an individual banker, a bank, or a developing country.

I think over time, however, and through these international efforts of education, among other things, countries, certainly financial institutions, are learning that dirty money brings with it problems that are very hard to purge and will take a long time to remove from their institutions. The corruption that accompanies that money affects the individual financial institutions, and we have watched it affect an entire country's institutions. It is much easier to bar it at the door than to try and purge it later. And I think those stories are now being taken as gospel by countries that are struggling financially, but see that they don't want to become narco democracies. It is an interesting pattern to watch today.

Page 41            PREV PAGE            TOP OF DOC

Chairman LEACH. Mr. Kelly, did you want to add anything?

Mr. KELLY. I would just like to make a comment about the fees. We see a little bit of encouragement in that the fees for money laundering seem to be going up because the risk is increasing for money laundering. So that is sort of anecdotal information that we are getting.

As far as the cultural issue that you mentioned, I think it is a valid one, and just as Mr. Winer said, I think the FATF has done remarkable work. They have only been in existence for nine years, and I think under the U.S. leadership, which happened to be Treasury at the time, the ball has moved forward considerably. We now have countries who want to join FATF.

So there has been a significant change in, you might say, the collective mindset of many nations. The 40 principals of FATF are now actively embraced by countries outside of FATF. So it is an incremental process, but I think the education process of the rest of the world you might say is working.

Chairman LEACH. Thank you.

Mr. LaFalce.

Mr. LAFALCE. Thank you very much.

Subsequent to this hearing we intend to mark up and report out two bills. If you had an opportunity to review these bills, what is your judgment on them? To what extent would they assist? To what extent should we make improvements in them? Is there any other area of existing law that needs refinements or additions or deletions to assist you in your efforts? Legal mechanisms that would come within the embrace of this committee's jurisdiction, and therefore most probably additions or changes to the Bank Secrecy Act?

Page 42            PREV PAGE            TOP OF DOC

Mr. KELLY. Well, it is a little bit of a difficult position for us because we don't have an official Administration position.

Mr. LAFALCE. Therefore I would ask you not to give an official Administration position, and I would just ask you to give your own individual position, not as a representative of the Administration.

Mr. KELLY. OK. Fair enough. We think there are, from Treasury's standpoint, provisions in these two pieces of legislation that are particularly helpful. As I said in my prepared remarks, the moving of the supervision of form 8300 from the IRS to BSA will in fact open up this information to other law enforcement entities, State, local and Federal.

You made reference to the Bergen Record article, which is an outstanding one, and they talk in there about auto dealers and those sorts of approaches to hide money. I think putting some light on this by using form 8300s would be helpful.

In addition, we support the liability 'safe harbor' concept, and I know various organizations, the American Bankers Association and others have weighed in on that saying that they are certainly supportive as well. I think what that will do is hopefully free up information. People will be perhaps more willing to come forward with information if they are sure that liability will not attach to it, assuming that there is no malicious intent in putting the information forward.

As far as the Velazquez bill is concerned, I believe that a strategy to address the problems of financial crime-money laundering in this case-is needed, and perhaps we would like to see it maybe on a biannual basis. I think the legislation now calls for it annually. I see the concept working, certainly in the area of enforcing drug laws.

Page 43

PREV PAGE

TOP OF DOC

What this legislation does is take that task force concept and put it throughout the country using State, local and Federal resources, and we support that. There are some issues that remain about grants, setting up a grant system in the legislation. It might be a little bit more difficult to administer, it might be subject to litigation. I think we can continue our dialogue with the staff on that. That is just a minor issue, but generally we are very supportive of both pieces of legislation.

Mr. LAFALCE. Ms. Warren.

Ms. WARREN. Again, I would recommend if you consider it appropriate to look at Title XVIII, Section 984, to extend the statute of limitations period to two years for recovering fungible money within a bank account. It is very difficult for us to--

Mr. LAFALCE. What is it now?

Ms. WARREN. It is one year, which is a very short time when we have complex money laundering investigations pursuing those financial crimes. We are often not in a position to complete the investigation and capture the full amount of laundered proceeds within a one-year period and have to watch those proceeds.

Mr. LAFALCE. Ms. Warren, how long would it take for you to come up with an amendment?

Page 44

PREV PAGE

TOP OF DOC

Chairman LEACH. Excuse me. Would you yield on that point?

Ms. WARREN. We have a proposal that we could hand up today.

Chairman LEACH. We appreciate that. We reviewed the amendment, and it is an amendment the Chair is thoroughly sympathetic to. It does, however, have some germaneness difficulties and would cause the bill

to go to the Judiciary Committee. On the other hand, it might well be the Judiciary Committee would waive its jurisdiction.

There are two elements of the amendment. There is a second one as well. There might be another way of framing it. But we have that under advisement and we are thoroughly supportive of it.

Ms. WARREN. Thank you for that. And again we offer to work with the committee in any way possible to try and accomplish our joint aims.

Chairman LEACH. Sure.

Mr. LAFALCE. Mr. Winer, did you have any comment that you wish to make on that?

Mr. WINER. I endorse the statements made by my colleagues.

Chairman LEACH. Well, thank you.

Page 45            PREV PAGE            TOP OF DOC

Mrs. Roukema.

Mrs. ROUKEMA. Well, following up on that, I don't know whether you are going to have a couple of amendments in your pockets as relates to some of the concerns that I have already stated. By the way, I thoroughly agree, obviously, with the Chairman and the Ranking Member in their line of questioning here.

I had noted, Ms. Warren, your reference in your statement to increasing the statutory limitations, and I certainly support that and I hope we are able to do it today. If not, certainly we can do it in a manager's amendment before we go to the floor.

However, I think there are other areas where, as good as this legislation is, I would hope certainly based on your general testimony that you agree with me that there has to be some tightening up here. Particularly pertaining to the cycle that we have here, and as you have adequately outlined, the cycle is of course international, but there has been a general recognition of the fact that increasingly there are small businesses, car dealers, real estate and small business links in every State, and certainly in the States that are of greatest concern. That has been outlined certainly in what we know about New Jersey and the Northeast, and it seems to me that you can be helpful, based on your experience, in telling us how we can tighten up that question, that link here. I don't think, as good as our legislation is here, I don't think we genuinely address that.

It seems to me, and if we don't have time, maybe we can come back here and get the answer to this, but especially in light of the legislation which is giving more resources at the State and local level, I frankly think there has to be some conditionality here, making the States take up their responsibility here, and being precise about the way they must be required to not only have their own statutes but what requirements we have for cooperation with Federal authorities. I would really like to get your specific recommendations there, and perhaps we can include them in our legislation today or before we go to the floor.

Page 46            PREV PAGE            TOP OF DOC

Mr. Chairman, what is your wish here?

Chairman LEACH. We have about two more minutes, so you can use your judgment in any way you prefer.

Mrs. ROUKEMA. I would prefer to come back and listen to their recommendations. I think this is an essential component of improving this legislation consistent with what our overall goal has been.

Chairman LEACH. Well, in that case, because there is a vote pending on the floor, why don't we recess early. The committee then will be in recess pending the vote on the floor.

Ms. WATERS. Mr. Chairman, prior to leaving, I would like unanimous consent to ask our guests who have given testimony here today, our witnesses, to take a look at the amendments while we are on break that I have before this committee, because I would like to ask them some questions about it when we return and when I have an opportunity to speak. Thank you.

Chairman LEACH. The hearing is reconvened for the purpose of the suggestion of the gentlewoman, and you are welcome to give our guests the amendments you have in mind, and certainly I am sure they will take the opportunity to review them.

Ms. WATERS. Thank you, Mr. Chairman.

Page 47            PREV PAGE            TOP OF DOC

Chairman LEACH. Thank you. I would make the observation, Mr. Kelly, we want you to go forth. You are excused.

The hearing is in recess.

[Recess.]

Chairman LEACH. The hearing will reconvene. Before turning to Mrs. Roukema, I would like to ask unanimous consent that opening statements by all other Members be allowed to be placed in the record.

Without objection, so ordered.

Mrs. Roukema.

Mrs. ROUKEMA. Yes. Mr. Kelly I understand has had to leave, but I don't know whether the chief counsel wants to present himself. He is shaking his head no, but he has indicated to me, and I don't blame you for that, I certainly clearly understand it. But I want to reiterate my question.

Chairman LEACH. Excuse me. If the gentlewoman would yield, I think it would be appropriate if the counsel would come forward and take the chair.

Mrs. ROUKEMA. We won't force an answer from you.

Page 48            PREV PAGE            TOP OF DOC

Chairman LEACH. Could you formally introduce yourself, sir?

Mr. KROLL. Chairman Leach, my name is Stephen Kroll and I am the chief counsel of FinCEN.

Chairman LEACH. Please, we are delighted to have you join us.

Mrs. Roukema.

Mrs. ROUKEMA. Going back to my question, in relation to both pieces of legislation that are before us, but most specifically in relation to the Velazquez legislation, which gives us-I have forgotten the exact number, 17, whatever-which gives more assistance to State and local authorities both in terms of personnel as well as financial assistance to improve enforcement.

As I stated, you know, this seems to not diminish what has to be done internationally, but it is an essential component of our total program, since there has been a horrendous increase in money

laundering through local businesses, check cashing, real estate, even car dealerships, and so forth, and we have good evidence in places around the country, but explicitly in New Jersey it has been reported, people pay \$1 million in cash for a home. I think that is what raises eyebrows right there.

So it seems to me on two fronts, on the basis of your experience, in your opinion, what should we be doing, like setting up minimums for transactions, cash transactions, for example, and have a short waiting period for those cash transactions? And specifically with the Velazquez bill, it seems to me that there should be a conditionality to that additional support that the Federal Government is giving, whether it be in cash or enforcement assistance, that the States should have some responsibility here in terms of improving their own statutory requirements. Again, I want to stress, this is a neighborhood business thing and the State has got to share its responsibility here.

Page 49

PREV PAGE

TOP OF DOC

So if you could be specific, Mr. Kelly.

And, I'm sorry, Mr. Kröll had indicated that they would be glad to respond to any written questions. But Mr. Kröll has something to contribute now. We would be open to that. And certainly Ms. Warren and Mr. Winer have had experience in their own departments with these issues. And I want some specificity as to how we can improve and tighten, not provide, not keep loopholes open here, now that we have this opportunity in both these pieces of legislation.

Ms. Warren, would you like to begin?

Ms. WARREN. I think this is primarily a Treasury question, but I will try to respond in some ways.

It would be helpful in many areas to have more uniform State laws in these areas in enforcement. The areas that you have suggested are certainly important. We recognize them as the most important in the Federal system. There are some others that I would just offer as a suggestion.

Mrs. ROUKEMA. Please. I want to have the benefit of your experience here.

Ms. WARREN. And this is a way there is an interrelation between the Federal enforcement effort and the State again.

Page 50

PREV PAGE

TOP OF DOC

Our major concern is the cash being taken out of the country, because we have worked so hard to make its access unavailable for those illicit proceeds to be dumped into our system directly. Often then the cash comes back in, having been entered in another financial system, and then it comes in through money couriers or armored express companies.

The States license those. Only about 30 States have licensing procedures. It will be very helpful for uniform licensing procedures that would require full identifications for those licenses and have those full identifications available for law enforcement's use. There would be a good interplay then of the Federal and the State effort in going after the enormous amount of money that goes out and then comes back supposedly, you know, in a legitimate form, would allow to us

check on a lot more and have a direct line of enforcement.

For example, Florida has a very good law. And we work with Florida and Miami often on those couriers coming in and get full identification. If the courier is not properly licensed in Florida, the money is immediately vulnerable to confiscation and further questioning. It helps us enormously in the Federal system.

Mrs. ROUKEMA. Yes, Mr. Winer.

Mr. WINER. I thank you very much, ma'am.

You have raised a really profound question,. In my opening testimony, I talked about the problem of differential regulation internationally, and you have gotten back to this issue of differential regulation locally among our 50 States. Because of globalization, they are the same issues in a lot of respects. It could be tremendously valuable for further work to be done in trying to look where the differential regulation at the State level is beginning to lead to problems, because my focus tends to be international and these equities are largely Treasury.

Page 51            PREV PAGE            TOP OF DOC

I have to defer on the issue of the legislation. But there is one issue that I wanted to raise since you have given us this opportunity. I look a lot these days at the internet, offshore financial services offered on the internet, essentially. This is a means by which people can, from their PC at home, dial up their ability to do money laundering all over the world. What is quite striking is that certain jurisdictions which are very vulnerable to money laundering tend to attract a huge amount of internet advertising and activity associated with that vulnerability.

I am quite used to seeing Caribbean countries that I know to be notorious in their lax legislation appear offering these services on the internet. What is disturbing is when one also sees American States similarly listed.

Yesterday, I was going through one of these problems. I came upon a company, Azaria Financial Services. I am just going to read you a few lines from one of their advertisements. ''Class I offshore banks registered in the Caribbean. You can buy yourself an offshore bank.''

The next service is ''Class B banks available from Nauru and other jurisdictions.''. The next line, ''limited availability of European banks''; and now Montana, U.S.A.

I know that our Department of the Treasury has been talking with some of our States about these kinds of problems, and it may be very useful inquiry to follow up with Treasury about some of the steps Treasury and Justice are taking. But there is a continuity here in the problem from the international to the local that is really quite significant.

Page 52            PREV PAGE            TOP OF DOC

Thank you, ma'am.

Mrs. ROUKEMA. So you are suggesting that they are easily transferable, that the recommendations are relatively easily transferable from the international to the State scene?

Mr. WINER. Yes, ma'am.

Mrs. ROUKEMA. Interstate, yes. Thank you.

Mr. Kroll.

Mr. KROLL. Congresswoman, I would just comment that one of the things I think that is most important about developments in the Bank Secrecy Act has been the use of the information to add to the resources available to State and local officials who are fighting money laundering. It is one of our most important programs. Because we recognize, as you say, that money laundering is everyone's problem and that the States and the local forces are, in fact, closer than we often are to the problems on the ground.

One of the reasons that Secretary Kelly noted specifically in his testimony favorably the provisions moving the form 8300 requirements to the Bank Secrecy Act is that those are the requirements that would, for instance, apply if a real estate broker received a million dollars in cash in connection with a house closing. And we want that information to be available both so that we can enforce those requirements so that we can help the States and local governments use it and so that we can learn more about the way money moves in that way so that we can come back to you when it is appropriate with more specific recommendations.

Page 53

PREV PAGE

TOP OF DOC

Mrs. ROUKEMA. I would hope that we could do that rather quickly. We certainly cannot do it today in this markup, but we can certainly keep it open for any manager's amendments or amendments on the floor when we get to that point. So I would be waiting to hear with specificity from each department here further.

But, for example, I mean, you all essentially agree that there has been some conditionality requirements on the States, so we agree with that. But, for example, what is the problem with a waiting period or lowering the threshold for cash transactions? It seems to be that that is—I mean, should you really be open without a precise reporting or waiting period to a million dollars in cash for a real estate deal? That seems to be ludicrous. Help us with the kind of language that we need to put in the legislation.

I thank you. I appreciate it.

Chairman LEACH. Thank you very much, Marge.

Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman.

Ms. KILPATRICK. I would like to be recognized.

Ms. WATERS. I would like to welcome our witnesses here today and preface my remarks by saying that this hearing is very nice and it is very calm dealing with a very serious issue. And I don't think any of us have worked hard enough, have done enough to deal with the laundering of drug money, including the public policymakers over here and all of you.

Page 54

PREV PAGE

TOP OF DOC

Now, having said that, I don't know if you understand the length of time that I have been involved in the question of drug trafficking and money laundering and how I have worked hard for the day to come when we would take this issue seriously. We are in a political climate where Republicans are accusing Democrats of not having done enough, and Democrats are accusing Republicans of not having done enough. And

we see a lot of actions taking place, a flurry of actions in this election year, back in Los Angeles and up in Harlem and St. Louis and Philadelphia.

People are dying. Little drug dealers with one rock of cocaine are being picked up on the streets and sentenced to mandatory minimum sentencing in Federal prisons. And prisons are just running over with 19- and 20-year-olds or mandatory minimum sentencing, and some folks would have Americans believe that that is a war on drugs. Well, since I have spent time working and understanding about CIA involvement in drugs up in Los Angeles in the 1980's and all the work that was done with Gary Webb, I have also started to look at our banks and at Treasury and at everybody.

With that backdrop, Justice Department, there is money laundering going on in high places. Citibank has been under investigation for a long time. They took in money from Raul Salinas. They have, through their private banking, served him well. And I don't know how many other drug traffickers. They ignored your customer policy. They didn't ask for it or references. He was assigned Ms. Amy Hillard as his private banker. She did everything for him, including to go out with him and buy a house. And he is under investigation.

We don't hear anything. We don't know anything. They have concentration accounts where they have wired money offshore. What can you tell us? What are you doing?

Page 55

PREV PAGE

TOP OF DOC

Ms. WARREN. Most respectfully, because it is an ongoing criminal investigation, I cannot comment on anything more than the status that it is ongoing.

Ms. WATERS. How long has it been going on?

Ms. WARREN. For a couple of years now.

Ms. WATERS. The Swiss have been in contact with me, and they say that the Justice Department is not too cooperative in this investigation, and I intend to follow through on some suggestions that they have. Are you involved with the Swiss in helping to get to the bottom in this money laundering?

Ms. WARREN. We have provided materials to the Swiss, including many witnesses. The Attorney General, Val Ponte, has expressed her gratitude for the U.S. cooperation in her investigation.

Ms. WATERS. Do you have any idea when this investigation may come to an end?

Ms. WARREN. Very hard to predict for a criminal investigation when it will come to an end. They are very experienced prosecutors working on the case and a team of senior law enforcement investigators who are working on it.

Ms. WATERS. Had you added two of the ownership programs, the Confia Bank that was indicted in the recent Casablanca raid that is owned by Citibank where they paid \$45 million over book value for it. Did you add that to your investigation?

Page 56

PREV PAGE

TOP OF DOC

Ms. WARREN. I don't believe that would be part of that investigation. The indictment of Confia in the Los Angeles case at the moment, as I said, the Federal Reserve is reviewing that taking over

of that merger.

Ms. WATERS. But it wasn't a part of Casablanca?

Ms. WARREN. That bank is a charged defendant. Confia is a charged defendant.

Ms. WATERS. Is it not owned by Citibank?

Ms. WARREN. I do not believe that the acquisition is complete yet.

Ms. WATERS. But you are in the-respectfully, I ask unanimous consent for two minutes.

You don't know whether or not that bank is owned by Citibank or whether it is in the acquisition stage?

Ms. WARREN. I believe it is in the process of being acquired but that it is not a complete acquisition at this time.

Ms. WATERS. Did they acquire this since they have been under investigation by the Justice Department?

Page 57

PREV PAGE

TOP OF DOC

Ms. WARREN. I don't know the date that they began negotiating. Again, I say I do not believe that acquisition is complete as of this date.

Ms. WATERS. In Casablanca, you started over three years ago and you had under surveillance an investigation of Confia, so you have known for two or three years that Confia was possibly laundering money; is that right?

Ms. WARREN. It was part of the investigation, that is correct.

Ms. WATERS. Is it logical to conclude that if you knew it, whoever was acquiring it also knew it?

Ms. WARREN. I wouldn't speculate on that.

Ms. WATERS. It is not wild speculation though, is it? It would not be a secret, if you knew about it, one who was acquiring it would have to normally do due diligence, wouldn't they?

Ms. WARREN. One would expect due diligence. In the acquisition, Bank Confia is charged, based on activities of certain branches of that bank.

Ms. WATERS. Do you have any plans for spreading the net to include them in other American banks? I don't think that money laundering stopped on the Mexico side or did it?

Page 58

PREV PAGE

TOP OF DOC

Ms. WARREN. The money laundering that was uncovered in Casablanca that supported the criminal charges have now been charged. An investigation continues. No U.S. banks were charged because there was insufficient evidence of any criminal complicity here.

Ms. WATERS. What about Price Waterhouse?

Ms. WARREN. I could not respond.

Ms. WATERS. What do you mean, you can't respond? Have they been charged?

Ms. WARREN. They are not charged in Casablanca, anyway.

Ms. WATERS. They are charged in something else?

Ms. WARREN. I do not know.

Ms. WATERS. You do not know about the case of the money laundering of Price Waterhouse? You have no information?

Ms. WARREN. I have no information today.

Ms. WATERS. You have not heard about this personally? You

qualified that. What does that mean?

Page 59

PREV PAGE

TOP OF DOC

Ms. WARREN. I personally do not. Perhaps someone you know in the Department does or U.S. Attorney's Office.

Ms. WATERS. I read about it in the paper. Did you not see it?

Ms. WARREN. I responded that I personally am not aware of that.

Ms. WATERS. So you are aware of it in some other fashion. OK, that is fine. I raised these questions because, Mr. Chairman, as I have said to Mr. Bachus and others, this is not a game. There is money laundering and drug trafficking maybe even going on in high places. And I want you to know and the Justice Department that I am dead serious about this.

And since it is now the political discussion of both Democrats and Republicans, I really do want you to speed up your activity. I really do want to know about involvement of American banks, along with Casablanca, that was the recent raid on the Mexico banks.

Ms. WARREN. If I might just respond, Mr. Chairman, please.

We certainly share with the Congresswoman her sincere interest in this. We, too, are dead serious about money laundering.

Page 60

PREV PAGE

TOP OF DOC

The Attorney General insists on an aggressive program of money laundering investigations that follows the evidence wherever it takes us. Since 1985, we have charged some 101 banks under the Bank Secrecy Act and 32 more domestic banks for money laundering.

Ms. WATERS. Would you repeat that for the audience and me? You have done what?

Ms. WARREN. Since 1985, 101 domestic banks and other financial institutions have been assessed penalties under the Bank Secrecy Act; and, during that same period, 32 domestic banks and financial institutions have been convicted of money laundering.

Ms. WATERS. Mr. Chairman, if I may, are they all still in operation? Any of these banks put out of business?

Ms. WARREN. Yes.

Ms. WATERS. We would like to have that information, because we don't know of any that you have put out of business.

Ms. WARREN. We will collect that information for you.

Ms. WATERS. You don't know it now?

Ms. WARREN. I know that some have been put out of business.

Page 61

PREV PAGE

TOP OF DOC

Ms. WATERS. How many?

Ms. WARREN. I don't know how many, but I know some, just from my prior experience as a prosecutor in the Southern District of New York where we prosecuted some of those cases.

Ms. WATERS. Thank you again, Mr. Chairman.

Chairman LEACH. Thank you, Ms. Waters.

Mr. Hinchey.

Mr. HINCHEY. Thank you very much, Mr. Chairman.

Let me begin, first of all, by congratulating the Administration and the officials from the Department of State, Department of the Treasury and the Justice Department on the completion of Operation

Casablanca which led to the results that Mr. Kelly outlined in his testimony.

In a part of his written testimony, which he did not read, he mentions the fact that just last week Customs seized more than \$15 million in cash believed to be illegal drug proceeds in four separate incidences in Houston, San Diego, New York and Chicago; and the money was destined for Colombia, Venezuela and Mexico.

Page 62            PREV PAGE            TOP OF DOC

This indicates to me that this Administration is serious and sincere about its efforts toward drug interdiction, realizing finally that the only way to impede the illegal traffic in drugs, particularly between the United States and Mexico, is by targeting the money laundering by banks which is absolutely essential for the carrying out of this operation.

I hope that this operation is not going to stop here. Unquestionably, an enormous amount of information has been now compiled by law enforcement agencies within the Administration, which is applicable to further investigations, further indictments and further prosecutions. I would encourage the Administration to resist completely all attempts by the Mexican government to extradite the agents who were involved in Operation Casablanca to Mexico.

It is quite clear that high-ranking officials within Mexican law enforcement and the Mexican government itself are incapable or unwilling to move aggressively against the drug-trafficking operation that moves through their country. In fact, we saw in a New York Times article just yesterday that a Mexican judge has dropped the most egregious charges against two brothers who are running Mexico's largest methamphetamine-or ''speed''-cartel.

So it is quite obvious that if we are serious about stopping the drug problem in the United States, we have to concentrate on Mexico and also on banks, both in Mexico and in the United States.

Does the Treasury Department find it interesting that an American bank might pay \$45 million above book value for a Mexican bank in this particular climate and what the motivation might be for an American bank to pay that substantial sum above book value for that particular enterprise? Does the Treasury want to respond to that or maybe the Justice Department? Does someone want to respond to that?

Page 63            PREV PAGE            TOP OF DOC

Mr. WINER. I'll respond to it, because I have no jurisdiction over that kind of issue, and it makes it a little bit easier.

Mr. HINCHEY. It makes it safer for you.

Mr. WINER. I have looked at a number of transactions, financial transactions, involving the purchase and sale of large businesses internationally in connection with my current work. And I have asked analysts from law enforcement, from economic bureaus, from the Treasury and occasionally from the intelligence agencies to look at some transactions. They are notoriously difficult to price.

Getting consensus within any of our agencies of whether a price was the best--was it a correct price or not proves to be almost impossible. When I have tried the experiment, I have later concluded that it was not a productive use of their time or mine, because the

analytic tools available to us from the outside to try and do an independent pricing have not been adequate. This does not involve this particular transaction, but it does involve some other transactions I have looked at of a similar nature.

Mr. HINCHEY. Mr. Winer, of course, the point is not whether a bank is spending too much of its own money making an acquisition, the point is why would a bank spend so much money to acquire another bank outside of the country, and is it possible that the motivation behind that acquisition is to facilitate the huge profits through money laundering that comes from drug trafficking? That is the real question.

Page 64

PREV PAGE

TOP OF DOC

And you may not be the right person to answer this question, although I very much appreciate your answer. And I will not press the Treasury or the Justice Department for an answer at this moment. But I expect an answer from them to myself or the other Members of this committee at their earliest convenience, because I think that this is a question that needs answering.

And I would just encourage all of those who were involved in Operation Casablanca to continue to pursue this issue aggressively. I am so delighted that the Clinton Administration is finally moving aggressively with regard to money laundering, and I hope that this initiative will continue and that all leads will be followed and they will be followed to their logical conclusion.

And if I may, Mr. Chairman, I am also very concerned about reports that American resources that were transferred to Mexico to interdict drug trafficking are being used to suppress democratic activities within that country. Last year alone, some \$7 million in American funds were sent to Mexico for the acquisition of equipment, for training and for other activities.

We are finding increasing evidence that American military hardware transferred to Mexico, American training coming out of the School of the Americas and elsewhere, and other military hardware are being used by agents of the Mexican government to suppress activities of the indigenous population in that country in Chiapas and elsewhere.

Now if it is a matter of policy that we are cooperating with the Mexican government to suppress indigenous insurrections, that is one thing. We ought to know about it. I don't believe it is. I don't believe we have any interest in doing that.

Page 65

PREV PAGE

TOP OF DOC

But if the Mexican government, as it seems they are, is using American military hardware, American military intelligence, American military training through the cooperation of American military personnel and the Central Intelligence Agency to suppress indigenous peoples, then I think we ought to take some action that makes it impossible for them to do that in the future.

And I just want to conclude by saying Casablanca is refreshing and terrific, wonderful news to all of us who are interested in seeing the illegal drug trade suppressed and ended, but we have got to keep it up. Because it is, without question, a fact that not only are Mexican banks involved in illegal drug trafficking, but American banks are as

well, and we need to find those American bankers and prosecute them.

Thank you, Mr. Chairman.

Chairman LEACH. Thank you very much, Mr. Hinchey.

Ms. Kilpatrick.

Ms. KILPATRICK. Thank you, Mr. Chairman.

I, too, want to commend the President and Federal agencies for Casablanca. I think it is long overdue. As Ms. Waters mentioned, the communities across America are being stifled and put upon because the drug trade in America is out of control, the cancer of America, if you will.

Page 66

PREV PAGE

TOP OF DOC

Several months ago, one of the subcommittees of this committee held a money laundering hearing. A young woman from Colombia who was under protective custody came and testified before us. She told us that \$100 million, thereabouts, is what she laundered herself in one year's time. And she had been at it for three years. She named Fortune 500 companies and several U.S. banks who were part of that operation.

Somewhere we are missing the point here. It seems as though this is just another hearing that could be school lunches and Social Security and other real issues that we face here in America. If the Department of State, the Justice Department and Treasury already know this, why are you not acting and acting more deliberately? Why are you now-and I am hearing now throughout our media, that we are about to attack the demand in America, which again are the low-level street people. Why not the money launderer? Why not go to where the source is?

Mr. McCafferty told us several months ago they know where it is produced-Mexico, Colombia, Peru, and a couple of other countries. Why not go where it is and do something drastic, like blowing them up, which I should not say in public, but that is about where I am right now. Why are we battling with a subject here that is really making America less than what it ought to be and questioning whether it will be as strong as it needs to be as we move to the new millennium?

I think Treasury, State and Justice, you already know who they are.

And I want a copy of those charts that were over there. There were not hard copies in my mounds of written material here. But it said that Operation Casablanca seized \$100 million. Fair. I am telling you the woman who spoke to us, one person, \$100 million in one year, so it is fair. But you don't get an A from me, fair. A thousand pounds of cocaine. Good, you probably made a dent in that, perhaps.

Page 67

PREV PAGE

TOP OF DOC

I also heard Mr. McCafferty just earlier this week talk about it is not the production. They can produce and produce to no end. They know that. You know that. Eight thousand pounds of marijuana. You know, three banks, two of whom are the second and third largest banks in Mexico, and now is the Citibank acquisition among that? Twenty-six bankers, 167 total arrests. Thank you very much. We appreciate it. But it doesn't scratch the surface.

How much did the agency spend on Operation Casablanca to this date, Ms. Warren? How much was that-and I commend you for doing it,

but they can produce it much faster than we can stop it-and it is flooding the streets of America.

And Michigan, where I come from, a \$200 million operating budget for our Corrections Department is now \$1.5 billion. No one is any safer. The drugs continue to flow. They continue to build prisons at \$40 million apiece, rather than educating children and taking care of seniors.

I am just not at all happy with what our agencies are doing. I think you know where the source is. I think you know who is running it. I think you know the Fortune 500 companies as well as the banks who are laundering the money-I don't see the urgency.

Ms. Warren is the representative from Justice. Talk to me. Tell me something you know. It is out of control. A lot of American children and families and grandmothers are being devastated.

This is the Banking Committee, and I think I said the same thing when we had this before. You know the banks. I want them closed. I mean, this is not a 'turn and go away, and things are going to go away.' It is not going away. It is getting worse. It is getting worse and our country's fiber is being threatened.

Page 68            PREV PAGE            TOP OF DOC

Ms. Warren, thank you for Operation Casablanca. Good step. Not enough. Any comment?

Ms. WARREN. Operation Casablanca is one step in many that have been taken and many more that need to be taken. We have identified many of the major drug traffickers of the world. Many of them have been indicted in our Federal system. Unfortunately, many of those drug traffickers are beyond our jurisdiction; and we are pressing in every international forum that we know and with every country that will listen to us that they must extradite and they must extradite their own nationals. It is number one on Justice's list that we proceed against.

Those are the enormous criminals of today that make our communities and our schools unsafe. And, unfortunately, they are beyond our reach. Those within our reach, we are trying to work as aggressively as possible through all the Federal agencies who have the responsibility for proceeding against the drug traffickers and the associated money launderers and all the violent crimes that they commit.

I think we are working a little better and definitely smarter against them, and we are working more across agency lines one to another. The agents, investigators are working more closely with the prosecutors so we can move the cases faster and bring more of the higher level defendants into our courtrooms and get them the sentences that they deserve for what they have done to us.

It is frustrating, I'm sure, for every cop on the line and for the prosecutors in the courtroom, as it is for you in watching the neighborhoods that you serve. We are all committed to trying to do it as forcefully, vigorously as possible and appreciate the tools that you give us to work with.

Page 69            PREV PAGE            TOP OF DOC

Ms. KILPATRICK. Need we be giving you more? Are we losing the

battle? Don't give me a 30-second sound byte. I don't want to hear that. If we are losing it, say it. And I understand we can't do anything internationally in those other countries.

Ms. WARREN. No, I don't think we are losing it. What we have come to recognize is that this has to be a domestic and an international battle for our own strategy. It needs to be a balanced and a comprehensive approach that includes demand reduction, education and treatment, along with very vigorous law enforcement. And those are not in competition one with the other, but are complementary one to the other, and all need to be supported.

Ms. KILPATRICK. Mr. Winer.

Mr. WINER. Yes, ma'am. The battle against the Soviet Union after World War II essentially took half a century. The strategy, which was a global strategy, not just a border strategy, it took a very long time. The whole U.S. national security establishment had to be reconfigured to fight that war after World War II, away from the battle lines of World War II to try to think about how to deal with the problems posed by the Soviet Union.

The kinds of problems we are facing with drugs and thugs and financial crime are similar in their global ability to subvert governmental institutions and hurt individuals literally all over the world; and it is going to take the same kind of concentrated, long-term effort.

Page 70

PREV PAGE

TOP OF DOC

You talked earlier about why don't we just blow them up. If you could identify the problem and localize it, you can think about military action.

I have got in front of me the list of our countries of primary concern, most of whom I have visited, talking about financial crime, money laundering, trying to strengthen their ability to fight these problems, to build alliances with us. Antigua, Aruba, Australia, Austria, the Bahamas, Brazil, Burma, Canada, Cayman Island, China, it goes on through the list.

Ms. KILPATRICK. But your point on that, and I will yield to my senior--

Mr. WINER. It goes all the way to Venezuela. It is about 40 or 50 countries.

Ms. KILPATRICK. And the point?

Mr. WINER. The point is, to deal with the problem, you have got to get every one of these countries lined up with the United States with a similar set of laws and practices to combat financial crime, sharing law enforcement information, extraditing criminals so they can't get 'safe harbor' anywhere, changing bank secrecy laws, so they can be breached when there are criminal cases that have to be followed up. You have to develop a web of international law enforcement cooperation.

Ms. KILPATRICK. I am reclaiming my time. I agree with you totally, but we have problems here in the U.S. The problem starts here.

Page 71

PREV PAGE

TOP OF DOC

My good staff just gave me a couple of things. Let me just correct. It is Colombia and not Cambodia that I spoke of, and it was a

Colombian woman in here and not Cambodian. I mentioned the banks that were indicted in the Casablanca. I know that those were the second and third largest. I am not sure what I said, but I do know that.

We try to act like the problem is somewhere else. It is an American problem as well. This is where the market is. 650 tons into this country in 1996. Yes, we have to do the international piece, but it is certainly here in America.

We know the banks. We know the companies. Let's go get them. Let's make it public. Don't try to act like it is not happening when it is.

I would yield if I have any more time to my distinguished--

Ms. WATERS. Will the congresswoman yield?

Ms. KILPATRICK. I certainly will.

Ms. WATERS. I would like to ask, Mr. Winer, of the countries you named--let's take Antigua, for example, a little country, probably--how many banks would you say Antigua has now?

Mr. WINER. Offshore sectors--about 50.

Page 72           PREV PAGE           TOP OF DOC

Ms. WATERS. About 50 banks. How big is Antigua?

Mr. WINER. 62,000 people.

Ms. WATERS. 62,000 people and 50 banks. Do our banks wire transfers down to Antiguan banks?

Mr. WINER. Yes.

Ms. WATERS. So you are going to tell this committee that this grave problem that we have that is going to take many years, likened to the problem we had with the Cold War, is going to take that long despite the fact that we know if there was no profit there wouldn't be any drugs on the street? Profit comes because of money laundering. You have got 50 banks down in Antigua.

Our banks wire transfer money through concentration accounts where they lose its identity, and you tell me we can't do anything about that.

Mr. WINER. Certainly I would not tell you we can't do anything about it.

Ms. WATERS. What are we doing about it? Somebody tell me.

Ms. KILPATRICK. Reclaiming my time. And, as I conclude, thank you, Madam Chairwoman, for that caucus. You can see how incensed we are, and everybody in the room ought to be incensed. It is not to say you are not doing a decent job. We want you to do more.

Page 73           PREV PAGE           TOP OF DOC

The personal computers that are now available--and you mentioned that. It is not like someone goes to a bank with a bundle of money. It is all wire transfers. It seems like this committee can do something with that.

I know it is quite political, and folks are threatened by some of these actions. But unless we really address it and make a difference, I think we are spinning our wheels. We are losing our children. We are sensing they are more threatened in their own homes and America is less of a country by it.

Thank you.

Chairman LEACH. Thank you very much.

If there are no more questions for this panel, let me thank the

panel.

I would like to conclude with the observation that I think it should be clear that there is a consensus in Congress that money laundering is a very serious undertaking, that actions like Casablanca are supported, that even though they may cause tension with the neighboring states, that tension is not an excuse not to proceed with further activities in this nature. And led by the Black Caucus as well as the conservative wing of the Congress as well as all thoughtful Americans, there is, I think, a strong support for the law enforcement endeavors undertaken. We applaud the efforts and hope to make it clear that the Congress is behind the Executive Branch on this effort.

Page 74            PREV PAGE            TOP OF DOC

Thank you all, and we will turn to the next panel.

Our third panel is composed of Herbert A. Biern, who is the Associate Director of the Division of Banking Supervision and Regulation of the Board of Governors of the Federal Reserve System; and Robert Serino, who is the Deputy Chief Counsel of the Office of the Comptroller of the Currency. And unless there is a prearrangement between the two of you, we will just begin in the order of introduction.

Mr. Biern.

STATEMENT OF HERBERT A. BIERN, ASSOCIATE DIRECTOR, DIVISION OF BANKING SUPERVISION AND REGULATION, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Mr. BIERN. Thank you, Mr. Chairman, Mr. Vento. I am pleased to appear before the committee to discuss the Federal Reserve's role in the Government's anti-money laundering efforts and our interagency efforts to develop and issue effective 'know your customer' rules for the banking industry.

As you requested, I will also describe in general terms the Federal Reserve's participation in Operation Casablanca and the issuance of enforcement orders against the foreign banking organizations with U.S. offices identified in the operation.

Finally, I will provide some comments on proposed anti-money laundering legislation that you and the Members of the committee are considering.

Page 75            PREV PAGE            TOP OF DOC

First, I want to emphasize that the Federal Reserve places a high priority on participating in the Government's programs designed to attack the laundering of proceeds of illegal activities through our Nation's financial institutions. As a result, over the past several years, Federal Reserve staff has engaged extensively in anti-money laundering endeavors on its own and in coordination with U.S. and international bank supervisory agencies and law enforcement agencies, because banking organizations are the strongest line of defense against financial crimes and particularly money laundering.

The Federal Reserve emphasizes the importance of financial institutions putting in place controls to protect themselves and their customers from illicit activities. A banking organization's best protection against criminal activities is its own policies and procedures designed to identify and understand with whom it is conducting business and having the capability to identify and then

reject potentially illegal or damaging transactions.

In 1996, Governor Kelley directed Federal Reserve staff to begin the development of a regulation addressing the obligation of banking organizations to 'know your customers.' The first step in this process was an extensive Federal Reserve effort in 1996 and 1997 to gain a comprehensive understanding of the current 'know your customer' policies and procedures of banking organizations operating in the United States and abroad, including the private banking activities of large domestic and foreign banks.

As a result of the year-long private banking review, the Federal Reserve developed and issued a 'sound practices' paper on private banking in July, 1997. Information gathered from the private banking examinations provided staff with some basic information that was absolutely necessary before draft regulations covering banking organizations' relationships with their customers could be prepared.

Page 76

PREV PAGE

TOP OF DOC

In the late summer of 1997, the staff of the Federal Reserve prepared a preliminary draft regulation and then began discussions with the other Federal bank regulators in an effort to design a coordinated regulation that would address the 'know your customer' activities of all Federally supervised banks, thrifts and credit unions, as well as non-bank financial institutions who would be subject to rules issued by Treasury.

Barring any unforeseen complications, we expected that the regulation should be able to be issued in a coordinated manner within the next few months. As the regulators' staff now envision the requirements of the regulation, banking organizations would be required to develop a 'know your customer' program that would allow them to identify their customers at the inception of their customer relationship and understand the source of funds and the normal and expected transactions of their customers.

The program also should be designed to allow banking organizations to monitor the transactions of their customers to ensure that they are consistent with their expected transactions and identify and report as necessary those transactions that are unusual or suspicious.

Turning to Operation Casablanca. As the committee Members are aware, the operation was recently made public with the announcement of criminal indictments that included charges of money laundering being brought against numerous bankers as well as three Mexican banks, two of which operate offices in the United States.

As I am sure the committee will understand, I cannot provide specific operational information about Operation Casablanca because, as we heard this morning, the law enforcement agencies responsible for the operation are still working on various aspects of the case. Similarly, confidentiality requirements preclude me from discussing supervisory information about the banking organizations that allegedly may have been involved in improper activities.

Page 77

PREV PAGE

TOP OF DOC

Within these parameters, I would like to briefly describe our role. The Federal Reserve was first made aware of Operation Casablanca in late 1995 when staff was approached by special agents of the U.S.

Customs Service, the lead agency. The agents requested technical assistance with regard to certain banking aspects of the undercover money laundering sting operation. Some of the assistance that we provided included verification of the existence of banking organizations and their geographic locations, explanations of procedures for the movement of currency between banking organizations and within the Federal Reserve System, and training on check clearing and funds transfer activities.

On May 18th, when the Department of Justice and Department of Treasury jointly announced the indictments of several banks and bankers, the Board issued enforcement actions, in this case, temporary cease-and-desist orders, against four Mexican banks and one Spanish bank with a Mexican bank subsidiary. Two days later, when several Venezuelan bankers and alleged money launderers were arrested, the Board took a similar action against a bank with U.S. operations.

Specifically, the Board ordered each of the financial institutions to provide a detailed description of the anti-money laundering policies and procedures that it had in place, as well as a detailed description of its understandings regarding deficiencies in such policies and procedures that could have given rise to the apparent illegal actions taken by its employees.

Additionally, the Board ordered each institution to submit an acceptable plan detailing the steps that have been and will be implemented to ensure that conduct, such as that which already occurred, is not occurring and will not occur in the future.

Page 78

PREV PAGE

TOP OF DOC

With regard to the proposed legislation being considered by the committee, I note that while the Board has not had an opportunity to review either proposal, as a general proposition, the Federal Reserve has always supported constructive efforts to better and more efficiently attack money laundering activities. From staff's review of the proposals, it appears that the legislation, among other things, would increase the tools available to law enforcement authorities to combat money laundering, on the one hand, and establish a coordinated, governmentwide effort against money laundering on the other.

With specific regard to the Money Laundering Deterrence Act of 1998, staff is particularly pleased with the clarification of some issues related to the disclosure of suspicious activity reports. The filing of suspicious activity reports by banking organizations is a vital tool for the Government's anti-money laundering efforts, and your legislative proposal enhances the organizations' ability to communicate with law enforcement and bank supervisors in a timely and effective manner without a threat of inappropriate legal challenges.

We also appreciate the importance the proposed legislation places on 'know your customer' regulations as an integral component of an effective Government anti-money laundering program.

With respect to the Money Laundering and Financial Crimes Strategy Act of 1998, we believe that coordination already exists among and between the various Government bodies that participate in anti-money laundering efforts. If the Congress were to determine that the development of a national strategy in this area is appropriate, then we would welcome the opportunity to participate in such an initiative.

In conclusion, I want to emphasize that the Federal Reserve has a significant interest in protecting the banking system from criminal elements. Consequently, we will continue our cooperative efforts with other bank supervisors and the law enforcement community to develop and implement effective anti-money laundering programs addressing the ever-changing strategies of criminals who attempt to launder their illicit funds through banking organizations here and abroad.

Thank you, Mr. Chairman.

Chairman LEACH. Thank you very much.

Mr. LaFalce-I beg your pardon. The OCC is held in very high regard in this committee, and we did not mean to overlook you. We recognize the Federal Reserve of the United States is not the only regulator.

Mr. SERINO. Thank you, Mr. Chairman. I appreciate it.

Mr. LAFALCE. Mr. Chairman, I must say some would question your statement.

Chairman LEACH. Please, Mr. Serino.

STATEMENT OF ROBERT B. SERINO, DEPUTY CHIEF COUNSEL, OFFICE OF THE COMPTROLLER OF THE CURRENCY

Mr. SERINO. Thank you, Mr. Chairman. I would like to submit my full statement for the record and summarize my remarks.

Chairman LEACH. Without objection, of course.

Mr. SERINO. Mr. Chairman and Members of the committee, I appreciate the opportunity to testify today about the OCC's anti-money laundering efforts.

Money laundering presents a serious challenge to law enforcement, and the OCC has a long-standing commitment to combating this problem in the banks we supervise. I want it to be made perfectly clear that we do not countenance any bank violating the law or being involved in money laundering. I commend the committee for continuing to focus attention on this critical issue.

In your letter of invitation, you asked us to address two areas, the OCC's anti-money laundering supervision and enforcement activities, and the two bills that you, Mr. Chairman, and Congresswoman Velazquez have proposed to strengthen the Federal Government's authority to detect and prosecute money laundering offenses.

Under the leadership of Acting Comptroller Julie Williams, the OCC is continuing to strengthen its anti-money laundering activities, as well as working with the law enforcement community to help investigate and prosecute organizations and individuals who engage in money laundering.

The OCC regularly examines national banks and the branches and agencies of foreign banks in the United States to insure banks' safety and soundness and compliance with the laws. Our supervision covers all aspects of an institution's operations, including a bank's compliance with the Bank Secrecy Act and anti-money laundering activities. Where deficiencies are noted, we take supervisory and enforcement actions to

ensure that the bank promptly corrects them.

The Nation's financial institutions themselves are the front lines in the fight against money laundering. Strong internal policies, systems and controls are the best assurance of compliance with the reporting and recordkeeping requirements of the Bank Secrecy Act and the money laundering laws. Consequently, our examinations focus on a national bank's system of internal controls, audits, policies and procedures in the Bank Secrecy Act and money laundering areas.

Where examiners note control weaknesses or when we receive a lead from law enforcement or other external sources, examiners test the bank's policies, systems and controls through more detailed reviews, including looking at individual transactions.

Effective cooperation between law enforcement and the regulatory agencies is essential to combating money laundering. Therefore, the OCC participates in a number of interagency working groups aimed at money laundering enforcement and meets on a regular basis with law enforcement agencies to discuss money laundering issues and share information that is relevant to money laundering schemes.

Through these interagency contacts, we often receive leads as to possible money laundering in banks that we supervise. Using these leads, we can target compliance efforts in areas where we most likely would be able to find problems.

To me, targeting is the key to uncovering problems. In cases where the OCC receives targeting leads or suspects violations of the Bank Secrecy Act or money laundering have occurred, the OCC conducts investigations. We have completed a number of extensive investigations into suspected money laundering activities, and we continue to closely cooperate with Federal criminal agencies as we speak.

These investigations may result in criminal convictions, administrative enforcement actions and significant asset forfeitures. All banks are required by regulation to report suspected crimes and suspicious transactions that involve potential money laundering or violate the Bank Secrecy Act.

In April of 1996, the OCC, together with the other Federal financial institution regulatory agencies and the Financial Crimes Enforcement Network, unveiled a new system and a new standardized form for reporting suspicious activity-the Suspicious Activity Reform, the SAR-and an improved databank. The new system provides law enforcement and regulatory agencies on-line access to the entire SAR databank.

Based on the information in the SARs, law enforcement agencies can initiate an investigation and, if appropriate, take action against violators. By consolidating all suspicious activity reports in a single location, the new system greatly improves the reporting process and makes it more useful to law enforcement and regulatory agencies.

In June of 1997, the OCC formed its own internal task force, the National Anti-Money Laundering Group of the OCC, to serve as the agency's focal point for our anti-money laundering supervision. As a result, during the past year, the OCC has embarked on several important projects.

One project seeks to identify banks that may be vulnerable to money laundering and targeting them for more detailed examinations that cover broader scope of a bank's activities. We select banks for these examinations based on law enforcement leads or on criteria developed by the OCC. We already have conducted a number of expanded-scope anti-money laundering examinations based on law enforcement leads.

The internal task force is also overseeing a program of anti-money laundering examinations of the overseeing offices of several national banks. We recently completed the first of these examinations, and we expect to do more.

In addition, the OCC's internal task force is also working with law enforcement agencies and the other regulatory agencies to develop additional interagency examiner training curriculum that will include training on common money laundering schemes.

In our ongoing effort to deploy our resources more effectively and efficiently, the OCC has developed a special cadre of approximately 100 examiners who specialize in compliance issues, including the Bank Secrecy Act and money laundering prevention. In addition, we recently hired BSA compliance specialists to provide in-depth expertise to examiners and to help improve our BSA and anti-money laundering policies.

Examiners with extensive backgrounds in fraud and money laundering are assigned as full-time fraud specialists in each of our OCC six district offices. Two examiners in our offshore banking and fraud unit in Washington, DC., track the activities of offshore shell banks and other types of suspicious activities that may be designed to defraud legitimate banks and the public.

Page 84            PREV PAGE            TOP OF DOC

Over the past several years, this unit has issued hundreds of industrywide alerts, including 15 specific alerts on unauthorized banks operating over the internet, some of which are suspected of being money laundering vehicles. The OCC believes that interagency cooperation and coordination are critical to successfully addressing Bank Secrecy Act and money laundering issues.

For example, as Mr. Biern indicated, for the past several months the Fed and the OCC, together with the other banking agencies, have been working to improve and to create a "know your customer" regulation. To help banks carry out their anti-money laundering responsibilities, the OCC works to educate the banking industry about its responsibilities under the Bank Secrecy Act. Our education efforts have included publications, guidance to banks and participation in conferences and training sessions across the country. We will continue to be active in this area.

In your invitation, you asked us to comment on the two proposed bills to combat money laundering—the Money Laundering Deterrent Act of 1998 and the Money Laundering and Financial Crime Strategy Act of 1998. Although the Administration has yet to put forward a position on the bills' particular provisions, the OCC believes that both bills could help detect and deter money laundering and deserve serious consideration.

The Money Laundering Deterrent Act of 1998 extends to accountants

the statutory 'safe harbor' from civil liability for banks and individuals who report crimes. It facilitates the flow of information among law enforcement and regulatory agencies within the Government and creates a new 'safe harbor' from civil liability for banks and individuals who share information in an employment reference about a prospective employee's possible involvement in a violation of law or a suspicious transaction. It also increases the penalties for certain violations of law and requires the filing of reports relating to crimes and currency received in nonfinancial trade or business.

Page 85            PREV PAGE            TOP OF DOC

The OCC supports the goals of this proposal, especially the creation of the new 'safe harbor' for banks and individuals who share information in an employment reference about a prospective employee's possible involvement in a violation of law or a suspected suspicious transaction. Banks and their employees must feel free to report suspicious transactions and to share information in the employment context about individuals involved in misconduct, without the fear of liability.

The Money Laundering and Financial Crimes Strategy Act would require the development of a national strategy for combating money laundering and related financial crimes, require the Secretary of the Treasury to designate certain areas as high-risk areas for money laundering and related financial crimes, and establish a Financial Crime-Free Communities Support Program.

The OCC supports the undertaking of cooperative efforts involving Federal, State and local government officials to combat crime.

In conclusion, money laundering is a serious problem. However, through the anti-money laundering initiatives I have described, active interagency working groups, increased international cooperation, and a committed industry, we believe we can continue to make progress in preventing the Nation's financial institutions from wittingly or unwittingly being used to launder money. We stand ready to work with Congress, the other financial institution regulatory agencies, law enforcement agencies and the banking industry on this critical issue.

Thank you, Mr. Chairman. I will be happy to answer any questions.

Page 86            PREV PAGE            TOP OF DOC

Chairman LEACH. Thank you very much, Mr. Serino.

Mr. LaFalce.

Mr. LAFALCE. No questions.

Chairman LEACH. Mr. Vento.

Mr. VENTO. Thanks, Mr. Chairman. I regret I wasn't here earlier. We had another markup in the Committee on Resources and of course we had votes on the House floor.

Everyone is looking for where the choke point is in terms of these problems with drugs, and obviously financial transactions represent one part of that picture. We have, however, this whole fight going on in terms of the demand and supply debate we read about, and what of the constituent parts are going into growing this stuff and transporting it.

So the question is, are we really doing the job in the transaction area? And is it really something that is going to be possible, given

the integration of our markets and capital markets on an international basis, without completely frustrating the flow of capital and other activities?

You point out, I haven't been able to look all of these statements over, but Mr. Serino has pointed out that there were 110,000 Suspicious Activity Reports, over 40,000 of them I guess as of September 1997. Maybe this goes back for a longer period of time. How long does that go back?

Page 87            PREV PAGE            TOP OF DOC

Mr. SERINO. From April of 1996.

Mr. VENTO. So it is actually about a 15-month or 18-month report. And about 40,000 of these were suspected money laundering violations. Did that wholly deal with drugs?

Mr. SERINO. Congressman, that is suspicious transactions that have occurred through financial institutions. Exactly how they break down, I don't know. They are suspicious transactions. We do instruct the banks that they ought to have a program in place to identify transactions that occur in the banks that look suspicious, and that if in fact they look suspicious, they ought to make referrals to law enforcement. The banking industry has responded very well in that short period, and I think that that--

Mr. VENTO. What is the disposition? The concern is they go out and we have all this paper coming in and all this reporting, and of course I noticed one aspect of one of the bills here is the paperwork simplification process. But the issue is, if we are sending an avalanche of information to law enforcement agencies, do they just set it on the shelf and say, "That is nice, but I have real work right here that I have to do"?

Mr. SERINO. Well, the benefit of this new system, Mr. Congressman, is that it is now a computer-based system. When a financial institution makes a referral, they make it to a central databank in Detroit. All law enforcement has access to that databank. So they can basically pull the information down from the databank, they can make searches of the databank by names, by amounts, by different elements. So that we feel that the avalanche of paper which we are concerned about also, has somewhat been eliminated.

Page 88            PREV PAGE            TOP OF DOC

Prior to this system, we had banks that would make referrals and rather than make it to one source, they had to make it to seven locations. Now, by having this system, it is a central location, everybody has access to this system, and it eliminates a significant burden on financial institutions.

Mr. VENTO. I assume that this involves all national or all banks?

Mr. SERINO. All banks.

Mr. VENTO. Whether they are regulated by the OCC or the Fed or the State?

Mr. SERINO. That is correct.

Mr. VENTO. Is there any feedback that you have received from this? Mr. Biern, we might as well invite you to participate in my questioning.

Mr. BIERN. Thank you, Mr. Vento.

As Mr. Serino said, starting sometime in late 1995 and 1996, all the bank agencies, representatives of all the bank agencies became concerned with the flood of paper, and as he said, banking organizations had to send the old criminal referral form to six or seven different law enforcement agencies.

Page 89

PREV PAGE

TOP OF DOC

This system that we and our staffs developed along with Treasury is light years ahead of where we were. Computer screens, computer databases, law enforcement around the country can take a look at all the referrals at the same time. It is just not a piece of paper. And they can cut and paste and move things around by name, type of activity, location, and we have heard that it is very beneficial for law enforcement, particularly because they can coordinate matters around the country much better.

Mr. VENTO. Well, that is really what we are looking for in terms of my recent question.

The bills also have a reporting provision for accountants and others where they see suspicious activities. Now, how would you relate these Suspicious Activity Reports to the reports that might come in from accountants? Is this the same piece of cloth here that we are looking at?

Mr. Biern, you may as well begin.

Mr. BIERN. Yes. The statute would expand somewhat the 'safe harbor' relating to the filing of Suspicious Activity Reports. Right now the statute relates to banks and their employees, and if an outside accountant was hired by a bank and would find something suspicious and would be involved with the filing of the SAR form, then the 'safe harbor' would be expanded to that accountant, and that is basically what the statute would do.

Mr. VENTO. They need that protection because the others that are reporting already, the regulators or the banks themselves that are reporting--

Page 90

PREV PAGE

TOP OF DOC

Mr. BIERN. They are already explicitly covered by the 'safe harbor' provisions of the law.

Mr. VENTO. So what does that mean, that they can't take action against them for actually doing this report?

Mr. BIERN. There is a 'safe harbor' from civil liability for reporting.

Mr. VENTO. Civil liability?

Mr. BIERN. Civil liability.

Mr. VENTO. So do you anticipate a significant increase in these types of reports? What do the others use? What kind of an increase are we going to see here in these reports?

Mr. BIERN. I don't think any significant increase relating to the 'safe harbor' provided to accountants. There are 100,000 or more reports filed every year and put into this database, and the fact that accountants will have a little more protection from civil liability should not significantly increase that number.

Mr. VENTO. What are the other reports that are the Suspicious Activity Reports? If they don't deal with money laundering, what do

Mr. BIERN. The form itself, and Mr. Serino I am hopeful knows this and will support it, the form has approximately 18 boxes of the type of criminal activity that banks will report. It also has an ''other'' box, in order to help banks identify what types of activity they are telling law enforcement about. And it goes from loan fraud or credit card fraud to whatever, all the general types of bank fraud.

Mr. VENTO. OK, I see. Well, thank you very much. Somebody has handed my a copy of this so I can review this with my pile of paper up here.

Mr. SERINO. Congressman, if I might add something to that, the reason for the ''safe harbor'' is we believe that requiring banks to file Suspicious Activity Reports is essential to get information to law enforcement. We don't want them to be reluctant to file these reports.

What we had heard in the past and what Congress had heard in the past was that the banks were in fear of getting sued by someone who was referred, if they made a bank referral. So Congress in its wisdom passed legislation that gave the banks protection when they made a referral. So we are encouraging banks to make referrals with this understanding that they will have protection from liability if they are sued.

Mr. VENTO. And there have been no suits? I mean, had there been suits before or are there suits now?

Mr. SERINO. There had been suits before and there are now.

Mr. VENTO. And of course the banks are obviously doing this in a responsible manner so that there isn't any undue harm to anyone by virtue of this, at least, if you could testify to that?

Mr. SERINO. That is correct.

Mr. VENTO. Thank you, Mr. Chairman.

Chairman LEACH. Thank you.

Mrs. Roukema.

Mrs. ROUKEMA. Mr. Chairman, I will forgo questioning now as long as I can reserve the right to come back.

Chairman LEACH. Yes.

Mrs. ROUKEMA. Thank you.

Chairman LEACH. Ms. Waters.

Ms. WATERS. Thank you very much.

Mr. Serino, have you been sitting in the room all afternoon?

Mr. SERINO. Yes, I have.

Ms. WATERS. Have you had an opportunity to hear what took place between the Members and the other panel?

Mr. SERINO. Yes, I have.

Ms. WATERS. OK. Then I don't want you to think we are just picking on you.

Mr. SERINO. No, I won't think that at all.

Ms. WATERS. We are picking on everybody.

Now, with all due respect for the wonderful work that you have described of OCC, and I am looking here on page 3 where you say ''All banks are required by regulation to report suspected crimes and suspicious transactions that involve potential money laundering or violate the BSA.''

Mr. SERINO. That is correct.

Ms. WATERS. ''In April 1996, the OCC, together with the other Federal financial institution regulatory agencies, and the Financial Crimes Enforcement Network, FinCEN, unveiled a new Suspicious Activity Reporting system,' ' and on and on.

Page 94           PREV PAGE           TOP OF DOC

Are you familiar with the CitiBank case over at the Justice Department?

Mr. SERINO. I am familiar with it, yes, ma'am.

Ms. WATERS. Your responsibility for oversight does extend to CitiCorp, doesn't it?

Mr. SERINO. Our responsibility applies to the CitiBank itself, not to the CitiCorp.

Ms. WATERS. Well, CitiBank?

Mr. SERINO. That is correct.

Ms. WATERS. In your examinations, did you find any violations of any kind with CitiBank?

Mr. SERINO. Congresswoman, I am not at liberty to discuss what we have found in our examination reports of any banks.

Ms. WATERS. Oh, is that right? Is that how it goes? It is secret information?

Mr. SERINO. I have not been authorized to discuss information from our examination reports.

Page 95           PREV PAGE           TOP OF DOC

Ms. WATERS. You are unauthorized, so is it secret information?

Mr. SERINO. It is confidential bank examination information, yes.

Ms. WATERS. Do you know any banks at this time that should be put out of business? That we should take their bank charters from them, that we should--

Mr. SERINO. Congresswoman Waters, I heard your discussion this morning and quite frankly, I would love to know from any Congressman or any law enforcement authority of a financial institution subject to our jurisdiction that you think might be laundering money. As I suggested, one of our major goals is to target our resources to those institutions. Over the past--

Ms. WATERS. Do you have--since you know that CitiBank is under investigation by the Justice Department, what have you done and what is your role?

Mr. SERINO. We have offered assistance to the Department of Justice and we have expressed our full cooperation to them.

Ms. WATERS. In offering assistance to the Justice Department, are you offering it after the fact, after information was received by the Justice Department that caused them to follow up, or did you trigger it? Did you do anything to help get this on their radar screen?

Page 96           PREV PAGE           TOP OF DOC

Mr. SERINO. I don't know the answer to that, Congresswoman.

Ms. WATERS. Are there any banks that you have examined that you have found suspicious activity or activity that warranted further investigation that have led to indictments?

Mr. SERINO. There have in the past, yes.

Ms. WATERS. That is not good enough. You have to tell me more.

Mr. SERINO. We are presently involved in some investigations which I hope and anticipate will also lead to investigation and ultimately, hopefully, prosecution by the Department of Justice.

Ms. WATERS. I guess my question is, have you ever had examinations that led to investigations that led to indictments?

Mr. SERINO. Oh, absolutely. Of financial institutions or individuals?

Ms. WATERS. Financial institutions.

Mr. SERINO. That is a good question. I am not certain.

Page 97            PREV PAGE            TOP OF DOC

Ms. WATERS. Would you find out for me and let me know?

Mr. SERINO. I don't know that I can find-I will try to find out the best I can, yes.

Ms. WATERS. What do you mean, the best you can? I mean, don't you have this information?

Mr. SERINO. We have made referrals to law enforcement historically, and we make them. But as to the outcome or disposition, I am just not aware off the top of my head whether or not any of those referrals specifically led to indictments of the financial institutions themselves.

Ms. WATERS. There was some discussion here about your responsibility to the ''know your customer'' policy. Have you found any banks that ignore the ''know your customer'' policy and guidelines?

Mr. SERINO. That is one of the principal areas that we are looking at when we examine banks. We look at basically three things:

First is there a good compliance program in place? And the compliance program basically is number one. Do they have policies and procedures? Number two, do they have a good accounting, audit function? Number three, do they have good training? And number four, do they have a designated compliance officer for a particular area?

Page 98            PREV PAGE            TOP OF DOC

Second, we look to see whether or not the banks have ''know your customer'' policies that are working. Finally, we look to see whether banks have a good suspicious activity reporting system.

I don't know specifically whether we have found any banks that do not have good ''know your customer'' policies. At the present time there is not a requirement by regulation. That is what we and our fellow regulators are working on, putting together a regulation that will require banks to have ''know your customer'' policies. We believe that it is a good practice for banks to have ''know your customer'' policies and we encourage them to do so. But as far as being required by regulation, we have not yet done that, final.

Ms. WATERS. Do your examinations take you into the private banking portions of these banks?

Mr. SERINO. Yes, they do.

Ms. WATERS. Does your examination raise any questions about fictitious names on accounts in private banking?

Mr. SERINO. One of our concerns in private banking is having adequate notification of who the customer is. We think that is an important area for banks, so yes, it is a concern as to who the customer is.

Ms. WATERS. What have you done about it?

Page 99                   PREV PAGE                   TOP OF DOC

Mr. SERINO. We are stressing when we do examine them that they need to have a good ''know your customer'' policy in place.

Ms. WATERS. And if they don't, what happens to them?

Mr. SERINO. We direct them to do that.

Ms. WATERS. So nothing happens to them?

Mr. SERINO. I didn't say that. If nothing happens and we feel it is essential, we could, in fact--

Ms. WATERS. Do you know you have private banking systems within banks that still have fictitious names on private banking services?

Mr. SERINO. I am not certain of that, Congresswoman.

Ms. WATERS. You don't know about that?

Mr. SERINO. I am not certain of that, no.

Ms. WATERS. Do you know what a concentration account is?

Mr. SERINO. I am aware of that, yes.

Page 100                   PREV PAGE                   TOP OF DOC

Ms. WATERS. Do you know how they work?

Mr. SERINO. Not really. I learned more about them today than I had known for a while.

Ms. WATERS. Aren't you the expert on this stuff?

Mr. SERINO. No, I am not an expert specifically in examination of private banking.

Ms. WATERS. Well, let's talk about concentration accounts in private banking, because this is where a lot of the abuses are. Do you know anything about it? Do you know how they work?

Mr. SERINO. No, Congresswoman Waters. After seeing the piece of legislation that you suggested today, what I said to myself was we need to find out whether this is a problem. I understand they are used for legitimate purposes. Whether or not there is an abuse and whether or not we need to do something to address the abuse is something we need to look at.

Ms. WATERS. I understand that the Federal Reserve have identified concentration accounts as a problem and they recommend against them, I am told. Is that right?

Maybe I should be asking you. Tell us about concentration accounts.

Page 101                   PREV PAGE                   TOP OF DOC

Mr. BIERN. Yes, ma'am, I was hoping you would get to me.

Ms. WATERS. Oh, I am so sorry. Please.

Mr. BIERN. As you know, during our extensive reviews of private banking activities in 1996 and 1997, which resulted in a sound practice paper on that subject, during the course of that review

issues related to concentration accounts, which are sometimes called suspense accounts or omnibus accounts, were raised by our examiners. Basically, these accounts are internal mechanisms used by banks to facilitate the flow of funds within the bank on an intra-day basis.

Ms. WATERS. I am sorry. Would you repeat that?

Mr. BIERN. They are basically ministerial accounts used by banking organizations to facilitate the flow of funds on an intra-day basis. They are not necessarily illegal, improper, immoral or wrong.

What we found was that private banking organizations needed to take great care in making sure that when they were transferring funds on behalf of private banking clients, that they maintained adequate records about the identity of the private banking client, where he or she was moving money from and moving money to.

So the guidance that we issued in July 1997 to banking organizations with private banking operations was to be very careful in this area. It is an area of potential abuse. Keep adequate records to make sure that there is a paper trail when you do move money from a private banking client within your banking organization. I hope that explains--

Page 102

PREV PAGE

TOP OF DOC

Ms. WATERS. Well, let me just quote what we have learned from what you said. You said, 'Generally, it is inadvisable from a risk management or control perspective for institutions to allow their clients to direct transactions through the organization or suspense account. Such practices effectively prevent association of the clients' names and account numbers with specific account activity and could easily mask unusual transactions and flows, the monitoring of which is essential to sound risk management in private banking and could easily be abused.'

Mr. BIERN. I stand by that guidance. That is what we found during our reviews, that there is a potential for abuse in this area if the bank's normal operation calls for the conglomeration of funds on an intra-day basis into a suspense or omnibus or concentration account. The guidance we are giving banking organizations is, make sure that you have clear records about funds transfers for your private banking clients; even if you want to use a suspense account, make sure you keep the records, and that is the guidance we provided.

Ms. WATERS. So that the suspense accounts or the concentration accounts, are these accounts where the money comes from a number of clients that all go into this pool?

Mr. BIERN. Let me give you a good example. Again, I am not a payment system expert on this, but BankAmerica has ten customers who want to move money to Wells Fargo.

Ms. WATERS. Do they move it anyplace else?

Page 103

PREV PAGE

TOP OF DOC

Mr. BIERN. Let's just say they have ten customers who, within the last hour, want to move money to Wells Fargo.

Ms. WATERS. OK.

Mr. BIERN. Instead of taking the ten customers' money every five minutes within that hour, they put the ten customers' money into a suspense account and do one wire to Wells Fargo. It is an internal

ministerial mechanism. It is not done, in our experience, for illicit purposes. It is an internal control mechanism.

Ms. WATERS. Have you found it to have been abused, and has it been used to lose the identity of drug money and then wire transfer it offshore?

Mr. BIERN. Again, our examiners who did an extensive review of private banking operations identified it as a potential area for problems.

Ms. WATERS. I know that. But have you found the concentration or suspense accounts to have been used to lose the identity and wire transfer it offshore?

Mr. BIERN. Not to my personal knowledge.

Ms. WATERS. Do you recommend that concentration accounts--

Page 104           PREV PAGE           TOP OF DOC

Mrs. ROUKEMA. [Presiding.] Ms. Waters, excuse me. We do have to move along here, and then we will get back to you again, if necessary.

Ms. WATERS. Thank you. I appreciate that.

Mrs. ROUKEMA. I would like to follow up.

I did find my colleague Ms. Waters' questions relevant, but not having been here because I had a conflict with a responsibility on the floor, I didn't hear your testimony. But on the basis of what I have heard in your response to Mr. Vento and Ms. Waters, let me ask you the question my way, OK?

You have said something about the legal powers. You referenced the need for better monitoring for supervision and verification. I think you made those references. But you did not indicate--and you acknowledge that you have got a "'know your customers,'" I don't know who brought that phrase in, to "'know your customer'"--but I didn't hear you say anything about how either there should be improvements under the law with increased penalties or more precise regulation.

Everything you have said sounds very discretionary, and doesn't seem to be up-to-date with the focus on the need as to the Casablanca connection and the cycling of money in and out of the country, as well as intra-State. I wish that you could come to us on the basis of your experience with a way of, under the law and with new penalties, helping you do your job better and helping us, helping the American people as an effective drug-monitoring system.

Page 105           PREV PAGE           TOP OF DOC

Could each of you respond, please? And if we have missed something here in this interchange, I would like you to be precise, and then we can benefit in our markup before we go to the floor by your advice and counsel here. But we can't be just vaguely talking about regulation.

Mr. SERINO. Madam Chairwoman, we think that what needs to be done is we need to somehow develop targets for us to focus our resources on. Any type of legislation, such as the piece dealing with creating the possibility of designating certain areas of high drug intensity for financial crimes, designating areas like that and then letting us target our resources on banks in those areas, to me would be very helpful. So that would be one area that I would think would be very helpful.

The other piece of legislation that makes sure that when an

employee gets fired from one institution and he goes down the street to another institution to get employment, and when that second institution calls back to the first institution and the first institution says, 'Hey, I can't tell you anything about it', this legislation you have proposed will protect the first institution if it discloses to the second institution, and therefore this individual going to the second institution will not be employed by the second institution. I think that is important.

Mrs. ROUKEMA. This legislation corrects that.

Mr. SERINO. That is correct.

Mrs. ROUKEMA. Yes, that is my understanding. Thank you.

Page 106

PREV PAGE

TOP OF DOC

Mr. SERINO. Yes. So that is very helpful.

Mr. BIERN. Let me answer from the side that Bob has not yet addressed. That is the 'know your customer' side of it.

We think that number one, the legislation, the sense of Congress portion of the legislation, that the agencies need to have 'know your customer' rules and have them very promptly, is an appropriate step to take. The banking agencies have been working very closely for a period of time on drafting 'know your customer' rules, and this is a very complex area. We are basically trying to find out how banks deal with their customers, not interfering with their transactions, but making sure that banks in essence know who they are dealing with. Because as I said during my testimony, this is the essence of banks failing to protect themselves and do the public good and report suspicious activity.

A critical element of any 'know your customer' policy is monitoring transactions and identifying transactions and then reporting them when necessary, and that is how it all ties in. You talked about this morning, you have closed the front door, the cash reporting is taken care of. Now we are doing some back door things, and that is making sure banking organizations not only report cash, but have the 'know your customer' policies and procedures in place that address how they deal with their customers.

Mrs. ROUKEMA. Are you telling me that the provisions in this bill you think are more than adequate in terms of closing those loopholes, and address also at the same time-are the penalties credible?

Page 107

PREV PAGE

TOP OF DOC

Mr. BIERN. As I said, our Board has not considered specific legislation, so I can't talk on behalf of the Board. But my observation is that you have provided law enforcement with new enhanced tools, and I am very encouraged to hear this morning that law enforcement supports those new tools. So I think that our Board has traditionally been supportive of things that law enforcement wants, and this legislation, particularly the sense of Congress on 'know your customer,' is very helpful to us.

Mrs. ROUKEMA. All right. Thank you.

Mr. Chairman, I will leave it to you now.

Chairman LEACH. [Presiding.] Mr. Hinchey.

Mr. HINCHEY. Thank you very much, Mr. Chairman.

Gentlemen, have either of you, either in your present role or

previously, come across information indicating that there are certain banks that are involved with or controlled by organized crime?

Mr. SERINO. No, I am not aware of them. If, in fact, we were aware of them, we would do an investigation and find out what was going on in the institution.

Mr. BIERN. Ditto.

Page 108                   PREV PAGE                   TOP OF DOC

Mr. HINCHEY. So in your experience, you have never come across information indicating that a bank has some involvement with organized crime?

Mr. SERINO. Well, let me qualify that. We often-and we encourage law enforcement or anyone else to bring to our attention any information they have of wrongdoing in a financial institution under our jurisdiction. If they bring that information to us, we will investigate it.

So, I cannot say, and I will say just the opposite, we have oftentimes received tips from law enforcement, and when we learn of them, we do investigate them. If it came to my attention about somebody else's bank, the Federal Reserve's bank, I would call my colleague, Mr. Biern, and I think he would do the exact same thing, cause an investigation to go on as to what occurred in that particular bank. So yes, we have received tips, we encourage law enforcement to give us tips.

Mr. HINCHEY. You have received tips that there are banks that are involved with organized crime activity?

Mr. SERINO. I didn't say organized crime. They are involved with wrongdoing. Wrongdoing.

Mr. HINCHEY. Wrongdoing, OK.

Mr. BIERN. May I add to my short answer, Congressman? Congress in 1978 provided the banking agencies with a vital piece of power to check the change of control in a banking organization. So when one bank changes control to-individuals change ownership, there is an extensive review done of the background of that individual, checks are made to law enforcement agencies, and we get information on individuals. Similarly, if a corporation, a company buys a bank under the Bank Holding Company Act, there are similar checks on the individuals associated with the company. So there is an interplay between us and law enforcement when there is ownership change.

Page 109                   PREV PAGE                   TOP OF DOC

Mr. HINCHEY. So there are routine ways in which information comes to your attention, and that information may trigger an investigation into a particular bank's activities?

Mr. SERINO. That is correct.

Mr. HINCHEY. Now, if a bank were to, for example, pay \$45 million above book value for a foreign bank, is that the kind of information that may cause you to investigate that procedure?

Mr. SERINO. My answer is I think in the application process, if there were an application before our office, we would evaluate various factors surrounding a particular application, competency of management and various other factors. So I think we would evaluate those factors, Mr. Congressman.

Mr. HINCHEY. And you are shaking your head yes to that, Mr. Biern.

It has been reported that an American bank is in the process of purchasing a Mexican bank, and that allegedly it is offering more than \$45 million above book value. Is that business transaction under investigation by either of your agencies?

Mr. BIERN. Well, let me-as I said, I can't talk about specific organizations. It is difficult. However, let me make it clear that some banking organizations in the current environment are being sold for three and four times book value. That necessarily does not make an improper transaction.

Page 110

PREV PAGE

TOP OF DOC

The exact price paid by Citi to acquire Confia, I do not know that number off the top of my head, however, I should emphasize that Confia is basically being bought from the Mexican government as a failed bank. It has been the subject of a massive fraud investigation, allegedly by its then-owner who is now in jail. So the price was negotiated between Citi and the Government of Mexico, and I don't have any view on whether that was a good price or a bad price.

Mr. HINCHEY. It isn't anything that would routinely trigger an investigation or at least some inquiry?

Mr. BIERN. It is possible.

Mr. HINCHEY. OK.

With regard to these concentration accounts, it would seem to me that the examination of these accounts, based upon your description, may be inadequate. Because if you have an attempt to disguise the owners of a particular account or the owners of a particular amount of money that is being transferred out of the country in a concentration account, it seems to me that the concentration account blurs, obfuscates or obliterates the identity of the participants in that transaction. That is the case, isn't it?

Mr. BIERN. I would agree with you fully. If a bank improperly, illicitly or illegally attempted to disguise the identity of one of its customers for purposes that are not proper at all, whether they do it through a concentration account, omnibus account, or any other way, by creating a nominee account or putting the person's name on a check, it would be totally wrong and it should be investigated and firmly prosecuted.

Page 111

PREV PAGE

TOP OF DOC

Mr. HINCHEY. But there is no routine investigation of these activities, and the only way that this kind of illicit activity that we are suggesting would come to your attention is if someone was aware of it and that information then came to your attention by virtue of that person, if somebody told you?

Mr. BIERN. That is one way to get information. The other way is when examiners go into banking organizations, in this particular case private banking organizations, they look for 'know your customer' policies, strong policies that are monitored, that have management's attention, audit procedures and reporting procedures. We would be upset if a bank did not have adequate 'know your customer' policies at a private bank, and in fact that led to information about account holders being lost because concentration accounts were being used.

That would be an improper, unsafe and unsound practice.

Mr. HINCHEY. So when a bank examiner goes into a bank, the information about who participated in these concentration accounts is readily available to them and they can discern who those persons were in each concentration account transaction?

Mr. BIERN. Examiners have full access to the books and records of an institution. However, there are hundreds of thousands of transactions every day in an institution. That is why the concentration of examiners' attention is on policies and procedures, implementation, audit, management oversight, all the important things that an examiner could do, risk management, making sure that the institution is doing the right thing.

Mr. HINCHEY. It would seem that these concentration accounts need some attention. Would you agree with that?

Page 112                   PREV PAGE                   TOP OF DOC

Mr. BIERN. We reviewed it during our private banking review and issued guidance to the banking industry, and hopefully that is sufficient.

Mr. HINCHEY. Well, I doubt if it is, frankly, but it seems to me like it is not sufficient. But nevertheless, that is something that we are going to have to look at.

The SARs, Suspicious Activity Reports, are very valuable, and you described them as being in place now for something like 18 months, is that correct?

Mr. SERINO. That is correct. As Mr. Biern indicated, prior to that there was another criminal referral system, the SAR, started in April of 1996.

Mr. HINCHEY. As I understood your description, these SARs are now done electronically and they are available on a computer database, and that computer database is made available to law enforcement agencies on a routine basis because it is simply there and they can just check into it if they so desire.

I didn't hear anyone say, however, that there is a routine examination of these SARs, particularly the 44,000 reports that were suspected to be involved with illegal money laundering. It seems to me that this is a very large gap in law enforcement activity. If you have 110,000 of these SARs that are suspicious, 44,000 of them are suspicious for money laundering, and no routine examination of any of those accounts, simply they are being put into a database in sort of a serendipitous hope that somebody might tune into them and check them out, that would seem to be inadequate.

Page 113                   PREV PAGE                   TOP OF DOC

Is there any plan for a routine investigation into at least the 44,000 SARs that seem to be involved in illegal money laundering?

Mr. SERINO. Many of the law enforcement agencies draw down on a weekly or monthly basis, all the information from the SAR databank in Detroit, so that a United States Attorney in New York would have his-he would draw down his suspicious activity reports, the FBI would draw them down, and they would review them themselves.

We in the OCC, for instance, review every suspicious activity report that is filed by a national bank, and we have our own program

to address cases where there is a bank involved, where there is an employee involved, and where there has not been criminal prosecution. We have what is called our fast track program and we will bring actions against individuals when they are not subject to a criminal prosecution.

So, Mr. Congressman, as far as I am concerned we are reviewing the forms, and I do know that law enforcement draws them down and reviews them also.

Mr. HINCHEY. But you don't know that to be a fact. What you know is that the information is out there and if a U.S. Attorney comes across it, that U.S. Attorney may or may not follow through on it.

It would seem to me that since this information is being collected and since someone made the judgment that it is important to get this information collected, that indicates that there is enough suspicion about this activity to do something about it. Why are we not routinely, as a matter of procedure, setting up a system whereby those SARs which indicate suspicious activity are not routinely followed up on?

Page 114

PREV PAGE

TOP OF DOC

Mr. SERINO. I do know that they are drawn down by the FBI; I don't know exactly the timeframe, whether it is a daily basis, weekly basis, monthly basis, and I do know that they are drawn down by the United States Attorney's office. They have the responsibility for investigating criminal cases and that is principally what they are.

Mr. HINCHEY. Do you follow up with those law enforcement agencies to see what they have done in terms of follow-up?

Mr. SERINO. They are periodically giving us reports on some dispositions of some of the matters involving a case. We have always asked law enforcement to give us the dispositions of the cases. We have been getting some dispositions of what the cases are.

Mr. HINCHEY. With regard to the 'know your customer' rules, there will be an amendment offered to the legislation later this afternoon which would require that 'know your customer' rules be in place 90 days after the enactment of the law, after the President's signature goes on it. Would you support such a measure?

Mr. BIERN. We would support getting it done as quickly as possible. We are very close to having a proposal acceptable to all of the staffs of the banking agencies in the next few weeks. We will then have to start working more closely with Treasury on them issuing those same 'know your customer' rules for non-bank financial institutions. We will cover the banks; Treasury would have to cover non-bank financial institutions, such as broker dealers.

Page 115

PREV PAGE

TOP OF DOC

Mr. HINCHEY. OK. Thank you.

Thank you, Mr. Chairman.

Chairman LEACH. Thank you very much.

Mr. Barr.

Mr. BARR. I have no further questions. I do appreciate the line of questioning that Mr. Hinchey was going into. I think it is very important, and if I were questioning I don't think I could have done as good a job. I think it is very important him going into that and I

appreciate him developing a record on it. I yield back.

Chairman LEACH. Thank you very much. We appreciate your testimony.

Our final panel is composed of Mr. Jack Blum, who is an attorney with Lobel, Novins & Lamont and coauthor of the United Nations Commission Report entitled "'Financial Havens, Banking Secrecy and Money Laundering''; and Mr. Charles S. Saphos, who is an attorney at Fila & Saphos.

Mr. Blum.

STATEMENT OF JACK A. BLUM, ESQ., LOBEL, NOVINS & LAMONT

Page 116

PREV PAGE

TOP OF DOC

Mr. BLUM. Mr. Chairman, I very much appreciate the opportunity to be here this afternoon.

On Monday the report which was coauthored by four of us was presented to the General Assembly of the United Nations, and it is a report which I believe has been reproduced and is available to Members of the committee. The report covers a wide range of money laundering issues, and for U.N. reports it is, I think, in very direct language with some fairly explicit recommendations.

I have a prepared statement and I would ask that it be made a part of the record.

Chairman LEACH. Without objection, so ordered.

Mr. BLUM. I will briefly summarize the points which I think are very important.

First of all, we looked at the overall problem of money laundering, first drugs and then money laundering from other crimes, and quickly concluded that what we are doing now really is not working. If there are \$500 billion or \$200 billion in drugs being sold and we are seizing about \$100 to \$150 million a year in assets, we are missing quite a few dollars and we have to look at a much broader picture.

The broader picture leads us out to the world of international banking, particularly the offshore banks and the machinery that the offshore banks and the domestic banks use to conceal assets. Once we begin to look at that, we start looking at some of the most obvious international criminal problems and you find that those same banks and those same pieces of machinery are being used to conceal proceeds of other crimes.

Page 117

PREV PAGE

TOP OF DOC

One of the most obvious, for example, is government corruption. We are now dealing with the problem of bailing out the government of Indonesia through the IMF, of \$40 billion that allegedly disappeared in the hands of the Sukarno family. The question is, where is the money? Probably in this offshore world. We have been through it with Mobutu, Collor de Mello, a whole series of international leaders who have taken off with the money, their countries have teams of attorneys and various other people looking for it, and it is all lost in the same world that is laundering drug money, that is hiding financial fraud, that is doing all of these other things.

We also realized, I think pretty quickly, that a bank is no longer simply that which is licensed by the Federal Reserve or the FDIC. A bank is any institution with an encrypted switch. If you have a

computer and you have encryption and you have the ability to move money around within that system, you have the capacity to launder money. So it is just as easy to do it through a brokerage firm, through a money exchange house, through any number of other institutions which are not subject to the level of scrutiny that the institutions that were under discussion this morning are subject to.

Now, I am going to briefly review a couple of the tools that are used by money launderers, and these are tools which I believe this committee can deal with and which the international community is now prepared to deal with. The international community began a very serious discussion of it at the G-7, G-8 meetings in Birmingham, England and I believe there will be a follow-up meeting at the ministerial level in September.

The issues are first the anonymous corporation, the international business corporation, which has no known owners, no way of tracing ownership, and it is chartered by these various governments on the condition that the corporation do no business in its home country. That is an unacceptable situation. The International Business Corporation is used solely for the purpose of concealing ownership, and impunity and concealment of ownership were never the underlying purpose of incorporation. We would never have allowed corporations to be used for that purpose. Indeed, in American law there is a proposition that there is criminal legal responsibility by a corporation. How can you hold an anonymous corporation criminally liable?

Page 118

PREV PAGE

TOP OF DOC

Similarly, there is a widespread creation of abusive trusts in various territories that have passed trust laws. The trusts are used to hide assets. So, for example, in a recent case that I was asked to consult on, the Federal Trade Commission had a judgment for fraud and got a cease-and-desist order. It was a civil judgment. They were told, 'Sorry, you can't collect anything. The money is in a Cook Islands trust, not subject to civil suit.' And of course here is the Federal Trade Commission stymied because this concealment has gone on.

We believe that on the issue of bank secrecy that we are in an ironic situation globally. That is to say, we have bank secrecy, but the bank secrecy seems to be limited to protection from legitimate inquiry by law enforcement authorities. For every other kind of information, any fool with access to internet, anybody willing to pay enough money, can find out anything they would like to know about you anywhere they would like to know it. But when it comes to a police inquiry from jurisdiction to jurisdiction, suddenly it becomes an unbelievably difficult enterprise. We think that it is very important to begin to discuss globally how to provide real privacy against private intrusion at the same time we begin to discuss how to provide legitimate law enforcement information across government boundaries.

There are other elements that are in my statement, elements such as free trade zones which I think have no place in the world. There is the problem, a continuing problem, of currency. U.S. currency abroad is a store of value for criminals everywhere, and now the Europeans are planning to compete with us by issuing the equivalent of a \$500 note which will set back the efforts to control money laundering very

substantially. Gambling has globalized and is being used very widely as a cover for illegitimate money.

Page 119

PREV PAGE

TOP OF DOC

We have two very important, I believe, institutional suggestions. The first is that we need to establish graduate level training on a global basis for people involved in financial fraud investigation. Today's financial fraud investigator needs a level of training that goes far beyond simple police training. One of the ideas was that under U.N. auspices a training center like this could be set up that would allow mid-career people to achieve high levels of sophistication in following financial fraud of all kinds, not just drug money.

Second, we think there has to be a global system for accumulating information about people who assist in money laundering, that disseminates that information to the relevant law enforcement authorities in timely fashion. That is something that needs to be worked on by the international community.

I realize my time is up, and I appreciate the opportunity to appear here.

Chairman LEACH. Mr. Saphos.

STATEMENT OF CHARLES S. SAPHOS, ESQ., FILA & SAPHOS

Mr. SAPHOS. Thank you, sir. Mr. Chairman, thank you for inviting me back to testify before this committee. I was here last year, nearly 13 months ago, and I, among other persons, Mr. Chairman, were asked to make suggestions to the committee concerning possible legislation, and I am pleased at the two bills that are being considered by the committee today. I am flattered to be invited back to comment on them, and I have prepared some testimony which I would ask be made a part of the record.

Page 120

PREV PAGE

TOP OF DOC

Chairman LEACH. Without objection, so ordered.

Mr. SAPHOS. Thank you, sir.

First, I would like to comment on the proposed Money Laundering and Financial Crimes Strategy Act of 1998. The first goal of that act is to develop a national strategy for combating money laundering. Section 5341 of the Act directs the Secretary of the Treasury to develop an annual strategy to be transmitted to Congress for combating money laundering and related financial crimes. I would like to identify some problems which might be encountered with that.

First of all, Mr. Chairman, the strategy may be somewhat redundant of a strategy already required of the President of the United States under the Foreign Assistance Act of 1961, as amended. The requirement for that strategy is codified in 22 United States Code, Ssection 2201. Because money laundering, Mr. Chairman, as we are well aware, is by its nature a multinational crime, where a domestic strategy ends up and an international strategy starts out would be a point that would elude me and I fear might elude those persons developing the strategy.

Second, Mr. Chairman, the bill directs the Secretary of the Treasury to compile this strategy. As this committee may not be aware, there is a great deal of competition between Federal law enforcement agencies. Oftentimes that competition is not terribly productive and serves to frustrate efforts to utilize our resources better.

One of the areas of debate within the Federal community is who has jurisdiction, which agencies have jurisdiction and which Cabinet officer has jurisdiction and responsibility for financial crimes, including money laundering. May I respectfully suggest that that debate would be best resolved by the President of the United States rather than by the Congress, and that this law which would direct the Secretary of the Treasury to compile the strategy may be inadvertently a congressional interference with that debate and directing that the Secretary of the Treasury is, indeed, the leading financial law enforcement officer in the United States. And I don't believe that is the intention of the committee, because I don't believe that enough data has been collected for the committee to make that decision.

Page 121

PREV PAGE

TOP OF DOC

Another shortcoming that I would suggest in this is that although portions six and seven of the Act tend to address resources and budget for law enforcement actions directed at financial crime, I would respectfully suggest that they don't go far enough. A real problem in supervising criminal law enforcement activities is, how much money is given in the United States toward law enforcement? Of that amount of money, how much is given for financial law enforcement? Of that amount of money, how much is given to each agency? Of the amount of money that the agencies are receiving, what are they doing as a consequence and how do we measure what they do as a consequence, and how does what they do differ from the activities of every other agency?

I would suspect that in this area of accountability and responsibility, our collective failure to demand that the agencies indeed account for their mission, account for their resources and are responsible to use those resources and report to Congress on the best use of those resources has not been met, and I would suggest that the current strategies already expected of the Executive Branch don't do it.

Instead of saying, 'How many resources are you going to use next year for doing this mission and why are you the best person to do it?', instead we get 200 pages on 'what I did at summer camp last summer.' It is glowing reports on past investigations, and presumably we have done great in the past, give us more money and we will do better in the future. But no one is making the hard call of why Customs gets less money than the IRS, and what is IRS expected to do with that additional money, and how do we measure their accomplishments?

With that, I would like to move on to the next section which is the Financial Crime Free Community Support Program, which is in Representative Velazquez's proposed act. I would point out that perhaps the limitation on grants within that of \$750,000, if we are seeing that money laundering problems are an intense area of money laundering in Los Angeles or New York, the amount of \$750,000 to positively effect joint investigations and prosecutions in those jurisdictions is too modest, and I would suggest that the authorities in those jurisdictions would not be inclined to even apply.

Page 122

PREV PAGE

TOP OF DOC

I would also suggest that the requirement of the bill that if you

apply for a grant, you must give up any money thereafter that you seize and forfeit, this acts as a very strong disincentive to State and local authorities who would not be inclined to sign up because they want to keep the money within the community, to address real problems within the community, which they seize from criminals in that community, with good reason.

I would like to next comment on the Chairman's bill, H.R. 4005, the Money Laundering Deterrence Act of 1998, first of all, to congratulate the Chairman and thank him for propounding the act, which contains many of the observations made over the last two years by many witnesses, the least of whom was, in fact, me. I would like to observe some of the things that the act is not doing which it might do.

First of all, the act modifies the terms for releasing information which the Secretary of the Treasury collects now under the Bank Secrecy Act. It would extend that and allow some of those reports or that body of reports to be released to certain regulatory agencies. By the earlier question that Congressman Hinchey asked, I do not believe that there is a complete understanding of what is happening with that databank.

Congress, this committee in particular, has required certain reports being filed by travelers, by financial institutions, by casinos, and now by other businesses which have currency transactions in excess of \$10,000. Those reports go to the Internal Revenue Service Data Center in Detroit where they are put into an electronic database. That electronic database can be accessed from any working station of any Treasury law enforcement officer in the United States. It is not available to other Federal agents or to State and local agencies.

Page 123            PREV PAGE            TOP OF DOC

The experience that we have had with that database is that it is an excellent mechanism to initiate new investigations into possible criminal activity on the local level. The failure of the Secretary of Treasury to make that body of reports available to all law enforcement and all regulatory authorities, I would suggest, is utterly inconsistent with the congressional directives in this act.

The act directs the Secretary of the Treasury to release a report in the singular at the request of the head of another agency. That would mean, of course, that the other agency already has an investigation or they wouldn't know to ask for a report, and what they are going to get back is a report.

The Secretary of the Treasury is acting as if this databank apparently is his own fiefdom so he might parse out individual reports to his friends, and I don't believe that was the purpose of the act. I also don't mean to be so derogatory with the Secretary, who has many more things to do than worry about my concerns.

I would commend you, Mr. Chairman, on your effort to move Title 26, 5060I into title 31. And I am very pleased that the representatives of the Treasury Department have agreed to that, since this committee has asked them three times in the past to resolve this problem and they have failed to do it, and the problem has been going on now for over a decade.

Let me, sir, move on then to an area which is not being addressed by either of these acts, and I will do it briefly because I see the

light glowing in front of me.

Page 124

PREV PAGE

TOP OF DOC

What these acts don't do and the need that I have heard from the panels and from the congresswoman all day today is to address what is happening with the international banking community when it interfaces with us, our banks, our children and our criminals. What can we do to try to compel those international banks to do the same thing which we are expecting and we are punishing United States banks when they fail to do it?

And I would suggest to you, Mr. Chairman, that given this committee's unique dedication to the issue of money laundering, in particular narcotics money laundering, you are the very best committee to take an initiative on this; and I would like to make a modest suggestion as to what might be done. I would suggest, sir, that United States banks are in a unique position in the marketplace. We require our banks to carefully scrutinize, record and report, and to establish a system where they can accurately do that, all transactions and all customers. No one else in the world requires that.

As a consequence of that, United States banks are at a distinct disadvantage on the world market.

One, there are certain customers who require anonymity who will not go to a United States institution, at least through the front door.

Two, and most importantly, because the first one, who really cares, you know, if Jorge Ochoa doesn't want to do business in my bank? It is not really going to break my heart.

But the second thing is that it costs quite a bit of money to set up that mechanism, and that is a cost per transaction that the other banks in the world don't have. Thus we are at a competitive disadvantage in the world market.

Page 125

PREV PAGE

TOP OF DOC

Last, our banks are doing this in large part, first of all, because we put a lot of bankers in jail in the 1980's. But, second, I would suspect, because they are good citizens and they want the world and banking to be clear of criminal activity, that may not be true in the world. And the way that it is influencing us is other banks are doing business with the crooks and then they are doing business with our banks, and we want to stop that. And that was exactly what was going on in Operation Casablanca, and that is exactly what Mr. Blum has been talking about.

The way to stop it, I would suggest, is compel the same degree of scrutiny of their books and records and their customers as we require of U.S. banks.

Now, would I be so naive as to say that we should compel international banks doing business in dollars and having corresponding accounts in the United States to file currency transaction reports?

No, Mr. Chairman, although I believe that you have the authority under the Constitution to do that. I would not suggest that that is a step that the committee might wish to take.

A more moderate step, I would suggest, but one for which there is a crying need is to compel any bank which is doing business in the

United States--and I don't mean by doing business that they have set up shop here with an agency or a branch but that they have done business under the long-arm statute. They have come into the United States, and they are conducting transactions here by having a corresponding account. That is doing business, and that brings them under your jurisdiction.

Page 126

PREV PAGE

TOP OF DOC

And if they are doing that business here, they must subject themselves to a subpoena issued by the United States for their books and records. And if they don't, if they elect to hide behind bank secrecy or hide behind confidentiality, fine, have a nice day, see how well you are going to do money laundering with Inta from now on. Because you can't do business in the United States, and you can't deal in dollars any more. Because, as I understand, Mr. Chairman, a requirement of dealing with dollars is you have to do business in the United States, because you have to clear your accounts on a daily basis, balance your accounts.

Last, I would say, as to that, that for the requirement of responding to the subpoena that you had real teeth, that the Secretary of the Treasury be allowed to issue an order directing any bank that is in contempt of a subpoena to cease and desist from doing business in the United States and direct all United States banks to cease and desist from doing business with that institution.

Last, I would suggest that it not be a defense to the bank, of its failure to produce records, that either the records were made and maintained in a bank secrecy jurisdiction or that it is not the practice of that institution to collect the same type of information as would be required of the United States institution that is situated in the same place--that would be similarly situated at the same time and place.

Thank you, Mr. Chairman. I see that I have overrun my time.

Chairman LEACH. Well, thank you, Mr. Saphos and Mr. Blum.

Page 127

PREV PAGE

TOP OF DOC

Mr. LaFalce.

Mr. LAFALCE. Mr. Saphos, with respect to your last recommendation, that we give subpoena power to the Treasury which, if not compiled with, the Treasury could then issue a finding of contempt and preclude one from dealing in the United States with any financial institution in the United States. What would we be subpoenaing--what would we be able to get if these other countries do not have records of the type of transactions we are trying to get at?

Mr. SAPHOS. Sir, because it would not be a defense to a subpoena that we do not make these records.

Mr. LAFALCE. Right, I understand that.

Mr. SAPHOS. They would be compelled indirectly, of course, but they would be compelled to make and maintain the exact same types of records as would a United States bank under similar circumstances.

Mr. LAFALCE. Well, that is what I thought you were getting at. So you are really suggesting that we pass legislation giving extraterritorial effect to United States law through the guise of saying that, to any extent that you are not in compliance with the

United States law, you would not be permitted to use that as a defense? Am I correct in my understanding of your suggestion?

Mr. SAPHOS. No, sir. Respectfully, I would suggest that I am not suggesting extraterritorial effect, because the institution that would be the subject of the subpoena is present in the United States under our long-arm statute because it has chosen to do business in the United States. Now, sir, if an institution chooses not to record the identity of its true customers or if it--

Page 128                   PREV PAGE                   TOP OF DOC

Mr. LAFALCE. Are you talking about only customers in the United States?

Mr. SAPHOS. No, sir.

Mr. LAFALCE. You are talking about customers abroad?

Mr. SAPHOS. Yes, sir.

Mr. LAFALCE. Wouldn't that be giving extraterritorial effect to offer transactions abroad?

Mr. SAPHOS. No, sir. It would compel the production of those records in the United States but only if the institution chooses to do business in the United States.

Mr. LAFALCE. The point is, to have the records is one thing. But if they don't have the records, you are suggesting they cannot use as an affirmative defense the fact that they do not have the records.

Mr. SAPHOS. That is correct, sir.

Mr. LAFALCE. OK. Well, I guess I am back to ground zero.

Page 129                   PREV PAGE                   TOP OF DOC

Mr. SAPHOS. Well, sir, on the day that the Congress passes this act, the bank has a choice to make: Will I do business in the United States and become subject to the requirements of this act or will I instead keep sloppy records so I can attract undercover Customs agents?

Mr. LAFALCE. Let me put it this way. I am certainly no expert in this area, but you sound very much as if you definitely are. Have you floated this suggestion to other experts in the area and what has their comment been?

Mr. SAPHOS. To the extent that I have talked to U.S. financial institutions, they are in favor of it inasmuch as it tends to level the playing field between U.S. institutions and their foreign counterparts. To the extent that I have talked to people who are examining the overall structure of world compliance with laws addressed at or actions addressed at correcting criminal activity, they are in favor of it, because it appears that the other efforts that we are making are not having great effect.

The Financial Action Task Force has been in existence for a decade, a decade; and, you know, members of the task force countries are still acting as havens for immense amounts of money laundering. To the extent that I have talked to people who are dealing with United States policy concerning international commerce, they are quite hesitant about it. Their concern, sir, appears to be a fear of reciprocity.

But what if Paraguay passes a law that said, 'If you bank in Paraguay, we may subpoena all of your books and records from anywhere

in the world?'' OK, what if they do? I don't understand why that is bad, sir, but perhaps it is because I am naive.

Page 130

PREV PAGE

TOP OF DOC

Mr. LAFALCE. Thank you very much.

Mr. SAPHOS. You are welcome very much.

Chairman LEACH. Thank you, John.

Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Focusing also, Mr. Saphos, on the subject matter of the last portion of your discussion and, to some extent, on what you have been discussing with Mr. LaFalce, if this committee in subsequent legislation were to amend the subpoena requirements and to amend the penalty requirements as well as you suggest for noncompliance, what specific impact--you sort of began to touch on that, but what specific impact would you expect to see in international commerce, in international relations, to domestic banking, to law enforcement?

And also if you could, after Mr. Saphos addresses that, Mr. Blum, discuss it perhaps from the standpoint of your work in the international arena, if you see that this would provide an important tool and would be consistent with the work that you are doing?

Mr. SAPHOS. Sir, I believe that the United States dollar is and will probably continue to be the main instrument in international criminal conduct. So to the extent that this committee and this Congress can take away the ease in which bad people move the dollar, I would expect it to have very favorable impact upon our efforts to address international criminal activity.

Page 131

PREV PAGE

TOP OF DOC

And, indeed, I have to admit that Mr. LaFalce is right that, indirectly, I would propose to extend the very same high standards that we expect of United States banks to international banks who choose to deal in the U.S. dollar and choose to protect themselves under the umbrella of doing business in the United States. I cannot think of any domestic act that can be done by a United States body that could be more important than shutting down these international banks to the crooks and the money launderers. There is nothing more important or which will be more effective.

Mr. BARR. Thank you.

Mr. Blum.

Mr. BLUM. To give you a sense of the complexity of the issue, I think that we ought to be able to subpoena information, obviously, about any U.S. person from a foreign bank that is doing business here. I think the problem gets a lot stickier if we try to subpoena information about a non-U.S. person who is doing business at a foreign bank who is from yet another country. Now you are into all kinds of legal questions.

Mr. BARR. There would be a threshold that you would have to show before that subpoena would be issued. It wouldn't be arbitrary.

Mr. BLUM. Here is where I think the leverage is and what we can do.

Page 132

PREV PAGE

TOP OF DOC

First of all, I don't believe that any American bank or brokerage firm should be permitted to open an account for a foreign corporation which is an anonymous offshore corporation not permitted to do business in its own country. There is absolutely no excuse for permitting absolute anonymity for the owners of an incoming account. And invariably this is how the drug money and the illegal money gets put back in the U.S. market.

I think we should also prohibit absolutely correspondent relationships with offshore bank like the banks in Antigua, which are absolutely unregulated, whose owners are unknown and, at the moment, get a window on the global banking system by opening a correspondent relationship in New York City. There is absolutely no rational explanation for it.

There are seven Russian mafia-owned banks in Antigua now, all of which have New York correspondent relationships. I don't get it. And you all have the power to stop it.

Mr. BARR. Did you have anything further to add on that particular point, Mr. Saphos? Because I think this is a very important discussion.

Mr. SAPHOS. I would agree with Mr. Blum, as I have already pointed out, that indeed this committee does the authority to stop it. This committee could stop it, in fact, by compelling any institution or company doing business under the terms of the long-arm statute in the United States to report. I would suggest that that is too draconian, and the committee may be unwillingly to do that. A more moderate step, yet one that I would hope would be as effective, is the step compelling production of documentary evidence.

And I would also add that it is very consistent with existing case law, as Mr. Barr is aware, in re the Rural Trust Bank of Nova Scotia for instance.

Page 133            PREV PAGE            TOP OF DOC

Thank you.

Mr. BARR. Thank you.

Chairman LEACH. Thank you, Mr. Barr.

Ms. Waters.

Ms. WATERS. Yes. I would like to thank Mr. Blum and Mr. Saphos. And you have offered a prescription for what should be done, but I want to tell you it is too tough for politicians to do.

I like what you are talking about. I wish this committee had the courage to do what you just recommended.

One of the reasons I made some of the comments that I made earlier was, as we derive the kind of information that shows you have got some 50 banks in Antigua and you further show that eight of them are from the Russian mafia-and not to speak of the Chinese banks and the money they are spending in Antigua and other places-and we sit here and we do business with them, if we don't stop that, we are not serious about dealing with illegal drug money laundering or any other kind of money laundering.

You have said it all. And I am glad that you came today, and I wish your trip had not been wasted. But I want to tell you I won't believe that the Congress of the United States is ready to do business in stopping the drug trade and money laundering until they take those

kinds of steps. Because we have the information, and we know what we are doing and what we are allowing our banks to do, and we know what the international offshore banks are doing. And if we don't deal with that, then the rest of this is for naught. And I just thank you for being here.

Page 134

PREV PAGE

TOP OF DOC

Mr. BLUM. Thank you. I should say I am much more optimistic that this is going to be stopped. If you stop and think about the rationale for an unregulated offshore bank, it really is not nonexistent. An offshore bank is a bank that is licensed only for the purpose of not doing business in the country that licensed it; and at the G6, G8 summit in Birmingham, the French government put forward the proposal to control this kind of operation.

There is now substantial agreement among the governments of France, Germany, the United States and Great Britain-Britain had been one of the great offenders in this area through its offshore centers-and now they have put the offshore centers on notice that they are going to regulate it in a completely different way and control it.

Now, with that kind of beginning of agreement, I think it is terribly important to convey the message to our Government that we shall at the front and that by September or October, when the next meeting occurs, the message go out that we want this nonsense ended. It has gone on long enough.

Ms. WATERS. I am very pleased that you are hopeful about that, and I guess I am a bit disgusted and not so optimistic as I watch what we do and what we don't do.

It appears to me, Mr. Blum, that we have got some United States banks that have gone after certain business, and they seek out the business and the deposits from people who have no way of telling you how they got rich, where they got their money from. And it has become a part of the way that certain banks are expanding and increasing their profits.

Page 135

PREV PAGE

TOP OF DOC

And this business about 'know your customer' is laughable when you find huge deposits are being made in banks where you can read the newspaper and tell that they are dope dealers and they are connected with the Juarez cartel and the Cali cartel and Medellin cartel. I mean, give me a break.

Mr. BLUM. The idea of 'know your customer' in many cases has been reduced to how big a check can you write. And if you can write a check for \$50 million, you are known. You are OK.

I think it has to go well beyond that. I think there is one other point, and it had turned up in this case involving Raul Salinas. The business of setting up offshore trusts and offshore corporations which was done for Mr. Salinas was not invented just to handle Mr. Salinas' business. That was done for many other people before he ever walked through the door and continues to be done.

So we have sections of these banks whose business it is to conceal money for people. And that as a legitimate banking business or legitimate legal business or legitimate accounting business should be brought into question, because lawyers and accountants are doing it

just as well as banks.

Ms. WATERS. I think you are right. The Raul Salinas case is the clearest example of that. And my knowledge about concentration accounts in private banking and how private banking, representatives of the banks set up companies for Mr. Raul Salinas tells the whole story.

Page 136

PREV PAGE

TOP OF DOC

Thank you very much.

Chairman LEACH. Thank you.

Mr. Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman. I have only one or two related brief questions.

I heard Mr. Blum just speak about the situation in Antigua. Cyprus has been a money laundering center for the former Soviet Union and including Russia today. Is there a situation parallel to Antigua? And the fact that they are slated to be the next member of the EU, does that have any implications beyond that?

Mr. BLUM. There are any number of jurisdictions which are in this business of setting up offshore banks. We have a number of situations in the Pacific. The island of Niue will give a bank charter for \$5,000 in any language you would like it in. Would you like it in Chinese? Would you like it in Russian? It is an offshore bank, and it is capable of then opening correspondent account relationships. The bank will have no other customers but now, because it is a bank, its dealings won't be questioned.

There is one terrible problem with that, which is we take the position that correspondent account funds of a foreign bank in the United States are not subject to seizure based on what a depositor is doing. So if I am a crook and I get a correspondent account open through an offshore bank that I own, I have got a protected access to the U.S. market; and that is an unacceptable situation.

Page 137

PREV PAGE

TOP OF DOC

Mr. BEREUTER. Any particular implications of their prospective membership in the EU? Does this complicate that as well?

Mr. BLUM. I think the EU will actually come down on that. The EU at the moment is suing the Austrians to getting rid of numbered accounts; and the Austrians have continued to have numbered accounts, which is a terrible situation; and Austria, as a result, has been a money laundering center. It is a very serious problem. But the EU membership should help, not hurt the situation.

Mr. BEREUTER. Good to hear.

Thank you, Mr. Chairman.

Chairman LEACH. Thank you.

Is there anyone else that seeks recognition?

Let me go to Mr. Hinchey.

Mr. HINCHEY. Thank you, Mr. Chairman.

Mr. Chairman, I want to thank you for inviting these two gentlemen here. I think that the testimony they have provided for us this afternoon and the answers to the questions that have been posed to them have proved to be the most valuable aspect of this hearing.

Page 138

PREV PAGE

TOP OF DOC

And I want to express my appreciation to both of you. The definition that you have given to these offshore banking centers indicates that they pose a threat to our security not just in terms of money laundering but, as you have indicated in your testimony Mr. Blum, the fact that they also engaged in market manipulation, in arms dealings and smuggling of human beings and other kinds of activities that pose at least as large a threat, and perhaps even a greater threat, to our security than does their activities in money laundering.

So I just want to express my appreciation to you. I would like to stay in touch with you and to explore this issue further. Because, quite clearly, there is a lot of room for some legislative initiatives here that could help correct this problem.

And I agree with Ms. Waters, but I am a bit more optimistic that we can do this. I think the time is right for it. I think that public sentiment is catching up to this, and I think that other countries are beginning to realize that the kind of fast and loose ability that they have had to play in this arena is now costing them as well. And there may be some sentiment to crack down on this, and I think that we can do it.

So I want to thank both of you for being here and for talking to us this way.

Mr. BLUM. Thank you.

I should note that the report that this testimony is based on was presented at the General Assembly, and we did open up to questions from various delegates at a panel discussion. The only negative comments came from the delegate from Antigua.

Page 139            PREV PAGE            TOP OF DOC

Ms. WATERS. If the gentleman will yield. If you have 63,000 people in 50 banks, you would have to keep your mouth shut and be negative, one of the two. So we understand it.

Chairman LEACH. Mr. Lucas.

Mr. LUCAS. Thank you, Mr. Chairman. I would like to yield to Mr. Barr.

Mr. BARR. I thank the gentleman for yielding.

Just one brief question to the panelists. Are either of you planning on attending the money laundering conference coming up in Panama in mid-August?

Mr. BLUM. No, sir.

Mr. SAPHOS. No, sir, but I can't think of a better place for it, for many reasons.

Mr. BLUM. I was going to say if you are-or maybe reconsider and attend. It would be very interesting to get some feel from you for these ideas that we are talking about today.

Thank you.

Page 140            PREV PAGE            TOP OF DOC

Mr. BARR. Mr. Chairman, if I could briefly indulge and ask the Chairman. Based on this testimony presented by both witnesses but particularly some of the specifics that Mr. Saphos has talked about today I think is food for, not only thought for legislative action;

and I would appreciate it if the Chair would entertain—we don't have time today in the markup to do it, because it is somewhat complex and deserves some consideration, but if we could perhaps work with the Chairman in the interim between now and when the legislation comes to the floor to see about proposing some additional changes perhaps by way of a manager's amendment.

Chairman LEACH. Let me mention to the gentleman, Mr. LaFalce has suggested something not exactly similar but that the testimony be reviewed very carefully by staff for the possibility of either further bills or amending this legislation itself. I am very taken by several of the things that have been said today, and I find the argumentation very powerful.

I would like to, frankly, attempt to frame it, but I would also like to get the input from the Administration as well. But I assure the gentleman that I think more should be done. And whether we take it up in a new bill or before we go to the floor, both become very credible prospects.

Mr. BARR. So the Chair would not rule out either option?

Chairman LEACH. I don't. The only idea I have heard today that I would take some askance of is that of Mr. Lucas, because if these gentlemen go to Panama, they may need some guards they may not be able to afford. But, beyond that, I think several of the ideas are worthy of further review.

Page 141            PREV PAGE            TOP OF DOC

Mr. BARR. I appreciate the Chairman's commitment on that. And I also want to again thank these witnesses from the prospective of a former United States Attorney. I think that these would be very, very important tools, long overdue, to assist in money laundering which, as the witnesses have indicated, is essentially an international operation. And I don't think that it would create terribly serious problems in a financial arena. We are talking about, after all, criminal activity, basically, money laundering here.

So I commend them, and I appreciate also what appears to be a substantial amount of support on both sides of the aisle here for this and, hopefully, that will give us some momentum that will enable us to move forward, because I think law enforcement needs it, and I would appreciate it.

And I thank the gentleman for yielding.

Chairman LEACH. Let me just—if the gentleman will yield—Mr. Lucas will yield just a second more.

Let me say that it is clear in the last decade or so that not only is money laundering a problem that has grown but the nature of banking is changing dramatically and that we think of banking in terms of places for people to deposit funds and to recycle those funds and, increasingly, banks are becoming money laundering platforms in many other societies, more than serving traditional banking functions. And there are many implications of that for international finance, as well as for international law enforcement. And I think this committee is obligated to look at that issue in a very serious way.

Page 142            PREV PAGE            TOP OF DOC

Does anyone else seek recognition?

Yes, Mr. Sandlin.

Mr. SANDLIN. I thank the witnesses for being here and am happy to get some of the substance of this issue.

I have a procedural question. I wasn't sure-expanding on what Mr. LaFalce was saying about the procedure, the hope of using contempt power to require the production of records. When records are not in existence, of course, you can't be held in contempt for not product that record, correct?

Mr. SAPHOS. That would require-that is a very good point. And I would suspect that since the bank had contact with the customer, that the bank being required to disclose the identity of the customer would not-and their failure to do so would not be contemptuous. If they failed to produce records in the same format as NationsBank, that also would not be contemptuous. But I believe that they could be compelled to fully identify their customer under threat of contempt.

Very good point, sir.

Mr. LAFALCE. If the gentleman from Texas would yield for a second. I think he was crystallizing the issue that I was attempting to make. I was having difficulty seeing how we could legally justify a contempt charge. But I have been reading your testimony, and I don't know that it is necessary to have a contempt charge. You could say that you can't use this as a defense, and your failure to have that type of information or documentation would lose you the ability to do business in the United States.

Page 143

PREV PAGE

TOP OF DOC

Mr. SAPHOS. Yes, sir.

Mr. LAFALCE. And that is the punishment short of contempt that we would be able to impose which would make it effective.

Mr. SAPHOS. Yes, sir.

Mr. LAFALCE. Am I correct in that?

Mr. SAPHOS. Yes, absolutely. What I would suggest that you don't want to do, though, is to take away the judiciary's power to impose a penalty for contempt. Any penalty that the committee imposes, such as denying the ability to do business in the United States, would be in addition to the judicial power.

Mr. BLUM. I would like to add something on this.

One of the most serious problems people face in investigating and prosecuting these cases is that the foreign banking institution will have a computer terminal in the United States from which all of the data that law enforcement people want is available. Yet when the subpoena is served, they say it is not in the United States, because it is connected electronically to a mainframe somewhere else. And they only call it up as needed.

So we have many banks who are operating here who, when served with a subpoena, would say, 'Hey, we don't know anything about that guy.' When, in truth, they have salespeople in the United States who are dealing with him daily, calling up the accounts daily on the screen.

Page 144

PREV PAGE

TOP OF DOC

It might pay to say that if the data is accessible here for purposes of the law, it is here. And that if they are served with a subpoena for it, they should be forced to produce it.

Mr. LAFALCE. And if they didn't produce it, then they clearly could be held in contempt.

Mr. BLUM. Exactly.

Mr. LAFALCE. And we could define accessibility as presence.

Mr. BLUM. Exactly. And the problem here has been that the banks, the offshore banks, have used this idea of a physical document or tape or whatever being here as the way of operating in the U.S. without being here. So you have major banks, foreign banks who are here with sales offices, computer terminals. If you serve a subpoena on them, they will say the record aren't here, the accounts are offshore, when, in fact, they are dealing with those people in those accounts in the United States by accessing the information from a U.S. computer terminal.

Mr. LAFALCE. I yield back the balance of my time.

Mr. SANDLIN. I would like-that was the point that I was making. We have to be careful there really is enforceability. Because contempt powers of a committee or a court cannot be used to require the production of the construction, I should say, of a document not in existence. So the only remedy would be to say, if you don't have these sorts of records, you can't do business.

Page 145           PREV PAGE           TOP OF DOC

But we are fooling ourselves if we think a court or a committee has power to hold someone in contempt for failure to produce a document that is not in existence. They can say I don't have it, and they have an absolute defense, no matter what the law says. We can say it is not a defense, but that is not true. If it is not there, you can't produce it. You have got a defense no matter what we say.

And that was my only point. I yield my time.

Chairman LEACH. Thank you.

Does anyone else seek recognition?

If not, let me thank our two witnesses, and we appreciate very much your testimony.

Mr. SAPHOS. Thank you very much, Mr. Chairman.

Chairman LEACH. And do you underscore the import of private sector perspectives?

Mr. LAFALCE. You certainly do. You certainly do.

Chairman LEACH. Thank you.

Page 146           PREV PAGE           TOP OF DOC

[Whereupon, at 2:45 p.m., the hearing adjourned.]

xx