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Money laundering: A study in the creation of law

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Money Laundering a Study in the Creation of Law

by

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A dissertation submitted to the Graduate Faculty in Criminal Justice in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York.

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Abstract

MONEY LAUNDERING A STUDY IN THE CREATION OF LAW

by

Eugene Smith

Advisor: Professor Robert Kelly

Enacted in 1970, the Bank Secrecy Act became a legal instrument making it difficult to "launder" illegally obtained cash through legitimate channels.

The U.S. Treasury Department is responsible for enforcing the provisions of the law through it's various services and agencies. In 1981, after an extensive review of compliance and enforcement provisions of the 1970 Act, the law was revised in order to enable the government to inhibit money laundering. The inputs from the law enforcement community, the banking and financial institutions, academic respondents and criminal informants into the formation of the original Bank Secrecy Act and subsequent revision constitute the basis of the study.

How a law is created and modified has been the subject of much theoretical discussion in the recent past. The analysis examines three major theoretical perspectives on law creation dynamics and uses the 1970 Bank Secrecy Act and it's 1981 revision as an empirical test of these perspectives, in order to determine which of these is more fruitful as an explanation of this process.

Acknowledgement

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INTRODUCTION

For many years, money laundering and criminal activities have been intimately linked together. The explosion of drug trafficking in the United States in the late 1980's has resulted in escalating money laundering activities to a degree scarcely conceivable a decade ago. Financial institutions are invariably used by launderers in an effort to "clean up" money obtained in illicit activities.

Until 1970, there was no law that specifically sought to curb money laundering. Since 1970, the Bank Secrecy Act was the only legal instrument designed to deter the activity. In 1986, the Money Laundering Control Act was enacted as part of the Anti-Drug Abuse Control Act. The Act amended the Bank Secrecy Act by making it a crime to structure transactions to evade the law. It created the crime category of money laundering and amended the Right to Financial Privacy Act of 1976. The Money Laundering Control Act of 1986 is the most significant piece of legislation enacted to combat money laundering because it directly affects financial institutions.

Money Laundering Defined

There are basically three conceptions of money laundering that capture its essence. First, an official definition from the Internal Revenue Service.

According to the IRS (1984), money laundering means concealing the true amount and source of income and disguising it as a legitimate source of funds. Another definition, derived from the U.S. President's Commission on Organized Crime the Cash Connection (1984), describes it this way: money laundering is the process by which one conceals it's existence, illegal source, or illegal application of income, and then disguises the source to make it appear legitimate.

Money laundering is an effort to use money obtained by illegal activity, hiding the identity of the individuals who acquired the mone,y and by converting it into assets to make it appear to have come from a legitimate source.

The Process of Money Laundering

Money is laundered in basically three ways by hoarding, by moving cash directly in and out of the country, and by using financial institutions, IRS (1984).

Hoarding occurs to a greater extent than most people think. It can present problems for large scale drug dealers who have accumulated a great deal of cash. An individual seeking to spend criminally obtained cash faces problems. Purchasing a home for $250,000 attracts attention. Cash outlays of large size require a real estate agent, for example, to complete IRS Form 8300 . This form notifies the federal government that a large

currency transaction has been handled.

Another method by which money is laundered is to remove currency directly out of the country without a paper trail. Estimates of the amount of money smuggled out of the United States are in the billions. The Bank Secrecy Act of 1981 requires filing Customs Form 4790 (See Appendix A) when more than $10,000 in currency of monetary instruments are taken in or out of the United States. If the law is violated the money involved is subject to seizure and forfeiture.

The money launderer who manages to get cash out of the country has completely circumvented the financial institutional system. However, the very institutions that were circumvented will be used to get the money back into the country. This is accomplished through wire transfers or in the form of written drafts from a bank outside the country into an account controlled in the United States. These transfers may be in the form of loans resembling investments in a company, that give the appearance of legitimacy.

Still another method by which money is laundered is through banks and other financial institutions. A number of techniques may be initiated at this point. A simple exchange of small bills for large ones may be carried out. Another method involves financial institutions directly where multiple transactions of cash under $10,000 may occur (Weilant, 1984; Pileggi, 1983).

One of the measures to combat money laundering requires financial institutions to report cash transactions over $10,000. To evade this requirement, individuals come back to the same bank or financial institution day in and day out with $9,000 deposits which are not required to be reported. Another method involves fictitious identity accounts involving transactions over $10,000. An organization opens an account either in a business name or in an individual's name which provide identification. Using a false social security number or a taxpayer identification number an account will be used over a period of months with hundreds of thousands or even millions of dollars, moved on to other sources, and then the account is closed.

Money launderers may choose instead to compromise bank employees by persuading them, perhaps with bribes, not to file 4789 Reports (CTR, 1970, See Appendix B).

Another method is to bribe couriers who purchase money orders, bank checks or traveler's checks in amounts under $10,000 and then forward these funds to other bank accounts which are moved to financial institutions in other countries (Panama, Columbia and countries with strict bank secrecy laws).

The use of business accounts as a "front" is one of the more common ways money is laundered today. Either the business will be fictitious or operate as a front. A

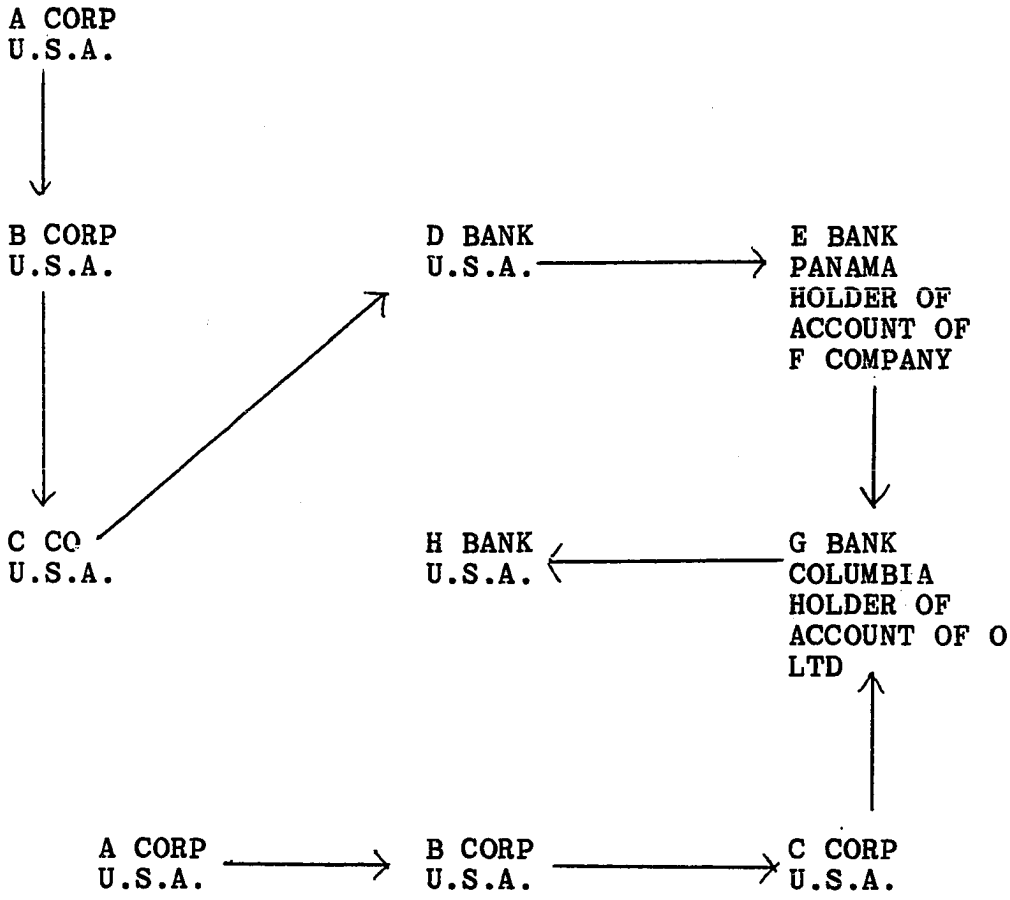
provision in the Bank Secrecy Act of 1970 makes it possible for legitimate retail business, which are the only type of business that handle large amounts of cash daily, to get exemption for large currency transactions.

Of the typical type of operation that goes on with business accounts related companies (See Figure 1.1), Corporations A,B, and C funnel substantial amounts of cash into D - a bank in the United States. Once in the bank the funds are shipped by draft or wire transfer to the account of F Company Ltd. in E bank in Panama. F Company Ltd. is a Panamian trust set up under the laws of Panama. Its real owners are the same individuals who control A,B & C Corporations in the United States. However, Panamanian bank secrecy laws prevent U.S. authorities from learning their identities.

When the money is in the E bank in Panama some of it may be wire transfered to the account of O investments in G bank in Columbia. This transfer may be to pay off drug suppliers. The remainder of the funds in E bank is wire transferred back to accounts that A,B & C corporations maintain in the H bank in the United States.

The monies returning to H bank from the account of F Company Ltd. in Panama purportly represent loans or investments in real estate or payment for exports (which of course, were never shipped). Actually the funds from H bank to the American corporations is the same money

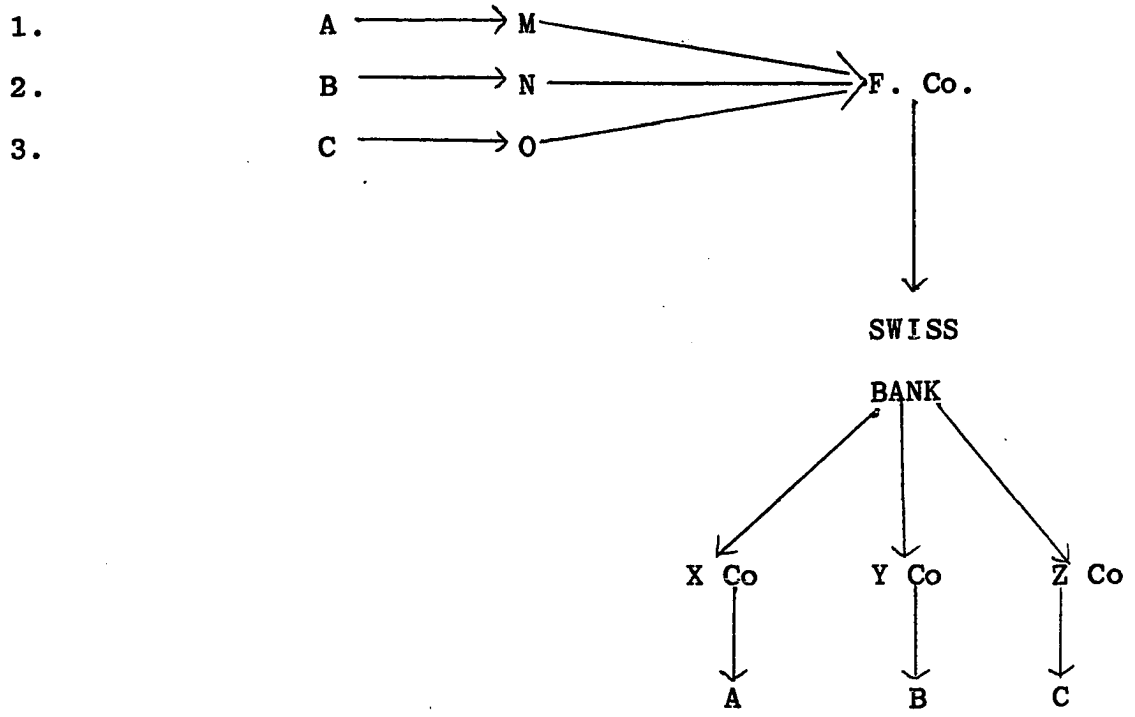
FIGURE 1.1 Money flow in a Money Laundering Scheme



originally wired by the owners. However, it had been "laundered" to make it appear to have come from a legitimate source.

Countless variations have been continued on the scheme depicted in Figure 1.2. For example, currency initially deposited into the A,B,C corporation accounts may be in daily amounts of less than $10,000 in order to evade the reporting requirements of the Bank Secrecy Act of 1981.

FIGURE 1.2: Variations of money flow in a money laundering scheme



The A,B,C Corporation accounts may be in three different American banks (M,N & O). Some of the funds moved from the latter to the F Company Ltd. may be transferred to a numbered Swiss bank account controlled by the owners of A,B,C Corporations. The funds coming back to the United States from the F Company Ltd. may go to the names of X,Y,Z Corporations which may be the same individuals owning A,B,C Corporations.

Organized criminal groups have also turned to countries where bank secrecy statutes exist. Numbered accounts are not truly anonymous. Owner identities are known by top management. Thus, some depositors invent screens. They operate through bearer share firms, set up by attorneys or accountants who have received their instructions from phantom fiduciary companies, yet another screen which is protected by secrecy laws even more rigorous than those that apply to banks.

Setting up a bearer bond company in a tax haven country such as Ireland, Hong Kong, Malaysia, Paraguay or Singapore states with more impenetrable secrecy laws than off shore Carribean and Central American nations is a fairly easy way to launder small amounts of illicitly earned monies. For example, drug money or "skim money" (taken illegally from gambling casino gross profits) is deposited into an account in Ireland. A consulting agreement or an employment contract is drawn up between the

company and same individual, providing the terms for some imaginary services. Payments are then authorized to the individuals for services which are never provided (U.S. President's Commission on Organized Crime Casino Laundering Hearing, 1984).

Another, very popular method of laundering criminally generated funds is called double-pricing (Tosches, 1986). Here, for example, real estate property with $3 million is purchased with a recorded payment of $1 million, and $2 million is paid with illegally earned monies exchanged or held in secrecy. After purchase, some $300,000 is laid out for development; in a few months, the property is sold for $3.3. million. If the transaction occurs in the United States there is a 25% realty capital gains tax on the $2 million "profit". By this procedure the $1.3 million of dirty money is rendered clean.

Likewise, through a bearer-share company, an importer may anonymously buy goods from a legitimate foreign seller at $2 per pound. The importer then buys those same goods from himself in his own name, from the bearer share company, for $1.80 per pound. The .20¢ per pound difference becomes a legal profit for the importer, while the dirty money --in the name of the bearer-share company is cleaned by passing it to the loss side of its profit/loss account (Cook, 1983).

Finally, the most effective system of money laundering

involves the apparent unwitting complicity of bonds, stock brokers, and currency traders. Michele Sindona, an Italian and corporate attorney, an advisor to Banco Ambrosiano of Milan and the Vatican Bank, was noted for his use of this type of monetary manipulation . His subsequent indictment and conviction to defraud an American bank led to his cooperation with the U.S. Dept. of Justice and his extradition to Italy and mysterious death while in prison there (Spero, 1980). Sindona's techniques require extensive knowledge of international finance and numerous partners in the legitimate sector of banking and stocks who may or may not understand the process.

Again in a bearer-share firm, illicitly earned monies are deposited in a foreign bank. The American stock exchanges trade currency options on British pounds, Canadian dollars, Japanese yen, Swiss francs and German marks.

The dirty money is then deposited in, for example, Hong Kong in the name of a ghost company. A yen option (at 240 yen per dollar) may be purchased through the company. The option gives the company the right but does not obligate it, to buy for example 24 billion yen for $100 million six months from now. The premium for the option is $1 million. If during those six months, the yen falls to $260 per dollar, $24 billion yen can be purchased in the spot market for $92 million, and the option contract can be

sold. In either case, a profit of $7 million is possible.

The counterpart in the transaction is officially the bank of Hong Kong. In reality, the bank is acting only on behalf of the ghost company that deposited the dirty money. But what if during that six month period the yen rises? What if it goes to 220 yen per dollar? Then, the option may be allowed to expire unexercised and what is lost is the cost of the premium $1 million, and the $20,000 commission to the bank. But the $1 million loss is not really a loss. It is offset by the $1 million in illegal profits earned by the ghost company as a premium for the option granted to it. And, the $1 million "loss" can be deducted from earned income. Not only are no real losses suffered but through the deduction, the taxable income on the laundered profits is reduced.

Although the money laundering process may be used to conceal the sources of funds acquired through legal means, the process is most often associated in the public mind with funds acquired through illegal sources. Money laundering may also be used as a means of evading Federal income taxes in the United States and for a host of other purposes (Weilant, 1984). In the case of tax evasion, the money may have been obtained by legitimate means, but is illegitimately concealed.

Although money laundering is an activity that violates government regulations, it is a criminal activity that has

significant similarities to normal, non-criminal business activities. Hence, it is easily hidden. In some cases, money laundering is conducted by businessmen/bankers as an adjunct to their regular, non-criminal activities. Their status in the banking system, and their knowledge of banking gives them the opportunity to violate regulations, or to circumvent and evade regulations directed at their area of business activity. This style of criminality is the bank related part of money laundering.

Construed as an illegal or extra-legal service, money laundering is a form of organized crime as well. As such, it requires coordinated economic activity similar to that of normal business, but all those engaged in it are involved in criminal activity. Money laundering brings together ordinary businessmen and career criminals in an elaborate system of financial subterfuge and manipulation. Money laundering can therefore be described as a "secondary crime" because it is a crime committed only to conceal other wrongdoing.

There are substantial social consequences resulting from money laundering. First, if the activity of money laundering is not stopped, or at least significantly curtailed, it becomes more difficult to discover and halt the criminal behavior that creates the funds to be laundered. Successful money laundering means that the source of the funds cannot be identified and the illegal

activity can proceed unchecked.

Second, the federal (and, to a lesser extent, state and local) governments are losing tax income because of money laundering in at least three ways: (a) money is expended in efforts to control criminal activity which is being facilitated by money laundering activities; (b) money is being expended in efforts as a result of successful money laundering activities to further other criminal enterprises.

A third facet of the problem involves international relations. When conducted on a large scale, money laundering inevitably involves the use of banking institutions located outside of the jurisdiction of the United States. The countries most often involved are those which maintain strict, legislated banking secrecy, such as the Bahamas, the Cayman Islands, and Switzerland (Austen, 1983). Efforts by American enforcement officials to trace monies through foreign banks often involve attempts to utilize United States law to supersede the laws of other independent countries.

A fourth harm associated with money laundering lies in the great economic power and leverage it provides the criminal elements within American society. In addition, individual bank officers are able to earn "commission" for handling monies acquired through illegal activities. These "commissions" can easily equal or exceed the annual

legitimate incomes of individual bankers (Kohn, 1983). Heavy work loads and limited budgets may be unable to dedicate sufficient resources and manpower to cases in order to analyze and effectively explain to a trial court the significance of a mass of facts. The impact of procedural protections on the class of defendants generally involved may also create pressures for the curtailment or abrogation of civil liberties. Some federal judges are in a dilemma because they may be urged to deny bail to persons so charged with serious offenses because they are wealthy and might not hesitate to forfeit bail. On the other hand, a no-bail decision violates the principle that a defendant is presumed innocent until proven guilty and that personal freedom should not be lost until after conviction.

Although money laundering has been recognized as a serious problem, the enforcement of laws specifically designed to deter money laundering has been difficult. Enforcement is complicated by several factors. First, it depends to a great extent on the voluntary compliance of banking institutions who may have a stake in this illegal activity. Banks are required to comply with the Federal currency transaction reporting laws, but when a banking institution or one of its employees is involved in a money laundering scheme, the transaction can be hidden from Federal notice. Moreover, participation of banking employees in this illegal activity makes the gathering of

necessary information for enforcement difficult. In addition, individual bank officers are able to earn "commissions" for handling monies acquired through illegal activities. These commissions can easily equal or exceed the annual legitimate incomes of individual bankers (Kohn, 1983).

The prosecution of money laundering cases also presents problems for staff. Prosecutors' offices with heavy work loads and limited budgets may be unable to dedicate sufficient resources and manpower to cases in order to analyze and effectively explain to a trial court the significance of a mass of facts. The impact of procedural protections on the class of defendants generally involved may also create pressures for the curtailment or abrogation of civil liberties. Some federal judges are in a dilemma because they may be urged to deny bail to persons so charged with serious offenses because they are wealthy and might not hesitate to forfeit bail. On the other hand, a no-bail decision violates the principle that a defendant is presumed innocent until proven guilty and that personal freedom should not be lost until after conviction.

Although, since 1970, there have been laws designed to prevent money laundering, they have been ineffective in limiting or ending the practice for several reasons. For example, enforcement of laws concerning money laundering, or development of more stringent laws, is made difficult by

the ways in which American banking statutes are written. Consistent with the constitutional protection of civil liberties in the United States, American banking statutes often aid and abet the money launderers, by making it difficult for enforcement officers to gain access to records which would indicate that a money laundering transaction might have occurred, and who might have been involved (DeMott, 1984). On the other hand, the penalties in the only two anti-money laundering banking statutes, The Bank Secrecy Acts of 1970 and 1981, are seen as being insufficient deterrents to either banks or bankers tempted to participate (Cook, 1983).

Under the Bank Secrecy Act of 1970 an individual could be indicted for criminal activity either when they fail to file a report or when there was fraudulent filing. There is a loophole in the law in terms of people outside the bank who were getting people inside the bank not to file.

Amendments to the Bank Secrecy Act in 1981 helped clarify some of the problems. The Tax Reform Act of 1984 established IRS Form 8300 which requires the reporting of currency transactions of more than $10,000. Finally in 1986 the Money Laundering Control Act was passed as part of the Anti-Drug Abuse Act of 1986. Three aspects of this legislation affect financial institutions and their security departments. The first, affects amendments to the Bank Secrecy Act. The second specifies money laundering as

a crime, and the third involves amendments to the Right to Financial Privacy Act of 1976.

The first important change in amendments to the Bank Secrecy Act of 1970 involves the crime of what may be called structured transactions . The statute enables prosecutors to pursue those who attempt to corrupt a bank or financial institution official or where banks or financial institution officials seek to aid those evading or circumventing the provisions of the Act. For instance, if an individual wishing to make a deposit of $15,000 in a bank is informed by a bank employee that they can avoid the need of a currency transaction report by dividing the deposit into segments below $10,000 over two days, the employee is at risk of a criminal prosecution.

The second major effort involving banks alone concerns the exemption of bank customers, mainly retail businesses, from the provisions of the Money Laundering Control Act of 1984. Banks offering exemptions from reporting monetary transactions of more then $10,000 must prepare statements describing in detail the reasons why a business or an individual qualifies for exemption. Exempted transactions must be in amounts that the bank reasonably concludes do not exceed amounts commensurate with the routine conduct of the lawful business of the customer. Naturally, this leaves some discretionary judgment to the bank. However, an important twist makes the bank responsible for

independently verifying the activity of the account for determining the applicable dollar limits for exempted deposits and withdrawals.

The final amendment to the Bank Secrecy Act of 1981 has to do with penalties affecting financial institutions. These were increased substantially. Formerly, civil penalties for financial institutions were set at $10,000 for each offense. The penalty has been raised to $25,000 or the amount involved in the transaction, whichever is greater. In any case, the penalty will not exceed $100,000. Criminal penalties were significantly increased as well.

Money Laundering As A Crime

Another major element of the Money Laundering Control Act of 1981 is that it makes money laundering a crime. Two sections of Title 18 of the U.S. Code (secs. 1956, 1957) prohibit financial transactions that involve the proceeds of specified unlawful activity where those conducting the transactions know that the property involved in the transaction represents the proceeds of some form of unlawful activity. According to section 1956, persons attempting to avoid a reporting requirement under the Bank Secrecy Act of 1981 are also violating the Money Laundering Control Act of 1981.

Reporting requirements affect wire transfers, checks,

and any kind of monetary instrument. The second part of Section 1956 prohibits the transportation of monetary instruments or funds outside the United States.

Section 1957 prohibits transactions involving criminally derived money of more than $10,000 with knowledge that it is derived from unlawful activity. A monetary transaction is defined as the deposit, withdrawal, transfer or exchange affecting interstate or foreign commerce of funds to a financial institution. Funds or monies derived from unlawful activity including drugs, counterfeiting and just about every major federal crime which one concealed or attempted to do, constitute the crime of money laundering.

Beginning with the Bank Secrecy Act of 1981, its amended versions, and the Money Laundering Control Act of 1981, fundamental changes have been introduced in the ways in which formal institutions handle their transactions. It is no longer acceptable for the financial community to look the other way when dealing with cash. Where the money comes from is now their concern. Financial institutions must inquire into suspicious transactions, they must co-operate with and refer appropriate matters to law enforcement officials. Bankers must control the exemption process.

Enforcement History

The Bank Secrecy Act of 1970 (the basic tool of the law enforcement community in its efforts against money laundering), the Money Laundering Control Act of 1970, and the various forms used by the IRS and Treasury Department to monitor monetary transactions have been significant in the policing of large amounts of currency. According to the Report on Financial Institutions and money laundering (U.S. President's Commission on Organized Crime, 1984).

In many cities across the country, there has been significant Bank Secrecy Act prosecutions. In 35 major cities financial investigative forces using the "Greenbacks" concepts of co-operations among IRS, Customs and the Justice Department have been established. The effectiveness of the Bank Secrecy Act prosecutors is evident from the statistics: In fiscal year 1983, 425 individuals were indicted, resulting in 239 convictions to date. In the first half of fiscal year 1984, another 587 individuals have been indicted and 154 convicted. The numbers indicted in fiscal years 1983 and 1984 to date exceed the total number of individuals indicted for Bank Secrecy Act violations during the previous ten fiscal years (p. 26-27).

The Bank Secrecy Act of 1970 has been the principle tool in the federal effort to detect, investigate and prosecute money laundering activities by members and affiliates of organized criminal groups. How the Act was

formulated, and in what context its provisions evolved legislatively is the subject of this study.

Chapter II

Statement of the Problem

Since 1970, laws designed to prevent money laundering have been partly ineffective in limiting or eliminating the practice altogether. For several reasons, the enforcement of the existing money laundering laws and the development of even more stringent laws, has been made difficult because of the ways in which American banking statutes are written. Consistent with the constitutional protection of civil liberties in the United States, American banking statutes often aid and unwittingly abet the money launderers, by making it difficult for enforcement officers to gain access to records which would indicate that a money laundering transaction might have occurred, and know the identities of the principals who might have been involved (DeMott, 1984). On the other hand, the penalties of the two anti-money laundering banking statutes, The Bank Secrecy Acts of 1970 and 1981, are perceived by some as being inadequate deterrents for banks or bankers who might be tempted to participate (Cook, 1983).

How were the anti-money laundering laws created? Determining the answer to this question is the research problem undertaken in this study.

The purpose of this study is to determine the factors and the processes by which the 1970 Bank Secrecy Act and

the 1981 Bank Secrecy Act were created. A number of questions may be raised. Legal rules may not be understood by mere assumption. The rules of law are culturally and historically reliable, and any particular system requires explanation (Dworkin, 1986). This theme also applies to violations from the law. The nature of lawbreaking is conditioned by the rules against which it is judged, and the lawbreaking may in part be explained in terms of the same considerations that explain the law and the process of law making.

Some explanations of law stress its embodiment of social consensus, which is held to be formalized in legal rules (Hart, 1968). Others focus on the varying amounts of power and influence among some social groups in complex stratified societies to affect the processes of law-making and creation (Chambliss and Seidman, 1971). These theoretical approaches aside, the paramount research questions stimulated by these ideas permit a host of inquiries that constitute the basis for the major hypotheses of the study. Regarding the laws under study, it is important to look at the following empirical questions because the data may be used to form the basis for a consideration of the interests, inputs and orientations that played a part in the creation of these laws. For example, which individuals or groups provided the initial impetus to cope with the money laundering

solution as represented by the 1970 legislation. Second, which persons or groups provided information, opinion and pressure to cope with persistent money laundering problems through the 1981 legislation? Were these the same or different persons or groups involved in the formulation of the 1970 legislation? Third, for both the 1970 and the 1981 hearings groups, to what extent did they favor or oppose the Act? What evidence was offered for or against the 1970 statute and its amended version in 1981? Fourth, what lobbying techniques were employed by both the 1970 and 1981 hearings groups. Fifth, to what extent was the testimony of those appearing at the hearings influential in bringing about the final passage of the Bank Secrecy Acts of 1970 and 1981. Sixth, how was the crime of money laundering assessed in relation to selected other crimes by those offering testimony? Seventh, how did the 1970 and the 1981 "evidentiary groups" feel about the strength and the weaknesses of the existing legislation? Eighth, what assessments were made by the "evidentiary groups" in 1970 and 1981 as to the probabilities of the laws' implementation? Ninth, for those who testified in the hearings held for the 1970 Act, to what degree, if any, did they change their support for the Act after its passage? Tenth, finally, among those who testified in the hearings held for the 1970 Act, to what degree did they view money laundering as a serious threat to the integrity of the

financial institutions in the United States?

Theoretical Framework

The theoretical context of this study draws on the work of Chambliss and Seidman, (1971).

Chambliss and Seidman (1971) note that two of the three major sociological/political theories that offer explanations of the creation of law are what may be called the pluralist and the ruling class views. In general terms, the first of these, the pluralist position, argues that law arises from a struggle or conflict between competing groups holding differential power which, in turn, exerts pressures on legislators to enact specific rules governing conduct. The ruling class view, on the other hand, sweepingly postulates that law reflects the power of elite groups whose goals and objectives tend to be homogeneous. In short, elites seek laws that protect their economic interests or preserve their share of political power.

With respect to these perspectives, Chambliss and Seidman (1971) observe that each orientation suffers from some problems that mitigate against their explanatory power. Specifically, they are either simplistic tautologies (i.e., the pluralist view states only that those who succeed are those who succeed; while the ruling class view states only that the ruling ideas are the ideas

of the ruling class); or they are devoid of insight into why laws change. Indeed, in their summary of these two views, Chambliss and Seidman (1971) state:

What is called for to explain law creation is not a theory that argues for total control by the ruling class, or for no control at all, but one that recognizes both the strength and the limitations of ruling class influence on the legal order (p. 144). Despite Chambliss and Seidman's dismissal of the pluralist and ruling class theories, it must be noted that other authors have produced fairly convincing arguments for these perspectives. Hall, (1952) who provided a pluralist view of law creation showed how the courts make law, not merely interpret it, and how social and economic conditions shape the law; thus, law reflects society's values and needs.

What Chambliss and Seidman (1971) do offer is a third theory of law creation, a dialectic theory, in which the impetus to social change -- one of which is the creation of law --is said to arise from the dynamics of existing contradictory elements in the society, nation, historical period, and/or economic system. People interact and react to these contradictions and their attendant resources and constraints, and one element or outcome of this response is the making of law.

The creation of law represents a momentary resolution of the contradictions inherent in the social system.

However, the law as a negotiated compromise generates over time new contradictions. This gives to law some dynamic and adaptive qualities which exist in modern society.

The radical pluralist view represented by Friedman (1977) argues that law reflects a struggle of competing interest groups some of whom are more powerful than others. He says that "What makes law is not public opinion in the abstract, but public opinion in the sense of exerted social force" (p.99). For Friedman (1977) it is essential to recognize that some groups, some social classes, will be more successful in exerting social force than will others. Determining which social group possesses power in greater amounts than others is evident in whether they get laws reflecting and protecting their interests enacted. The radical pluralist position has some truth but it appears to be trivially true and uninformative on key questions about the increments of power of social groups.

Similarly, Marxist elite theories which treat the law as a reflection and instrument of ruling class interests too often assume that (a) there exists a homogeneous ruling class, and (b) that its interests are the same for all groups composing it. The empirical evidence fails to validate either of these two basic tenets of faith of the Marxist theory (Chambliss, 1981).

The Process of Lawmaking

When it comes to law making the mechanics of the process are as important as the social forces and groups behind particular pieces of legislation. As Neely (1981) notes "Legislatures have intentionally designed a cumbersome procedure for themselves in comparison to the fairly streamlined procedure of the courts, because they wish to frustrate the passage of special interest legislation" (p.49). Often, legislative bodies serve as "referees" in a struggle between and among special interest groups locked in combat over bills they support which usually protect or enhance their special privileges. In the case of money laundering, it might be supposed that the usual negative process of a legislature might be suspended in the case of legislation presumptively assumed to be in the general interest. Laws designed to curb crime or constrict criminally gained profits from generating more wealth should be, it may be supposed, enthusiastically supported at all levels of the law making process from Congress, through the Courts, law enforcement agencies, and among those in the public (banking institutions and ordinary citizens) whom most would believe to be adversely affected should the activity go on uncontrolled.

The recent U.S. President's Commission on Organized Crime (1984) chose money laundering as the subject of its first report. The emphasis on money laundering suggests

its importance as a criminal activity that requires serious consideration.

Creating a subterfuge about the origins of illicit money is central to the operations of money laundering schemes that seek to place such monies into the legitimate sphere (Karchmer, 1985). The fact that a Presidentially sponsored commission of great prestige selects money laundering as a major criminal problem might lead to the expectation that official response in the form of legislation and agency actions would be swift and decisive. As will be seen, the identification of a problem and the creation of legal and enforcement instruments to cope with it are complicated matters not easily coordinated.

Money Laundering as a Social Problem

An approach to money laundering and the governmental reaction to it is to understand the phenomenon as a social problem. Money laundering has been defined as an undesirable condition judged by members of the community to be so intolerable such that it requires group action for its resolution. However, the issue is not as simple as it seems. Conditions identified by some as harmful to all segments of society may be seen as harmful by others as well, but the remedies proposed may also be seen as execessive, unnecessary or ineffective. With solutions to problems involving governmental intrusion or intervention

and regulation of free, legitimate enterprises, the very processes of civic control and prevention create problems for some groups within the community. Doubtless, bankers and financial institutions oppose money laundering crime in principle, their response however, to the methods designed to curtain or eradicate these crimes may be qualified by their self interests.

Beginning in the 1960's a dramatic increase in surplus United States dollars appeared in the banking systems of many drug source countries such as Columbia, Bolivia, Panama and Thailand. The government estimated the following. (See Table 2.1):

Table 2.1

U.S. CUSTOMS SERVICE

YEAR	DRUG SOURCE NATIONAL SURPLUS (constant 1970 dollars)	% change
'67	$ 545,000 Mill.	
'68	$ 585,000 Mill.	7.3%
'69	$ 660,000 Mill.	12.8%
'70	$ 790,000 Mill.	19.6%
'71	$ 890,000 Mill.	12.6%
'72	$ 1,010,000 Mill.	13.4%
'73	$ 1,190,000 Mill.	17.8%
'74	$ 1,400,000 Mill.	17.6%
'75	$ 1,640,000 Mill.	17.1%
'76	$ 1,950,000 Mill.	18.9%
'77	$ 2,230,000 Mill.	14.3%

SOURCE:
U.S. Customs Service, Handbook for Special Agents, 1983.

Gauging the magnitude of the problem itself is difficult. Further, the sheer frequency of money laundering transactions may not be a good measure of their significance and threat. Another feature in the analysis of money laundering activities answers the question, who are the people that define the problem and determine that there is a major discrepancy between social norms and social realities?

As might be anticipated, the banking industry expressed concern about governmental incursion into the privacy of banking transaction records. While there is a recognition of the problem the solutions advanced by advocates of the Bank Secrecy Act of 1970 and its amended version in 1981 have produced objections from the banking interests. The U.S. President's Commission on the Cash Connection, Organized Crime, Financial Institutions and Money Laundering, 1984, offered a series of amendments to current money laundering legislation which substantially increased the penalties on officers and employees of financial institutions corrupted by money laundering. In effect, it called for increased criminal penalties. What was recommended provoked a reaction from the banking community.

The report noted that:

The effects of money laundering do not justify the belief that a highly limited scheme of Federal regulation,

standing alone, will suffice to deal with the problem. The complex and sometimes ingenious techniques of professional money launderers make it possible for drug traffickers and other criminals to conduct illegal activities with substantial confidence that the profits from such activities can be safeguarded from detection and seizure of law enforcement agencies. Moreover, money laundering invariably has a deleterious effect upon the financial community. By corrupting officials and employees of financial institutions in furtherance of laundering schemes, money launderers undermine the integrity of those institutions and, if discovered by law enforcement agencies, can ruin the reputations of those institutions for soundness and prudent judgment (p. 62).

The legislation proposed by the President's Commission Report of 1984 is comprehensive in prohibiting the conduct of transactions involving monetary instruments where persons doing transactions have criminal intent, or seek to further criminal activities through either direct assistance or indirectly by facilitating their conduct. The reach of the government would substantially increase with these legal innovations.

The circumvention of the reporting requirements of the Bank Secrecy Act has been the subject of several court cases. The misunderstandings and breakdown in cooperation between federal agencies and banking institutions is

evident in the reluctance of Treasury Department officials to fulfill provisions of amnesty for banking officials who had failed to file currency transfer information prior to 1985 (Ricks, 1985).

There are many criminal problems for which there is a general consensus about causes, control, treatment and eradication. Murder, drug trafficking and racketeering are crimes that have been traditionally described as organized. Organized criminal groups have correctly been identified as having "muscled into" "penetrated" and "infiltrated" trade unions, trucking and casino operations, retail food business, the toxic waste industry and pornography (Reuter, 1987; Block and Scarpetti, 1985; Trebach, 1987; Kelly, 1987). But this is scarcely appropriate in coming to grips with the criminality associated with financial and banking institutions. The banks are not being "infiltrated" in the same way that mozzarella cheese companies and pizza parlors were some time ago to facilitate drug trafficking and to launder illicit monies earned thereform (U.S. President's Commission, on Organized Crime: The Cash Connection, 1984).

It is understandable why the banking institutions are reluctant to accept what many bankers feel are draconian measures in dealing with money laundering and the tendency to see banks as mechanisms for the disguising and transferring illicit monies through legal channels. A

consequence has been that proposed statutes which seem effective from a law enforcement perspective are perceived as dangerous intrusions into the sanctity of privacy which has been a hallmark of banking.

The Conflict Perspective I

How then does the inherent conflict between banking interests and law enforcement agencies determine, influence and condition the construction of the normative structure of rules (laws and statues) that define criminal behavior? A dramatic approach, at least in regard to criminal policy, is that of Quinney (1974). His theorizing seeks to delineate the principal architects behind laws and their motives and biases. He asks: What is the economic and political nature of criminal policy making in America? My argument is that the ruling class formulates criminal policy for the preservation of domestic order, an order that assumes the social and economic hegemony of the capitalist system (p. 59).

The ruling class, the argument states, is able directly or indirectly through its economic and political power to define the political order. It uses its power to perpetuate the capitalist social system by prescribing which acts or actors will be deemed criminal. A less ripe conflict argument where ideological dimensions are tamer, is that of Sellin (1938). For Sellin (1938), conflicts may

develop in a number of ways. Of primary importance here is the conflict that emerges over "conduct" norms. What is customary behavior within a small community may be regarded as illegal by the dominant group which is in a position to legally define criminality. The law too, the basis for defining criminality, is itself a product of conduct norms. According to Sellin, the criminal law is a mechanism whereby one group may coerce adherence to its norms. His explanation of this is worth examining: Among the various instrumentalities which social groups have evolved to secure conformity in the conduct of their members, the criminal law occupies an important place, for its norms are binding upon all who live within the political boundaries of a state and are enforced through the coercive power of the state. The criminal law may be regarded as in part a body of rules which prohibit specific forms of conduct and indicate punishment for violations. The character of these rules, the kind or type of conduct they prohibit, the nature of the sanction attached to their violation, etc. depend upon the character and interests of those groups in the population which influence legislation. In some states these groups may compromise the majority, in others a minority, but the social values which receive the protection of the criminal law are ultimately those which are treasured by dominant interest groups (p. 21).

The implications of Sellin's views have been

elaborated by others (Kadish, 1967; Wolfgang, 1966). An act codified as criminal by law reflects cultural patterns believed to be unacceptable within the normative social structure. The structure is not static but flexible and its content may be understood as a reflection of the concerns of various interest groups composing the society.

From this perspective, the laws which define illegality are viewed as the product of value conflicts and political activity. It is also assumed by adherents of this view that the same political forces instrumental in the implementation of law play a role in its enactment. As Chambliss and Seidman (1971), claim, every detailed study of the emergence of legal codes shows the importance of activities of special interest groups (not in the public interest per se) in the formulation of legislation.

The Conflict Perspective II

Reflecting the assumptions of the conflict perspective developed from analyses of cultural differences, Quinney (1970) has proposed a theory of the social reality of crime. As with his theoretical precedessors, the starting points of Quinney's view are embryonic. Crime for him "is a definition of human conduct that is created by authorized agents in a politically organized society" (Quinney, p. 15). Crime as officially determined is a definition of behavior conferred by those in power. Agents of the law

(legislators, police, prosecutors, judges) are responsible for formulating the administration of the criminal law. With the creation and applications of these definitions of crime, persons and behaviors may become criminal.

Quinney (1970) goes on to promulgate another "proposition." "Criminal definitions," he says, "describe behaviors that conflict with the interests of the segments of society that have the power to shape public policy" (p. 16). These definitions are ultimately incorporated into the criminal law. Furthermore, it may be supposed that definitions of crime change as the interests of the dominant classes change. There are other implications as well.

The powerful interests are reflected not only in the definitions of crime and the penal sanctions attached to them, but in the legal policies on handling those defined as criminals. Procedural rules are created for enforcing and administering the criminal law. Policies are also established for treating and punishing the criminally defined, and for programs to control and prevent crime. From the initial definitions of crime to the prevention and penal programs, those who have power regulate the behavior of those without it.

Quinney (1970) goes on: "Criminal definitions are applied by the segments of society that have the power to shape the enforcement and administration of criminal law"

(p. 18). In the case of the Bank Secrecy Acts of 1970 and 1981, those proposing the legislation and the machinery for enforcement, namely the law enforcement community, are in conflict with the very forces Quinney and other ideologically committed social thinkers would identify as the most powerful segments of society. This ideological anomaly does not invalidate the essence of the theory explaining the organization of law, however. The theory can be rescued from its ideological habitat. Its explanatory apparatus of the dynamics of the struggle over values and rules between contending parties as groups can be usefully employed to understand how a conflict develops; what its effects are on the participants, and whether such conflict is destructive of social relationships and stability. These and many other questions are generated by the conflict perspective. As Coser shows (1964), conflict only in its negative dimensions as tearing apart relationships and this perspective is deficient. Conflicts may contribute and may integrate formerly disparate members of groups. In the case of the money laundering control legislation, the threat perceived by bankers may have served to weld them into a community of like-minded individuals organized into clearly defined groups in opposition to laws that collectively threaten their autonomy and operational processes. Moreover, the conflict over money laundering legislation may serve to build the

internal cohesion not only of banking institutions, that in normal business conditions, are in competition with one another, but also among law enforcement groups where activities do not always smoothly mesh. In another related sense, the struggle over money laundering legislation may bind the antagonists. The very act of entering into conflict with the law enforcement agencies and legislators may establish relations where none may have existed before. In the first place, the very opposition to money laundering controls denotes that there exists a common object of contention. Conflict over the rules governing disclosures and transfers of monetary and financial deposits and disbursements implies that both parties to the conflict accept the idea of regulatory controls in general and statutory provisions regarding the implementation of these controls. What they appear to be fighting about is not the principle of regulation, but its application in specific cases.

The conflict between agencies of the government and the banking interests over reporting provisions in the statutory controls may be said to be "productive" rather than destructive in at least these connected ways: First, the conflict over specific provisions in the secrecy legislation may lead to the modification and the creation of new law which is more germane to the actual conditions and processes of money laundering. Second, the application

of new and modified rules leads to the growth of new institutional structures centering on the enforcement of these instruments.

It is noted above that one potential outcome to be investigated concerns the extent to which the antagonists in the conflict are "bound together" because of their involvement in the law. They intereact "strategically" in Goffman's words: "One part of strategic interaction consists of concrete courses of action taken in the real world that constrains the parties; the other part, which has no more intrinsic relation to communication than the first, consists of a special kind of decision making; decisions made by directly orienting oneself to the other parties and giving weight to their situation as they would seem to see it, including their giving weight to one's own" (Goffman 1969 p. 101). Mutual assessments concerning the credibility of the contending parties claims moves both parties closer to a common ground for discussion, debate and resolution.

The process of drawing closer together to engage in disputation over laws affecting both parties is but one facet of the effects of the conflict. Another structural aspect of the conflict involves the formation of coalitions of bankers and alliance building among law enforcement agents. The law enforcement agencies have called public attention to organized criminal infiltrations into

legitimate business. The federal strike forces, rackets bureaus and special organized crime sections in police departments have emphasized the importance of the problem. By these and other means, law enforcement professionals manage to convey to the American public that organized criminality is not simply gangs of hoodlums but a sophisticated sinister threat to basic institutions. It was vigorously argued that the enormous power of illicit wealth could undermine the economic infrastructure of the nation. Thus, the law enforcement community that lacked the basic enforcement tools and resources (wiretraps, manpower, etc.) made their particular problem a national social problem, and in the process persuaded significant segments of an ambivalent public to demand action.

To the extent that publicity campaigns concerning the dire threat organized crime presented succeeded, there gradually developed among police, criminal justice professionals, journalists, academics, and interested citizens, pressure groups, and crime commissions, that lobbied for action. Congressional hearings, sensational trials and the persistent efforts of law enforcement officials at the national, state, and local levels combined so that official notice had to be taken of organized crime as a serious problem. Anti-organized crime specialists in law enforcement and in government managed to make legislation specifically designed against organized

criminality a reality. The 1967 Task Force wiretap and electronic surveillance proposals were followed in the subsequent decades by RICO statutes in many states modeled after the federal law (Blakey, 1986).

For the coalition partners of law enforcement groups and their peripheral supporters the common bond, the common denominator, holding them together is the phenomenon of organized crime. Normally with so many divergent elements making up the "crusade" against organized crime, the more likely they are to be antagonistic. Simmel (1964) observes that: "As the size of the group increases, the common feature that fuses its members into a social unit become ever fewer" (pp. 397-398). That the concept of organized crime plays as a unifying element is evident. Nonetheless, while free to preserve their separate law enforcement objections and aims, many cooperate closely when dealing with organized criminality by sharing intelligence data, providing specialist personnel, and logistical resources in joint operations (Martens, 1987).

At the same time the aspirations of the banking community and their institutions that they be as crime free as possible was never in question. The proposed means to restrain criminal intrusions into banking via money laundering, however, were suspect. For bankers, too much law enforcement investigative latitude would appear to threaten the integrity of banking itself, and many resisted

efforts by the law enforcement community to get the statutory leverage sought in the legislative groundwork.

Perhaps the banking community is wrong about the impact of law on their business perogatives - more than legal philosophers, lawyers or judges are prepared to allow. The financial community that feels the direct impact of laws may not experience regulatory controls as a mere abstract structure of rules. Instead, they may see laws that impinge on them directly as not only reflective of social realities but constructive of them, laws governing banking operations may not just regulate behavior, but construe and construct it.

The Conflict Perspective and the Statuary Framework II

The approaches of Chambliss and Seidman (1971) to the process of law making and criminalization derive primarily from the conflict orientation. Fundamental to their work is the view that criminalization of behavior and actions are essentially political; and that the application of legal sanctions is based less on a consensus over norms then on a differential ability of interest groups to implement their own particular values and agendas as matters of public policy. With the exception of certain behaviors including murder, rape and overt assaults on persons or property, it cannot be assumed that popular perceptions of acts are congruent with the legal

definitions of these acts.

A reasonable inference from the dialectical theory of law creation is that groups with clear interests in legislative actions will struggle and seek to influence legislative bodies to embrace their point of view. Under appropriate conditions, the struggle moves into a legislative arena where the principal opponents attempt to neutralize each other. But even if this is successful, the struggle continues through each stage of the judicial process. It may be expected that bargaining and compromises based at least partially on positions of strength will occur throughout the process. In short, law making means declaring certain procedures, and behaviors as illegal and this confers the status of criminality on certain practices within the context of conflicting social units.

A full blown theory of law-making ought to be normative as well as conceptual. The thrust of this study is on the normative part of it looks only at various theories of legislation. Theories of adjudication and of compliance are touched upon but are not central to the analysis.

The process of law making raises questions concerning the scope of jurisdiction which explains why and when judges and courts should make decisions required by the standards of the legislation. Implicit in the law are

rules of compliance and deference which outline the nature and limits of requirements of obedience towards the law and a theory of enforcement which identifies the goods of enforcement and punishment.

Relation of Theories to this Study

The data in this study are collected in order to describe the factors and processes which led to the creation of anti-money laundering operations in the United States. In order to see how data might or might not support one of the theories, models must be constructed of the creation of anti-money laundering legislation based on the processes described by each theory.

Relating the pluralist model to the anti-money laundering legislation, it will be remembered that new law is said to arise from the foundation of consensually held values. In the case of money laundering, the pluralist perspective would hold that law developed because many different interest groups, with similar values, struggled with the problem and from which emerged a form of law based within the consensus, but representing the interests of some factions for the larger plurality. The pluralist perspective would hold that law developed because many different interest groups, with similar values, struggled with the problems and from which emerged a form of law based within the consensus, but representing the interests

of some factions for the larger plurality. The pluralist theory (Chambliss, Seidman, 1971), does not hold that all groups have equal input in the development of law, but that groups have reasonably equal opportunity to provide the social pressure behind the development of laws. In different instances, under this theory, different segments of competing interests groups may exert sufficient force to enact their particular social goals into law.

After analyzing the data, overall pattern of findings can then be reviewed to see if they reveal a process that conforms to the plurist desciption.

Another influential perspective, the ruling-class theory (Chambliss, Seidman, 1971), holds that all law is essentially the product of ruling class, self-interest -- although this objective can be hidden and subtle, when, for example, legislation is used to effect some short-term loss of interest so as to stave off possible attacks on elite interests.

In terms of money laundering, the power groups may be identified as people involved in high-profit organized crime, important banking institutions and the influential members thereof, business men who wish to avoid income tax on legally gained money, and political people and/or other officials who assist in money laundering for the purpose of monetary gain. These people may indeed be members of the power elites themselves and have some vest interest in

seeing that the system remains operational.

Within this context, the protectors of the majority interests are also members of the power elites, or members of government agencies. "The people themselves do not stand on street corners or march on Washington protesting the existence of money laundering; the competing interest groups are unequally represented, with the group wishing to preserve and protect money laundering much more highly motivated." (Chambliss and Seidman, 1971).

In the context of the pluralistic versus ruling class theories, the intent in this study is to perform an extensive examination of the enactment of money laundering legislation to determine how much confirmatory support exists for each theory. However, if the overall pattern of findings fail to fit the requirements of either the pluralist or the ruling class theory, the analysis will shift to the dialectical view. That is, the study will examine whether the pattern of overall findings is best characterized by competing forces and contradictory elements within the society.

Thus, the study has theoretical interest in the findings, at least in a relatively loose sense, to the extent to which they support or disconfirm one of the three major theories of law creation.

Hypotheses and Methodology

Specific hypotheses were developed from the major theories of law creation discussed above. Further, the hypotheses are designed to generate data on the processes by which legislation is proposed, justified and finally passed into law or defeated.

General Research Appoach

The Federal Income Tax Law was enacted in 1913. In the period from 1913 to 1960, income taxes increased dramatically, and universal enforcement and collection became institutionalized. This period also witnessed the emergence of significant organized crime, partly in response to Prohibition, as well as the emergence of the large-scale growth of money laundering during the next two decades. As a background, this study traces salient and relevant events during this period, but its focus is on the period from 1960, which coincides with the Congressional Hearings on money laundering, through the present, with an emphasis on the Bank Secrecy Acts of 1970 and 1981. Thus, for the period from 1960 to the present, this study attempts to:

1. Examine and describe the predominant methods of money laundering as perceived by legislators, lawenforcement officials and agencies, and criminals

involved in money laundering.

2. Examine and describe the response of legislators and law enforcement officials and agencies to the problem of money laundering.

3. Identify the key factors involved in formulating legislation on the problem of money laundering (e.g., Banking Community, Internal Revenue Service, Justice Department): describe and examine their goals, motivations, and activities pursuant to such legislation, and their relative degree of influence in its passage.

HYPOTHESES

The main hypotheses try to describe the relationships among a number of variables including forms of crime; the contexts in which they occur; how illegal profits are transformed into "laundered" money; and the legislative reactions to these types of criminal behavior.

Hypothesis 1. Money-laundering evolves as an adaptive response to social and economic conditions and as a reaction to breakdowns in existing laws.

Hypothesis 2. The legislative response as money laundering developed in reaction to two major trends and initiatives was effected by:

a. The rise of organized crime in drug trafficking, and

b. Inadequacies in legislative controls and

restraints on monetary instruments and transactions.

Hypothesis 3. The Bank Secrecy Act of 1970 and 1981 primarily reflect and support the interest and needs of the ruling class theory of law creation.

Hypothesis #1 seeks to examine the criminal conditions that give rise to large amounts of cash, and how those in possession of it attempt to conceal its origins. The first hypothesis describes how criminal entities have operated in the law's gaps concerning income and money transaction reporting. It also looks into how criminals exploit ambiguities and uncertainties in the procedures of financial/banking institutions and how criminals manipulate those institutions that fail to comply with reporting requirements.

Ever since the successful prosecutions of criminals for tax evasion where income or assets from any source that are unreported constitute crimes, criminal operators have been sensitive to, and sensible about, laying themselves open to such criminal investigations and prosecutions. They make sometimes crude and obvious, but more often ingeniously inventive efforts to disguise illegally earned or acquired income.

Hypothesis #2 examines the societal reaction to money-laundering. Specifically it situates historically the kinds of criminality that precipitated money-laundering and attempts to understand the weaknesses in the initial

legislation that led to the 1981 amended version of the Bank Secrecy Act of 1970. The inputs and conflict of various groups are examined here and in Hypothesis 3.

Hypothesis #3 stipulates a test of the "ruling class" theory of law creation described in Chapter two. Briefly, the theory has roots in Marxist inspired conflict theory and argues that the promulgation of law does not reflect societal consensus but represents more narrow interest group values and concerns. The information and arguments advanced by those offering testimony should reveal the positions of various segments of the law enforcement and banking communities as to the threat that money-laundering constitutes for the society as a whole.

Hypotheseis #3 has broader implications than merely aligning the forces and inputs that pose arguments and place data before the deliberative and enacting law making machinery of the Congress. Information refers to facts and opinions communicated that may be unorganized and even unrelated. In contrast, "knowledge" is an organized body and information, and the comprehension of which is the consequence of having acquired an organized body of facts and theories. There is a strong implication in knowledge, a sense of an intergrated framework where "information" is structured in such a manner that permit judgment and insight.

Even in the informative-rich environments of

legislative hearings the sheet weight of data above does not improve conclusions. The value of information is to provide options for action, discussions and outcomes. At some level the question of knowledge shades over into a question of ethics, or more preferably the normative structure of society. The capacity of information in solving problems does little to answer whether particular problems are deserving of solutions. Thus, the study will attend to the views of "experts" and interested parties concerning the workability of solutions of money laundering - whether some proposals are efficient or capable of coping with the criminal practice. Questions are raised about the fallout of legislation on the rights of non-criminal sectors and on the capacities of banking institutions to handle requirements.

Finally there are many subsidiary questions raised in Chapter two that rise out of the hypotheses. Questions concerning the groups and interests that presented evidence for or against legislative proposals to curb money-laundering. The investigation seeks information on the kinds of data presented before committees in 1970 and again in 1981 which either opposed or supported anti-money laundering legislation. By identifying those who testified and presented information at hearings, it is possible to locate them in terms of their institutional locations and affiliations. By doing so, the hypotheses -- especially

the second and third - may be tested.

CHAPTER III

Data Collection

Sources

Data are drawn from widely scattered sources and are primarily of two major types.

Open Sources. These consist of government documents reports and oral testimony obtained from members of the participant groups who were willing to be identified and speak "on the record."

Sensitive, Closed, and/or Classified Sources. The researcher is a certified public accountant who also has on-the-job experience as a United States Treasury agent. This background provides the necessary tools to understand the complicated accounting and banking methods employed in the money laundering process. Further, it provides access to informants and data not ordinarily available to the public. These sources include classified government data and reports; informants not willing to be identified or willing to speak "on the record."

Interviews

"On the record" interviews were free-flowing, in-depth, and tape recorded. Some "off the record" interviews occurred in order to build up background on the issues and to create an atmosphere of trust. These sessions were not tape recorded. However, notes were taken by hand. One group of "off the record" interviews was based on a

questionnaire designed and administered by the researcher (Appendix C). It was initially administered to a sample of 15 individuals who testified at Congressional Committee hearings prior to the passage of the Bank Secrecy Act of 1970, and 1981, or both. These individuals represented 25 percent of the total population of individuals (180) who had testified before these committees.

The use of the questionnaire ensured some comparability of responses. Some of the questions were open-ended. In order to help create an atmosphere of trust, the researcher himself wrote down the answers of the respondents.

The interviews focused on the following concerns:

1. the role played by respondents and their organizations in the Hearings;

2. the extent of respondents' participation in the Hearings;

3. the position respondents took toward passage of the Bank Secrecy Act and why;

4. respondents' lobbying activities; (what types of activities they participated in to influence the lawmakers)

5. the degree of influence respondents believed they and their organization had on the content of the legislation and on its passage;

6. the degree of influence respondents believed other groups and individuals had on the content of the

legislation and on its passage;

7. respondents' opinions as to the most important factors involved in passage of legislation;

8. respondent's opinions on how well the legislation had been administered and implemented;

9. respondents' opinions concerning improvement of the legislation; and

10. respondents' opinions concerning the gravity of money laundering, when compared with other crimes.

It must be noted that some of the data made available was given so on condition that the source not be identified; or with the restriction that the principals involved not be identified as individuals. All precautions were observed to protect the privacy of individuals either providing information for this study, or who were the subjects of information.

The Interview Format and Questionnaire

Actually, the instrument developed for the collection of data is a mix of an interview schedule and a questionnaire in the sense that the respondents themselves could write down answers to some of the questions contained in the research instrument.

The instrument is structured to collect factual information, information about beliefs, attitudes and expectations of the legislative respondents. The factual

information section (questions #34 through #37) includes data about the individual as to their professional positions and occupation; and questions concerning the Banking Secrecy Act of 1970 and 1981.

The format of questions falls into two basic types; open-ended, and fixed responses or checklist questions. There are pros and cons about each type of question (Kornhauser, Sheatsley, 1959). The open-ended questions were used because it was deemed suitable for the sorts of information required. Based on pilot study responses the range of replies could not be determined with any degree of certainty in advance. The diversities of opinion on such issues as the influence of groups on the legislative process, and the impact of the legislation on various business groups are not at all clear. A relatively simple question such as question #9 might reveal (a) the special interest represented by the respondent, (b) the kinds of evidence the respondent thought committee members found most convincing; and (c) the weaknesses in the presentations of the Bill's opponents. Thus a major problem of open-ended questions is the number of possible dimensions that might be addressed by respondents so that the answers may not be comparable.

The drawbacks of fixed-response, checklist questions is that the responses offered might fail to capture the complexities and nuances of a respondent's sentiments and

ideas. Apart from that, there is the obvious danger of putting words in the respondents' mouth and thereby distorting their views. Nevertheless, there are many virtues to close-ended questions (Kornhauser, Sheatsley, 1959). They tend to clarify the meaning of a question by specifying the dimensions of a question that are particularly pertinent to a researcher. Instead of an open-ended question -- as, for example, #17 "Which of the lobbying techniques did your group employ?" which probes for information; a closed or fixed response question such as #28 "Please describe how closely you think the law is being implemented in terms of the values it was designed to protect? RE: Bank Secrecy Act of 1970: Very Closely, Moderately closely, Not at all closely." This question specifies the type of evaluation of the legal instrument that the research hypotheses require as data.

On balance, fixed response questions seem to be superior to open-ended questions. Even so, open-ended questions perform valuable functions for some research projects and are seldom excluded entirely from surveys. Particularly during the early phases of the research and where information is sought on dynamical processes and subjective experiences that cannot be anticipated, the open-ended question can generate unexpected information.

Another consideration is that the original questionnaire consisted of 39 questions and was tested on

several subjects. As a consequence, the wording of some of the questions was clarified and made more precise; and question #31 (Appendix D) was added based on pilot study response data.

The critical variables in the study are: money laundering; the factors affecting the growth of this particular type of criminal activity; the legislative responses to it; their perceived weaknesses and inadequacies; and the interests and needs of specific groups in shaping the law enforcement response to the questionnaire and interviews.

The qualitative data from the interviews with those experts and interested parties from government, banking and law enforcement, enrich the analysis of quantitative information available in government reports and hearings.

Thus the study employs two types of information and source material: archival reports and primary interview data.

Data Analysis

Responses were coded and analyzed for major themes relevant to the concerns of the inquiry, and comparative analyses were made of responses based on the category of respondents. Where indicated, rank orders of responses were compiled.

Responses obtained in interviews with the individuals

who had testified before congressional committee hearings were compared with the actual testimony given at the hearings by the respondents. This is to provide an internal test of the validity of responses, and a measure of how respondents' opinions may have changed over time. Responses concerning the effectiveness of the money-laundering statutes were compared with Treasury Department data on this subject, thus providing a measure of the degree to which respondents' perceptions accurately reflected reality. Responses on the effectiveness of the legislation provided data on the extent to which respondents believed the laws were deliberately weakened as drafted and, if so, why.

Congressional hearings, records and other documents available were examined for indications of influences during the developmental processes of the legislation. That is to say, the records were studied in order to determine the specific impact of expert testimony on the formulation of the legislation. Naturally as the bill proceeds through the torturous process of committee debate, review, congressional conference presentation, and preparation for floor debate in both houses as well as its circulation through the departments of the government with responsibility for its enforcement with enactment, it often undergoes a profound metamorphosis. Consequently, it was important to get a good overview of the thinking and input

of respondents before a piece of legislation began its way through the Congressional crunch.

Limitations

Several limitations may be anticipated and must be seen as unavoidable in research which relies on retrospective material:

1. Subjects may have forgotten or may unintentionally distort their accounts of the past due to poor memory or changing perceptions of past reality.

2. Subjects may intentionally distort their accounts of the past due to fear of being honest with the interviewer. This is especially applicable in studies of a personal and sensitive nature where the material to be covered may bring up painful, unresolved, or uncomfortable memories and feelings.

3. As Webb and his colleagues have noted, something is bound to be lost in the transcription of the spoken word to the printed page: Inflections, facial expressions, and a host of other non-verbal communications cannot be communicated to the reader through the written word. Necessarily, the researcher received some information which, although it may have influenced his thinking, cannot be documented in this study. (Webb, 1984: 44).

CHAPTER IV

RESPONSES AND ORIENTATIONS TOWARDS THE BANK SECRECY ACTS

Before examining the results of the survey instruments it would be helpful to analyze the demographics of the respondents so that their organization locations are clear. Respondent organizational affiliations may be expected to influence if not shape their attitudes and approaches to the legislation. A total of 46 respondents were interviewed, twenty-two of whom testified at the 1970 hearings and twenty-four of whom testified at the 1981 hearings. The twenty-two individuals involved in the 1970 hearings came from the following backgrounds:

Table 4.1

Organizational Affiliation	Position as of 1970
Law Enforcement	Assistant U.S. Attorney - Washington DC
Judiciary	Former U.S. District Judge
Law Enforcement	Assistant Attorney General
Banking and Finance	Former Bank President - New York
Other Government Agency	General Accounting Office - Investigator
Law Enforcement	Under Secretary of the Treasury
Law Enforcement	Assistant U.S. Attorney - Miami
Organized Crime	Organized Crime Informant - New York
Organized Crime	Organized Crime Informant - Miami
Organized Crime	Organized Crime Informant - Las Vegas
Former Bank Official	Convicted Bank official - Boston
Former Bank Official	Convicted Bank Official - New York

Law Enforcement	Internal Revenue Service Assistant Commissioner
Law Enforcement	Customs Service Assistant Commissioner
Law Enforcement	Assistant U.S. Attorney - New York
Banking and Finance	American Banking Association Official
Banking and Finance	President of Commercial Bank - New York
Law Enforcement	State Police Director - Florida
Academia	Law Professor
Banking and Finance	Vice President of Commercial Bank - New York
Banking and Finance	Former Bank Executive Officer - New York
Government Official	Federal Reserve Official - New York

The 24 individuals involved in the 1981 hearings came from the following areas:

Table 4.2

Organizational Affiliation	Position as of 1981
Law Enforcement	Assistant U.S. Attorney - New York
Law Enforcement	Director Drug Enforcement Administration
Law Enforcement	U.S. Attorney (Southern District New York)
Law Enforcement	U.S. Attorney (Eastern District New York)
Law Enforcment	Customs Service Assistant Commissioner
Law Enforcement	Internal Revenue Service Assistant Commissions
Law Enforcement	Assistant U.S. Attorney - Miami
Law Enforcment	Assistant U.S. Attorney - Newark
Law Enforcement	Under Secretary of the Treasury
Law Enforcement	Dade County Florida Police Official
Banking and Finance	American Banking Association Official
Banking and Finance	Vice President Dade County Chamber of Commerce

Banking and Finance	Bank President - Miami
Banking and Finance	Bank President - New York
Organized Crime	Organized Crime Informant - New York
Organized Crime	Organized Crime Informant - Atlantic City
Organized Crime	Organized Crime Informant - New York
Organized Crime	Organized Crime Informant - Miami
Former Bank Official	Convicted Bank Official - New York
Former Bank Official	Convicted Bank Official - New York
Former Bank Official	Convicted Bank Official - Boston
Judiciary	Former District Judge
Academia	Law Professor
Former Government Official	Former Federal Reserve Official

The respondents were divided into five groups as follows: law enforcement, bankers/businessmen, confidential informant/organized crime, confidential informant/banker, other interests.

The forty six individuals interviewed were selected for a number of reasons. First, they represent approximately 25% of the total number of witnesses who appeared before the congressional committees. Second, their backgrounds (Law Enforcement 18, Bankers/Businessmen 10, CI/OC 7, CI/Bankers 5, and Other Interests 6,) approximate the backgrounds of all those who testified. The only constraint on the selection of Law Enforcement, Bankers/Business or Other Interests selections was that approximately 20 witnesses have since died. The overall selection of subjects for these groups was made at random. For the two remaining groups of Confidential

Informant/Organized Crime and Confidential Informant/Bankers - (although the researcher had access to the original identities of these individuals) - many have since changed their names and residences. Therefore the 12 confidential informants interviewed were selected simply because their locations were known.

All the respondents were interviewed. During the interviews respondents completed a questionnaire and were invited to speak at length extemporaneously. All cooperated satisfactorily.

The interview and survey questionnaire is designed to gather information whether the subjects opposed or approved the Bank Secrecy Act and what impact their preference had in their estimation upon the final form of the Bill.

A proposal or a Bill becomes federal law in a protrated and uneven fashion. As shown in figure 4.1, the mechanics of how a bill becomes law involve the following:

Figure 4.1 HOW A BILL BECOMES LAW

SUBMISSION OF BILL
BY MEMBER OF CONGRESS
TO THE APPROPRIATE COMMITTEE

COMMITTEE HEARINGS ON THE
PROPOSED LEGISLATION

COMMITTEE MEMBERS VOTE ON BILL
IF THE MAJORITY APPROVE THE BILL MOVES ON
BEFORE THE FULL SENATE OR HOUSE

THE BILL IS DEBATED AND THEN
VOTED UPON BY THE SENATE OR HOUSE

IF THE BILL PASSES BOTH
CHAMBERS OF CONGRESS IN DIFFERENT
VERSIONS A CONGRESSIONAL CONFERENCE

COMMITTEE DRAWS UP AN ACCEPTABLE
MODIFIED FORM

CONGRESS APPROVES THE
COMPROMISED FORM AND
THE BILL IS SENT TO THE
PRESIDENT FOR HIS SIGNATURE.

From the data generated in the questionnaire, it seems that the impetus for the Acts came primarily from the Attorney General's office and those in the law enforcement community. Attorney General John Mitchell testified extensively prior to the passage of the 1970 Act. In 1981 Attorney General William French Smith testified in favor of the modified act. The input of banking groups and others affected by these laws were sought and furnished but many bankers interviewed felt their presentations carried less weight than did those of law enforcement. As one banker stated "It is difficult to argue excessive administrative costs versus the horrors of organized crime and narcotics (Personal Communication 2/5/87).

The history of the development and passage of these two laws shows a conflict between different interests - the banking industry on one side, and the law enforcement establishment on the other. While the banking community in general opposed the 1970 regulation, by 1981 it had come to accept the regulation and merely wanted to avoid the strengthening of its provisions. The banking community may be seen as attempting in each case to maintain the status quo, while the law enforcement community sought altered provisions for combating problems they perceived or anticipated as likely to occur.

Subjects Who Testified at the Hearings for the 1970 Bank Screcy Act

The extent to which the individuals who testified became involved in the 1970 hearings differed:

Table 4.3

ROLE IN CONGRESSIONAL HEARINGS FOR BANK SECRECY ACT 1970

	N	Law Enforce-ment	Bankers/ Business-men	CI/OC	CI/Bankers
Testi-fied Only	16	4	5	3	2
Testi-fied & Lobbied	4	3			
Testi-fied & Assisted Writing	2		1	1	
Total	22	8	6	3	2

Some law enforcement individuals were requested to submit a proposal for a bank secrecy law prior to the actual hearings. Since the bankers in general were opposed to a new law only one banker who testified submitted a draft for the new law. The Confidential Informants/Organized Crime Members (CI/OC) and the Confidential Informants/Bankers (CI/Bankers) testified concerning their activities with money laundering and the potential effects of the Act on

the control and containment of money laundering.

The Law Enforcement members interpreted their participation mostly as deeply involved, (which agrees with their actual participation in the hearings):

Table 4.4

EXTENT OF PARTICIPATION IN CONGRESSIONAL HEARING

1970 BANK SECRECY ACT

	N	Law Enforce-ment	Bankers/ Business-men	CI/OC	CI/Bankers
Deeply Involved (3)	12	7	3	1	1
Moderately Involved (2)	10	1	3	2	1
Slightly Involved (1)	0				
Total	22	8	6	3	2

The remainder of those answering the questionnaire divided equally on whether they were moderately or deeply involved. The Law Enforcement individuals were representing the position of their agencies which favored the legislation. Bankers divided only on how strongly they were opposed:

Table 4.5

ORGANIZATION ORIENTATION TOWARDS THE 1970 BANK SECRECY ACT

	N	Law Enforcement	Bankers/ Businessmen	CI/OC	CI/Bankers
Strongly in Favor (4)	9	8			1
Weakly in Favor (3)	5			2	1
Weakly Opposed (2)	5		3	1	
Strongly Opposed (1)	3		3		
Total	22	8	6	3	2

The money laundering issue was clearly of interest to the law enforcement officials, who sought a means for curbing and controlling the practice. For bankers, however, money laundering was not perceived as a major problem.

The bankers did see the pending legislation as an additional burden that would increase their paper work, recording and reporting activities. In addition the bankers viewed the bank secrecy act as a first encroachment on banking privacy to be followed by further legislation.

For the law enforcement officers, the approach to the legislation was factual, that is, the officers for the most part cited the dramatic increase of drugs and other organized crime activities. One officer stated "all I had to do was point out the 200% increase between 1960 and 1969" (Personal Communication, 3/10/87). Another officer said "the crime figures given put pressure on the lawmakers to pass a pro-law enforcement bill" (Personal Communication, 2/17/87).

Bankers, on the other hand, basically projected what additional administration tasks complying with the reporting requirements of the proposed Bank Secrecy Act would entail. Also, almost all the bankers were involved in making campaign contributions to members of the legislature in order to gain more sympathy for the banking industry's problems with the Bank Secrecy Act:

Table 4.6

CONGRESSIONAL LOBBYING TECHNIQUES, 1970 BANK SECRECY ACT

Lobby Technique	N	Law Enforcement	Bankers/ Businessmen	CI/OC	CI/Bankers
Campaign Contributions	4		3		
Factual Presentations	16	7	3	3	2
Voter Appeal	2	1			
Retain Counsel	0				
Total	22	8	6	3	2

One banker observed "I projected that the reporting requirements of the Bank Secrecy Act would amount to an expense of $800 million annually. Another banker stated he argued that the cost of compliance would bankrupt many marginal banks" (Personal Communication, 4/10/87).

Not supprisingly in general the bankers reported that their presentations had little or no effect on influencing whether a lawmaker voted for or against the Bank Secrecy Act of 1970. While some bankers thought that their presentations might have had some little effect, they felt in general that the efforts of their organizations, aside

from their testimony, had no impact. They believed that the committee and congress already had decided in favor of the act before the hearings took place. Law enforcement officers, interestingly, also felt that their organizations had little or no effect on the lawmaker's vote, but did think that their testimony made a moderate to large difference:

Table 4.7

PERCEPTIONS ON THE INFLUENCE OF TESTIMONY ON THE FINAL PASSAGE OF BANK SECRECY ACT - 1970

Lobby Perceptions	N	Law Enforcement	Bankers/ Businessmen	CI/OC	CI/Bankers
Large Extent (3)	4	4			
Moderate Extent (2)	9	4	2	2	
Small Extent (1)	9		4	1	2
Total	22	8	6	3	2

KEY

Large Extent - Influenced several congressmen.

Moderate Extent - Influenced some congressmen.

Small Extent - Did not influence congressmen.

This seems contradictory, but perhaps it is a matter of interpreting the questionnaire. The respondents may have separated their own inputs from what they thought was meant by effort on the part of their organizations. Generally, however, those who were in favor of the Act believed that they had influenced the passage of the Act, while those opposed felt that they had not exercised much influence.

It was generally believed by all respondents that law enforcement, and, particularly the participation of the Attorney General, had been primarily responsible for the passage of the Act. Only two of the law enforcement officers believed that the general public had demanded and pushed for passage of the Act. One noted that the public was demanding that congress pass any law to combat drugs (Personal Communication 7/15/87).

The bankers thought that law enforcement made the difference in the passage of the Act but some felt that their testimony had been effective in toning down legislation which seemed to them inevitable. A banker stated that his testimony about the additional administrative costs may have stopped even tighter regulations from being passed (Personal Communication 4/1/87).

From the beginning the three Confidential Informants/Organized Crime subjects believed it was the outcry against drugs by the public that led to the passage

of the 1970 law. One declared if drugs had not spread to middle class youth there would be no clamor for a Bank Secrecy Act (Personal Communication, 4/15/87). While the two Confidential Informants/Bankers stated it was the outcry against income tax skimming that provided the impetus for the legislation. One banker insisted the government is interested in policing the cash economy through money laundering laws. (Personal Communication, 5/10/87). It seems that the respondents answered the question as to what was most influential in this legislation according to what aspect of the debate was of direct interest to them. Law enforcement officers testified from the perspective of those who must deal with this problem of money laundering and created a case that the Act would help stymie violations of the law.

Ramifications of the Bank Secrecy Act of 1970

How were these various groups affected by the passage of the Bank Secrecy Act of 1970? Respondents answered according to their perceptions of how effective the Act had been since its passage. The consensus seemed to be that the Act had not been very effective in curbing the practice of money laundering.

Law enforcement officers were divided as to its degree of effectiveness - six of eight indicating that it had only a slight deterrent effort. By the questionnaire fixed

responses of slight/moderate/strong deterrent it was explained to the interviewees that slight deterrent referred to almost no deterrent. Moderate deterrent related to a deterrent to individuals outside of organized crime and finally strong deterrent referred to a deterrent to almost everyone. One officer stated "Even after the passage of the 1970 Bank Secrecy Act there were loopholes which allowed money laundering to take place with impunity or that the sanctions were to weak to deter those involved in money laundering from continuing the practice" (Personal Communication 5/20/87). By loopholes the respondent was referring to such manipulations as multiple same day deposits, and split deposits. One informant stated "money laundering is just too lucrative an activity to deter" (Personal Communication 3/8/87). Another stated that "because the public still perceived of money laundering as a strictly white collar crime, violators do not fear jail time. Even though potential penalties for money increased significantly to date few individuals have been sentenced to prison" (Personal Communication 5/20/87). Another said "We thought that the bank secrecy act was needed to combat traditional organized crime activities, but during the 70's it became more apparent that we needed an even stronger act to fight Columbian drug smugglers" (Personal Communications 4/25/87). The six Banker/Businessmen responded as follows: five believed the Act was no

deterrent to laundering money because the penalties did not correlate with the rewards. One stated that the administrative cost of complying with the Treasury Department's regulations was the only effect on business. The Confidential Informants in both categories also felt that the law had had no real effect, feeling that the passage of the law changed some minds concerning the Act, as was noted when respondents answered this question: "After the passage of the 1970 Bank Secrecy Act, did your organization's position to the Act change?" All of the bankers said that their organization's position was changed after passage of the Act. Another banker stated that "as the drug problem increased through the 1970's it became an almost indefensible position to be completely opposed to any money laundering law" (Personal Communication 6/15/87).

In view of the explosion of drug trafficking and the rise in money laundering of drug money, bankers could no longer publicly oppose some effort to frustrate the illegal trafficking. In general, law enforcement officers stated that they were in favor of the 1970 Act and remained in favor of it, advocating, if anything, a stronger law. Bankers, who were all opposed to the 1970 law, were no longer in opposition to that statute, feeling that the law for all intents and purposes was not being strictly enforced. As on respondent stated "our bank believed the

1970 law would be an administrative nightmare" (Personal Communication 4/3/87). This was not the case because the reporting requirements were never truly implemented and by the late 1970's computerization in the industy allowed for an easier tracking and reporting system for the complying banks. Thus, their worst fears about what would happen if the law was passed did not come to fruition.

The respondents were asked to rank a list of crimes in order of gravity. The question was asked because it would reveal the severity of the crime of money laundering activities. The results can be seen in the following:

Table 4.8

ORDER OF THE SEVERITY OF CRIMES

(1 - Most severe to 8 - Least severe)

	Total Sample	Law Enforcement	Bankers/ Businessmen	CI/OC	CI/Bankers
Homicide in Commission of a Crime	1.0	1.0	1.0	1.0	1.0
Rape of Stranger	2.7	2.5	2.0	2.0	2.0
Selling 1 Kilo of Cocaine	3.4	3.0	4.2	3.7	3.5
Burglary (Day Residence)	4.1	6.3	3.1	3.3	3.6
Laundering $500,000 from an Organized Crime Activity	6.0	4.7	7.2	7.0	7.0
Selling Stolen Property	6.2	7.7	5.5	5.3	6.0
Purse Snatch ($100)	6.2	7.0	5.2	6.4	5.5
Unreported Income to IRS ($100,000)		4.7	7.8	7.7	7.3

Overall, the law enforcement officers and others ranked money laundering as a much more serious crime that did the Bankers/Businessmen or Confidential Informants groups. This is clearly in keeping with the stands they took on this legislation. One banker stated "The drug trade does not exist because of money laundering violations of the Bank Secrecy Act but because of the heavy demand of the American public" (Personal Communication 7/8/87). A confidential informant said "The crime of money laundering may expedite drug deals but it is regarded as a non-violent by the general public" (Personal Communication 7/22/87). One law enforcement respondent stated "that money laundering was such a vital part of the drug trade that without it, importations of narcotics in the United States would virtually stop" (Personal Communication 7/16/87). Since cocaine and heroin and most marijuana must be imported into the U.S. the proceeds from the domestic sale of these drugs are returned to support further production. If the outflow of narcotic money could be stopped at the borders this would certainly hamper overseas growth of narcotics. By contrast, a banker noted that "money laundering activities can be viewed almost as a way in which so called white collar workers can charge drug smugglers for their services" (Personal Communication 3/10/87). In other words, it was the banker's opinion that the drug trade would continue unabated whether the foreign

drug dealer utilized American banks for laundering their money or simply never bothered to disguise their income.

Therefore, by assisting them in laundering the money for the standard 3% commission the drug dealers receive less of a profit. This of course was the opinion of only one banker.

Testimony at Hearings, 1981 Bank Secrecy Act

The lack of enforcement and other concerns over the general weaknesses of the 1970 Act led to the creation of the 1981 Act. Respondents were asked what changes they had sought leading to the 1981 Act. Those advocating the law were interested in a stronger and more comprehensive law, while those opposed to the 1970 law were content and were not pushing for a roll-back of the legislation. Seven of the eight law enforcement officers thought stronger civil and criminal sanctions than the penalties already spelled out in the law were needed. A law enforcement official believed that more resources for enforcing the law were required. A law enforcement respondent indicated that "mandatory prison terms should be required for offenders because in many cases the drug king pins cannot be implicated" (Personal Communication 6/10/87). None of the six bankers desired any changes at all because, being opposed to the law, they were satisfied that it was

ineffective in any case, and thus harmless. One banker said "There are too many banks and too much money flowing in and out of the country to attempt to police money laundering (Personal Communication 5/10/87). Another banker argued that the 1970 Act was not properly enforced and the bankers feel a revised Act might have enforcement "teeth." By not properly enforcing the law, the banker meant that sufficient resources were not provided to the Treasury Department to carry out an adequate enforcement mission, as may be seen in Table 4.9:

TABLE 4.9

ENFORCEMENT RESOURCE ALLOCATION

BANK SECRECY ACT U.S. CUSTOMS SERVICE

YEAR	OPERATIONS BUDGET	% OF BUDGET ALLOCATED FOR ENFORCEMENT OF THE BANK SECRECY ACT	MAN YEARS EXPENDED ON ENFORCING THE ACT
'70	$420,000 Mill.	0	0
'71	$442,000 Mill.	0.8%	80
'72	$455,000 Mill.	0.9%	90
'73	$486,000 Mill.	1.0%	110
'74	$540,000 Mill.	1.1%	118
'75	$564,000 Mill.	1.1%	120
'76	$586,000 Mill.	1.1%	119
'77	$625,000 Mill.	1.2%	128
'78	$656,000 Mill.	1.2%	130
'79	$692,000 Mill.	1.2%	130
'80	$738,000 Mill.	1.3	140
'81	$810,000 Mill.	1.3	140
'82	$894,000 Mill.	1.3	150
'83	$972,000 Mill.	1.4	168
'84	$1,120,000 Mill.	1.4	174
'85	$1,214,000 Mill.	1.6	224

SOURCE:

U.S. Customs Service Operations Budget 251 (1986)

The Congressional Hearings for the Bank Secrecy Act of 1981 enabled these groups and organizations to advocate their positions once more and perhaps to effect some changes in the law.

The degree of involvement in these hearings was not significantly different from that in the first for any group:

Table 4.10

EXTENT OF PARTICIPATION IN THE CONGRESSIONAL HEARING'S 1981 BANK SECRECY ACT

	N	Law Enforce-ment	Bankers/ Business-men	CI/OC	CI/Bankers
Deeply Involved (full time)	9	8	1		
Moderately Involved (part time)	9	2	2	2	2
Slightly Involved (testified only)	6		1	2	1
Total	24	10	4	4	3

Of the ten law enforcement officers questioned, there was greater lobbying indicated, since eight of the ten testified and lobbied, while only two confined themselves to testifying. By lobbying it was explained by the law enforcement respondents that they acted in a concerted and co-ordinated effort in explaining to the lawmakers the importance of passing the legislation. It does not mean they contributed money or organized a national campaign to pass the law. Three of the four bankers only testified. The law enforcement group felt that its participation showed deep involvement, while in the main, the bankers and other groups responded that they were only slightly to moderately involved:

Table 4.11

ORGANIZATIONAL POSITION AND ATTITUDES OF PARTICIPATION IN HEARINGS FOR THE 1981 BANK SECRECY ACT

Participate Attitudes	N	Law Enforcement	Bankers/ Businessmen	CI/OC	CI/Bankers
(1) Strongly in Favor	11	10			1
(2) Weakly in Favor	5			2	2
(3) Weakly Opposed	6		2	2	
(4) Strongly Opposed	2		2		
Total	24	10	4	4	3

(1) Organization allocates significant resources.

(2) Organization allocates little resources.

(3) Organization allocates little resources.

(4) Organization allocates significant resources.

The data showed Law Enforcement to be favorable to the 1981 Act.

In response to the question "To what extent did your testimony influence the final passage of the '81 Act?" Law enforcement respondents believed their testimony had a significant influence while Bankers again perceived their testimony as effecting the passage of the Act only to a small or moderate extent. Again, as with the 1970 Act, those in favor believed that they had influenced its passage:

Table 4.12

PERCEIVED INFLUENCE OF TESTIMONY ON THE FINAL PASSAGE OF THE 1981 BANK SECRECY ACT

Perceived Influence	N	Law Enforcement	Bankers/ Businessmen	CI/OC	CI/Bankers
Significant	10	8		1	1
Moderately Significant	9	2	2	2	2
Not Significant	5		2	1	
Total	24	10	4	4	3

KEY

Large Extent - Influenced several congressmen.

Moderate Extent - Influenced some congressmen.

Small Extent -Did not influence congressmen.

Of the group and/or factors that led to the passage of the 1981 Bank Secrecy Act, the law enforcement respondents were split along jurisdictional lines, the seven federal officers believed that their own law enforcement community was primarily responsible for the passage of the Act. The three state or local officers indicated that it was the general public that pushed for its passage. One law enforcement officer said "The 1970 passage of the Bank Secrecy Act was the turning point away from the liberal laws and decisions that dominated criminal justice in the 1960's" (Personal Communications 3/8/87). Of the four Banker/Business two stated that it was the influence of the Justice Department, and two believed it was the pressure of law enforcement testimony which led to passage of the Act. One banker added "The Justice Department framed the voting of the Bill to be a referendum that law enforcement timed right before the 1970 congressional election" (Personal Communication 8/2/87).

However, the remaining categories of subjects had a different view and believed that the factors leading to the passage of the act were related to the drug trade. All four of the Confidential Informants/organized Crime

subjects believed it was the blatant money laundering conducted in the drug trade that led to passage of the Act. One Confidential Informant said "The Columbian drug trade corrupted too many bankers" (Personal Communication 6/4/87). Another Organized Crime Informant stated "Too much again, as with the money, was leaving the country for Latin America" (Personal Communication 7/8/87). The three Confidential Informant/Bankers believed it was the greedy money laundering by the South Florida bankers that really pushed the 1981 law. One informant banker reported to the researcher that "Over 4,000 new banks opened in the state of Florida during the 1970's" (Personal Communication 8/10/87). Of the three individuals from other fields, two believed it was the increase in the Latin American cocaine connection, and one felt it was the influence of the Attorney General's office. One stated "Cocaine was coming in, cash was going out, the government could not stop the coke from coming so they tried to stop the cash from leaving" (Personal Communication 8/16/87).

The respondents who participated in the 1981 hearings were also asked to rank a list of crimes according to seriousness, and again Law Enforcement and Other Interests ranked money laundering as a more serious crime than did subjects in the other categories:

Table 4.13

BANKING THE SEVERITY OF CRIMES

(1 - Most Severe to 8 - Least Severe)

Type of Crime	Total Sample	Law Enforcement	Bankers/ Businessmen	CI/OC	CI/Bankers
Homicide in Commission of a Crime	1.0	1.0	1.0	1.0	1.0
Rape of Stranger	2.0	2.4	2.0	2.0	2.0
Selling 1 Kilo of Cocaine	3.2	2.6	4.2	2.7	3.7
Burglary (Day Residence)	4.5	6.2	4.0	4.0	3.3
Laundering $500,000 from an Organized Crime Activity	5.5	4.1	6.1	6.0	7.0
Selling Stolen Property	5.8	7.5	5.2	5.0	5.8
Purse Snatch ($100)	6.4	6.8	6.2	6.6	7.3
Unreported Income to IRS ($100,000)	7.3	5.2	8.0	7.8	8.0

Law Enforcement also once more found money laundering to be a serious threat to our society, while the Bankers predictably did not.

Effectiveness of the Acts

Law enforcement officers recognized that the Bank Secrecy Act of 1970 was not being enforced as they thought it should have been when they testified for its passage. One officer reported "We had the law but Customs didn't have the manpower to enforce it" (Personal Communication 6/20/87). They remarked that manpower resources were not sufficient for the law to be fully implemented. One subject mentioned the negative influence of interagency rivalries as a brake on enforcement. By interagency rivalries it must be remembered that several law enforcement groups are mandated by congress to combat the narcotics trade. In 1972 Congress created a new agency to stem the tide of drugs, this was the Drug Enforcement Agency (DEA) which was placed under the Department of Justice. Prior to the creation of the D.E.A. the Customs Service which is under the Department of Treasury was the lead agency in fighting narcotics. As a result of the new D.E.A. competing with the Customs Service for limited resources, a rivalry developed. The 1970 Bank Secrecy Act mandated the Customs Service to administer and enforce the Bank Secrecy Act. As one law enforcement respondent stated

the customs service was loathe to share the information they collected with other agencies particularly the DEA" (Personal Interview 8/21/87). Subjects from other groups, in the open-ended question responded that the law was not being comprehensively implemented by the Treasury Department once it was passed.

The reason for the problems in the administration of the law are twofold. First, in the early 1970's the Customs Service did not have the manpower in the inspection branch to investigate outgoing passengers for money and did not have the computer resources to properly monitor the outlflow of money from the United States. Second, the Bank Secrecy Act required extensive reports from banks. As a result, the Treasury Department had to monitor the self reporting of over 40,000 financial institutions. In fact it took several years before the Treasury could organize a program of accountability for accurate timely reporting. As one subject stated "For all intents and purposes by the Treasury Department could not enforce the law for several years" (Personal Communication 4/5/87). Prior to 1981 Law Enforcement the 1970 Act, they felt a stronger law was needed. All other respondents who testified previous to the 1981 Act indicated that the 1970 Act was ineffective as a deterrent to money laundering. As a respondent stated "The criminal penalties were not strong enough to be a real deterrent" (Personal Communication 8/4/87). The 1981 Act

was intended to correct loopholes in the 1970 act and establish more severe criminal and civil sanctions. The loopholes that were closed included repetitive daily deposits of slightly less than $10,000.

As noted in Appendix E the penalty for criminal violation of the 1970 Bank Secrecy Act was a fine not to exceed $50,000 and up to 2 years imprisonment. The 1981 Bank Secrecy Act increased the sanctions to $250,000 and up to 5 years imprisonment. Except for the sanctions the Bank Secrecy Act of 1970 remained essentially the same law after revision in 1981 as one can observe by comparing the laws, (1970 Appendix F, 1981 Appendix G).

Regarding the 1970 Act, the majority of respondents nineteen of twenty-two felt the Act was "Not At All Closely Enforced" regarding the 1981 Act between "Moderately Closely Enforced" and "Not At All Closely Enforced". Law Enforcement felt that the 1981 Act was implemented only moderately closely (4) or not at all closely (4), and the other respondents likewise gave the program no higher than a moderate rating. Law enforcement subjects again stated that they believed there were not enough resources allocated for the law's proper implementation action. By resources one respondent stated "We need more inspectors and agents to police the Act" (Personal Communication 7/8/87). The Bankers/Businessmen subjects said that although the law was being implemented much more

effectively than the 1970 law, there were still implemented. Overall, respondents were roughly split over the many loopholes such as no checks on numerous repetitive deposits of less than $10,000 which prevented the Act from having its intended effect on money laundering. However, the Law Enforcement respondents also indicated satisfaction with the passage of the 1981 Act, but favored a still stronger law. Bankers interviewed stated that they opposed the 1981 law because there were excessive costs for them in complying with the reporting reuirements. One banker stated "We had to put in a new computer system costing over $1 million to accomodate the Treasury Department's requirements under the Bank Secrecy Act" (Personal Communication 8/8/87).

In 1981, the civil and criminal penalties for violation of the Bank Secrecy Act were expanded and enhanced.

TABLE 4.14

	Civil Penalty	Criminal Penalty
1970	$ 25,000	$50,00 fine and two year imprisonment
1981	$ 100,000	$250,000 fine and five year imprisonment

Analysis

The basic players in both the 1970 Act and the 1981 Act were the same, and the issues remained essentially the

same as well. The groups involved in presenting testimony were from Law Enforcement, Banking, and related fields, as well as Confidential Informants involved in the criminal activity at some time previously.

The perception of the problem also remained essentially the same for all groups concerned. Law Enforcement felt in 1970 that money laundering was a major crime and a major problem for society, and this remained the case at the time of the 1981 Act. After the passage of each of these Acts, Law Enforcement respondents indicated that further legal action would be necessary because neither act had allocated sufficient resources to combat the problem.

Bankers opposed the legislation in both cases, feeling that money laundering was not a major crime or a major societal problem. They lost the fight in both cases. After passage of the Acts, Bankers perceived that the law was not being enforced assiduously, though there were costs to the Bankers in complying with reporting requirements.

In both instances, the perception as to why the laws were asked for and passed was essentially the same. That is, it was felt by some that the public had called for such legislation, but most of the respondents felt that Law Enforcement, and specifically the Attorney General's office were the powers which saw to it that the legislation was passed.

The involvement of the public in this issue seems to have been minimal. It is certainly possible that the law enforcement officers and the Attorney General were responding to public concern about drugs and money laundering, as some of the respondents believed. However, when the legislation was drafted and set in motion through the system the participation of the public was not great and certainly did not appear to be the deciding factor in getting the legislation passed.

This case seems to fit the dialectic theory of lawmaking put forth by Chambliss and Seidman (1971, p. 144). For them people, not systems, societies, or the legal order, but people make laws, people acting in the face of limited resources and contraints.

The conflict between the bankers and the law enforcement officials before the committee considering this legislation creates a tension that produced compromise legislation that answers some but not all of the problems that prompted the creation of the legislation in the first place. While bankers felt they had little impact they also stated that they had managed nonetheless to reduce the onerousness of some provisions that had been in the original law. This contradicts their statements that they wanted no legislation at all. When the legislation passed, they thought it was ineffective. In fact, they had actually been effective to a certain degree in softening

and weakening the law just as the law enforcement officers had been effective to a certain extent in getting the legislation shaped around the issues they agreed were dangerous to society if nothing was done. The law enforcement officers were not fully successful, which is why there perceived, they had problems with subsequent enforcement efforts.

This analysis suggests that a conflict approach, modified as Chambliss and Seidman have urged, into a dialectical conflict perspective where the production of legislation is perceived as a response to certain problems, perceptions, and actions which best captures the dynamics of the process. The pluralist perspective seems theoretically inadequate in explaining what happened with the creation of the Bank Secrecy Acts. Aroused public interest may have given impetus to efforts by the Attorney General and others, but the public appears to have had little say in the creation or imposition of these laws.

Indeed, the public interest that was engendered, as was indicated by several respondents, was not over money laundering as such, but was rather concerned with those anti-social behaviors which lead to money laundering, such as the sale of drugs. The public has an interest in the problem of drugs because it understands what that problem entails -- smuggling, the sale of chemicals, health problems fatalities for those who use drugs. Further, the

spillover effects are clear as well: the public understands such issues as the increase in other crimes as a consequence of addiction.

Money laundering as a crime however, is more exotic and abstract. The people understand what the term means, but have only vague impressions about its mechanisms. Those details require more expert understanding which law enforcement officers and bankers presumably possess. These professionals respond to public concerns, but the expertise required is more than the general public as such can command.

The history of the legislative response to this problem shows that the perceptions of the respondents depended on what they felt the legislation will mean for them. Bankers were somewhat content with the passage of the Acts not because they favored the legislation, but because they saw the legislation as ineffective.

The formulation of this legislation reveals a lack of a pluralist consensus. There was a clear conflict between the two groups: the bankers focused on the added clerical tasks the legislation would mean; the law enforcement officials supported the legislation because it offered another asset in their struggle to cope with organized crime.

CHAPTER V

Conclusions

Before examining for the fit between the findings and the theories, it might be well to remember the cautionary warnings of Chambliss and Seidman (1971). They write: Understanding consists of dividing the world into abstract units which we then use to order our observations. Too early, however, we become enamoured of our observations and reify them. "Society" -- an observation of some use in helping us understand what is going on -- has become an entity for many otherwise perfectly intelligent social scientists. When this happens we cease asking the right questions and become mired in abstract disputes rather than carrying on with the sine qua non of social scientific inquiry: the description and explanation of social realty (p. 202).

Chambliss and Seidman take their warning against the reification of social processes and social interaction quite seriously. One suspects that their advocacy of the dialectical theory to explain the complex relationships among law, power and the social order is rooted in their respect for historical detail and the inability of any theory, no matter how powerful or useful, to capture all the complexities of events as they occur. In this respect all theories, like all metaphors, limp, no matter how useful and indispensable they may seem to be.

No one, it seems, has been more eloquent on the subject of social theory than Max Weber (1949). He

referred to social theories and concepts as "ideal types," and wrote: It (the ideal type) is a conceptual construct, which is never historical reality. It is even less fitted to serve as a scheme under which the real situation or action is to be subsumed as one instance. It has the significance of a purely ideal limiting concept which the real situation or action is compared and surveyed for the explication of certain of its significant components (pps. 93-94).

According to Weber, the theory or the concept, once formulated, can be used again and again to take good measure of what is going on in the historical social context, and to refine both the concept. It is conceivable that we might want, in time, to discard a particular concept or theory because its usefulness has been exhausted and other more powerful concepts have more explanatory value.

Lawmaking: Effectiveness

A good deal of light is shed upon the nature of lawmaking when it is judged in terms of its effectiveness. The question might be posed in this fashion: Did the law, in this case the two bank secrecy acts, have their intended effects? If the survey data and interviews are reliable, it must be said that the effects of the two acts were limited in so far as they became efficient tools in halting

money laundering. None of the respondents felt that the two acts were implemented "very closely." Just 3 out of 22 respondents, all bankers, perceived the 1970 act to be implemented "moderately closely." The 1981 act was perceived to be a more effective deterrent, in as much as 9 of 22 respondents, 4 bankers, 2 informants and 3 law enforcement officers were of the opinion that the act was implemented "moderately closely." Still, more than half of those interviewed thought the implementation of the 1981 act to be very weak -- followed through "not at all closely."

Several reasons were adduced to explain the rather weak follow-through on the legislation: there were just too many loopholes, even in the 1981 act, which was designed to close loopholes such as multiple daily deposits. In actuality loopholes were tightened but not eliminated. Second, the sanctions imposed for the laundering of money were just too weak to deter the practice in the opinion of some. Some respondents felt that the law was undercut by the lack of funding or by the less than enthusiastic political will of the Treasury Department to enforce the law vigorously.

Whatever the reasons for the absence of vigorous enforcement, it can be said that the two acts illustrate a fundamental feature of law making in a democratic forum. Lawmakers seldom, if ever, legislate for the sole purpose

of creating laws that are, on their own merits, effective instruments even when enforced vigorously. Some observers might, with good reason, object to this postulate on the grounds that ineffective lawmaking only creates disrespect and even contempt for the law. This might well be true, but the fact that weak legislation is enacted only serves to point out that there are factors other than mere effectiveness which influences the passage of particular laws.

What were the factors which influenced the passage of the bank secrecy acts? Primary among them, to be sure, was the ascendency of the issue of drugs on the political agenda. During the 1960s the consumption of drugs increased significantly and became a symbol of defiance of the younger (and middle-class generation). Even when the political turmoil of the late 1960s and early 1970s died down, the consumption of drugs and smuggling activities were widespread. Cocaine was touted in some circles as the drug of preference for upscale and ambitious segments of the population.

Yet another factor which influenced national legislation on drugs was the strong association in the minds of many government officials and citizens between the consumption of drugs and the commission of crimes. Criminals were using drugs before commiting crimes and they were engaged in crime to pay for drug habits. The issue of

money laundering, if it is to be seen in perspective, must be placed in the context of these broader social and cultural issues. Finally, the salience of the anti-drug platform in political campaigns cannot be denied. Individual politicians could take a strong stand on drugs without alienating prominent and influential segments of the voters. Adopting a strong anti-drug posture gave to office-seekers the opportunity to present themselves as defenders of the moral fabric of American political ideals and social values.

Perhaps the best example of employing lawmaking to develop a broad strategy for decreasing the supply and demand for drugs was the passage by Congress in 1981 of the amendment that lifted the prohibition against using the military in domestic law enforcement (Time, June 23, 1986). The amendment to the act enabled the military to track suspected smugglers as they approached this country by sea or air, and alert the Coast Guard and other law enforcement agencies, including the Drug Enforcement Agency, for further investigation of incoming traffic. Interestingly, the Secretary of Defense was strongly opposed to the measure on the grounds that it would seriously threaten the defense posture of the armed forces of the country. The situation is somewhat analogous to that of the secrecy measures; the bankers, for financial and philosphical reasons, felt that the anti-drug measures, however,

laudable in principle, would only complicate affairs. The passage of the posse comitatus amendment (enacted in the same year as the second secrecy act) illuminates the extent to which the whole issue of drugs had captured the political imagination of many politicians and citizens.

In considering the effectiveness of the law, especially its enforcement, one must consider the possibility that individual laws, which together serve a larger purpose, might limit the degree to which they might be enforced. The "war on drugs" was a broad effort, supported by a variety of legislation, which if it was to be enforced, would require the expenditure of considerable funds. Officials from various programs dealing with a variety of drug-related problems competed for funding. After 1981, moreover, the Reagan administration was intent on cutting back the extent of government expenditures. Thus this overriding priority served to undermine the ability of the federal and local governments to enforce the secrecy acts. This assumes that the practice of money laundering has been perceived as a major crime, and as noted earlier, respondents in this study, with the exception of law enforcement officials, did not perceive this practice as a crime deserving the highest priority.

Lawmaking and the Competing Theories

It was noted above that social reality is simply too

complex to be captured by any one theory or body of concepts, no matter how elegant they might be in their expression or usefulness for analysis. We would not expect, then, that there is or should be a perfect fit between any one theory and the formulation of the two bank secrecy acts of 1970 and 1981. It is even possible that the formulation of the laws in question might not be very good tests of the three theories.

The ruling class theory, for example, would seem to be of limited value in explaining the bank secrecy acts. It might be claimed, in line with the theory, that the bankers and law enforcement officials represent the best interests of the ruling class, and note that the bankers were successful, through their testimony, in lobbying and participation in writing the acts, in toning down the language of the legislation, so that the emerging law was a weakened instrument for countering money laundering. It may be noted, too, that those in Congress would rarely pass laws which run counter to the interests of those dealing in capital. Finally, it might be claimed, in line with the theory, that the issues of drugs and money laundering would not have the salience they do if the middle and upper classes were not preoccupied with the welfare of their children.

Though some or all of these claims made in the name of ruling class theory might have some truth to them, it would

seem that the theory does not do justice to the social complexities involved in the writing of the secrecy laws. The bankers and the law enforcement officials tended to view the crime of money laundering from different perspectives: the bankers did not share the law enforcement's view of laundering with the same gravity. The twin issues of money laundering and drugs would also seem to have relevance as a moral issue challenging ethical sensibilities and a sense of order in society, threatened by the continued influx of drugs and the increased power of organized crime to launder funds and invest their monies in other enterprises. Also, one cannot ignore the legislators' objective of reelection and the drug issue as one way to effectively communicate with the electorate, or large segments of it. If when the issue of money laundering is viewed in the broader picture of the legislation against drugs, it is clear that there was considerable effort expended by the government to deal on many fronts with what was considered a significant social problem.

Chambliss and Seidman (1971), criticize ruling class theory on the grounds that it is tautological and sets out to prove a posteriori what is assumed a priori, namely the laws serve the best interests of ruling elites. This study and the interviews with the respondents does not come close at all in even suggesting that the basic assumption of

ruling class theory is correct in this case. It is perhaps asking too much to equate comparatively weak secrecy laws with the winning influence of bankers. Perhaps the formulation of the secrecy laws provides at best a weak test for ruling class theory.

Some of the evidence accumulated might well be used to some effect in support of the pluralist conception of lawmaking. The pluralist theory has gained considerable currency among U.S. political scientists, who have tended to view the policy in democracies as organized into competing interests who seek to influence the formulation of policy and laws. Also, some political scientists, have sharply criticized American acceptance of the pluralist ideal for what they see and interpret as its crippling effect on effective government (Dahl, 1970). Whether the pluralist ideal is viewed favorably or not or simply as a useful tool in analyzing political and social realities, there is little doubt that it is a most influential construct, guiding and justifying both political behavior and political theory.

Information from the interviews offers some support of the pluralist thesis. There was a difference of opinion among the law enforcement officials and the representatives of the banks. Before the enactment of both secrecy measures their objectives were different: for the one group a tough law which would provide effective enforcement

of anti-laundering activitites, and for the other group no law at all (1970 or one that did not greatly increase bank participation and costs 1981) would serve their purposes. Both the bankers and the enforcement officials, moreover, lobbied to have their views accepted and each party had a representative in the law writing group. Some bankers contributed funds to important people in the Congress apparently in an effort to exercise some contraints.

Also important, from the perspective of the pluralist view, is that relatively few groups even expressed an interest in the secrecy measures. The general public did not participate in any notable fashion, perhaps because the legislation was just too technical for ready understanding. Other pending legislation dealing with other aspects of the government's anti-drug efforts might more readily capture the public's imagination and interest.

Also instrumental in the formulation of the secrecy laws, in the view of some respondents, was the vigorous participation and influence of the office of the Attorney General, which desired some form of legislation to counter laundering practices. The Attorney General's office might be considered as a third party representing its own special interests within the law enforcement community, which might not necessarily coincide exactly with other enforcement agencies dealing with the twin problems of drugs and money laundering. The Attorney General is not only the chief law

enforcement officer in the country but also generally acknowledged to be the most politicized law enforcement position.

Pluralist theory makes allowance for special interest groups to approach legislators and others in government to seek a favorable hearing that just might influence the formulation of policy and law. It is interesting to note in this regard that several respondents in the study were of the opinion that they had some say in the final formulation of the secrecy laws. Whether or not this was in fact the case for any or all those claiming some influence, it appears that participation in hearings before legislative committees entails the notion that competing interest groups can put their best case before the responsible lawmaker. This means that the pluralist theory gains validity in the organization of legislative processes within the government which is structured to accommodate interest group pressures and inputs. In other words, the government's organizational structure, at least its law making apparatus, not only acknowledges but invites interest group activities. And that virtually excludes the unorganized public from a voice in law making.

The review of the testimony of the respondents indicates that the lawmakers sought to address the issue in a technical and administrative framework, while law enforcment sought to tie the issue of laundering money to

the broader issues of deterring crime and drug trafficking -- both of which have more extensive social and ethical dimensions.

In itself, this study does not have the broad scope required to fully test the pluralist understanding of the secrecy acts. But there are indications from the interviews with informants and from the very outcome of legislation regarding secrecy and laundering that the pluralist perspective has merit and might be explored even further.

Chambliss and Seidman (1971), are as critical of pluralist theory as they are of the ruling class theory, in so far as both assume a broad a priori principle and then marshall the evidence used to support a concept of lawmaking in which consensus is the norm and the more powerful interests will have the major influence in the final outcome of legislation. It would seem possible to dispute these authors on this score, especially if one adopts, as do Chambliss and Seidman (1971), an approach which looks in detail at the social and political circumstances surrounding a particular lawmaking issue, such as bank secrecy.

It would seem that the pluralist perspective on this issue could deal well with the contradictions of the lawmaking process, a prominent feature of the Chambliss and Seidman (1971), model. The very notion of pluralist

advocacy and compromise would suggest that contradictions are likely in lawmaking, a fundamental contradiction being that between the effectiveness of law and the need of accommodate various points of view in the text of the law.

Chambliss and Seidman's (1971), dialectical theory can be applied with some profit to the formulation of the secrecy acts. These authors find difficulties with the "grand theories" of social dynamics of lawmaking. Rather than view lawmaking in broad theoretical perspective, they prefer to focus intently on the details of the process by which laws are formulated. One might describe their general approach as phenomenological.

Chambliss and Seidman (1971), however, do have a theoretical framework in which to place their observations of the actual dynamics of lawmaking. Their dialectical perspective assumes that any society will have fundamental contradictions that will be expressed in the ideals and behavior of various segments of society. For example, the values and interests of capitalist entrepreneurs will often conflict with the values and interests of the working classes; or women, who wish to be able to function on the basis of equality with men, will find themselves at odds and in conflict with a variety of male-dominated institutions, including legislative bodies, the courts, the churches, universities and industrial and commercial firms. It is the view of Chambliss and Seidman (1971) that the

state is the arbiter of social contradiction and conflicts and that lawmaking can be understood best in terms of attempts by legislative bodies to resolve conflicts. Furthermore, these theorists do not see lawmaking as furnishing the mechanism for the final resolution of conflicts. Laws contain their own ambiguities and uncertainties that lead to further contradictions and still other attempts to resolve them.

Various features of the formulation and enforcement of the bank secrecy acts can be interpreted with profit using the dialectical model of lawmaking. The whole issue of money laundering comes before Congress in 1970 because there is a basic contradiction between the attempts to suppress the activities of organized crime and drug trafficking and the ease with which those who violate the law can distribute and make further use of their illicitly gained profits. Once the issue of money laundering comes before legislative committees we find, according to the respondents in this study, a basic conflict between the bankers, sensitive to the issue of their costs should pending legislation be enacted, and law enforcement officials, very conscious of the manner in which the actual practice of laundering money undermines enforcement activities. In the course of the legislative process, the lawmakers compromise so that neither the law enforcement agencies nor the bankers have a piece of legislation that

wholly satisfies either interest. In the decade after the passage of the 1970 secrecy law, it is apparent that there are loopholes in the law which criminals can use to continue their practices. Also, the sanctions are such that they do not effectively deter. In an effort to resolve these problems, hearings are held to amend the secrecy act in order to make it more effective. But the 1981 secrecy act, as judged by the respondents in this study, is at best moderately effective and conflicts remain.

There is another basic conflict which characterizes attempts to curb money laundering, and that is the tension between the law and the existence of resources to implement it. Within the government itself, particularly after the 1981 law, various anti-crime and anti-drug measures were competing with one another for funding, and competing too, with the budget priorities of the Reagan administration. It can be seen that there are contradictions and conflicts in governmental policy that affect the law's implementation.

There is, then, a good deal to recommend the dialectical perspective in understanding the formulation and implementation of the bank secrecy acts. Certainly, many of the respondents expressed an awareness of the contradictions in the lawmaking process and the secrecy laws themselves. In 1981, the bankers did not wish to

quibble with the law already on the books, for this piece of legislation had minimal impact on their concerns. The law enforcement respondents seemed quite aware that the law, imperfect as it was from their viewpoint, could not be effectively implemented without the funding to underwrite its complex and expensive investigative tasks.

The dialectical model of Chambliss and Seidman (1971), can be clearly demarcated from the "grand" ruling class and pluralistic theories. But one wonders if this is so. It would seem that the dialectical model and its methods of investigation could be accommodated quite well by the other two theores. Earlier, it was noted that there is much in the pluralistic perspective which can be applied to a profitable study of the formulation and enforcement of the bank secrecy acts. There would seem to be no inherent logical reason why the notion of contradiction cannot be accommodated within the pluralistic perspective if the individual theorist chooses to do so. The analysis of the bank secrecy acts in this study would indicate that both approaches have significant value in analyzing the legislative process. The one approach supplements that of the other.

The notion of contradiction can be accommodated within the pluralist perspective in this study by examining the fundamental contradiction between the business and the law enforcement segments of society. The data clearly show

their different values and interests. The legislative bodies attempt to resolve this conflict. In this case they passed the Bank Secrecy Acts of 1970 and 1981.

It would seem that Chambliss and Seidman (1971), are correct when they warn against applying the a priori principles of grand theory to the study of particular legislative processes and phenomena without analyzing in detail the patterns of social interaction that are very much a part of the lawmaking process. But it also appears that they go too far when they attack the usefulness of theories of large scope, which, after all, are idealing with social processes extending far beyond the arena of lawmaking. One might argue that the concept of dialectics is too narrow in focus to constitute a political theory, that captures both the social and ethical dimensions of life in the polity. Both the ruling class and the pluralist theories venture to make philosophical judgments about the ethical and the social dimensions of society and lawmaking. In itself, dialectical theory does not do this, intent as it is on examining the social processes and patterns as they appear to the investigator. The dialectical approach, on the other hand, could be used to enhance the quality of research in many political theories; for political theory, whatever its assumptions, must necessarily deal with the contradictions and conflicts that are part of any political system or process, including that

of lawmaking.

Lawmaking in a Critical Perspective

The study and interpretation of the formulation of the bank secrecy acts has focused mainly on the respondents' testimony in interviews. The study did not consider the lawmaking process directly, so to speak. At this point it might be beneficial to step back and consider the respondents and legislators in so far as they are all participants in the process and bring to committee hearings and the crafting of the law the assumptions they share about the processes they are involved in.

There is a small body of legal scholarship that in the past decade has gathered under the banner of "critical legal studies" in order to examine, as one theorist states, "the rich texture of moral values and ideological assumptions reflected in legal doctrine" (Fischl, 1987, p. 507). Critical theorists (Chambliss and Seidman, 1981), question the assumption that the courts of the land interpret the written law in a detached, rational and logical fashion. Rather, these theorists argue, that the body of law and individual laws are in essence indeterminate, that is, the law as written is quite capable of generating contradictory arguments in court, each having some merit and precedent which the judge must weigh. The judge's decision, in turn, will reflect his thinking on the

arguments presented, as well as some basic cultural and ethical assumptions not explicitly referred to in the decision that are simply taken-for-granted.

The critical perspective of court presentations and proceedings can be applied equally to the legislative process and the making of laws. Participants who testify pro and con on a piece of legislation, or lobby for or against its passage, or participate in the actual writing of the law enter into the process harboring certain unexpressed assumptions about the activities they are involved in. For the critical theorist it is important to study various facets of the legal process and make explicit those values and assumptions which make it possible for people to convene in courts or legislative bodies and perform their individual functions.

The critical perspective is not at all unique to the study of legal processes; it is applied to the study of all facets of social interaction and behavior in the various fields of the social sciences, especially in anthropology and sociology. There are at least two fundamental postulates (Chambliss and Seidman, 1971) of critical analysis: (1) social behavior is to be examined in terms of the meaning and significance which people attribute to their actions; and (2) the routine activities of social life and their significance are often taken for granted and go unnoticed by social factors in any given situation.

Weber (1949) clearly established the relationship between social behavior and the significance it has for people when he writes: The transcendental proposition of every cultural science lies not in our finding a certain culture or any culture in general to be valuable, but rather in the fact that we are cultural beings, endowed with the capacity and will to take a deliberate attitude towards the world and lend it significance (p. 81).

If we apply the critical perspective to the formulation of the bank secrecy acts, there is one feature of the legislative process that stands out -- a basic assumption on the part of the participants, at least a good many of them consulted in this study, that they would have some role to play in influencing the secrecy acts as these might be passed by the legislators. It might be said that the actions of the respondents demonstrate an implicit acceptance that the laws, as written, would reflect many viewpoints expressed during the hearings and in the sessions devoted to the actual writing of the legislation. Pluralism (as opposed to the political theory, accepted by participants in the legislative process) plays a very important role in so far as it ensures that the laws enacted will be compromises reflecting various views and priorities. With compromise there arise the contradictions examined earlier in the discussion of the dialectical approach. The pluralistic conception is made expressly

clear in the various activities associated with the enactment of the bank secrecy acts -- the testifying, lobbying, campaign contributions and the actual drafting of the legislation.

Critical study could be applied to examine the basic assumptions underlying the presentations of the bankers, the law enforcement officials and the informants, thus bringing into sharper view the manner in which values actually and specifically influenced the behavior of the participants in the process. It may be desirable to explore the basic assumptions which informed the participants' attitudes towards drugs and what values rendered anti-drug legislation of "moral-educative" importance, as one congressman has put it.

In sum, it can be said that the study, and the testimony of the respondents can be fruitfully analyzed from a number of theoretical perspectives together in order that we might better understand why the bank secrecy laws took the form they did and how they were enforced.

Recommendations for Further Study

The analysis suggests that the present study did not and could not explore the process by which the bank secrecy laws were enacted and enforced in all their richness and scope. The interviews with the informants did indicate that the dialectical and pluralistic perspectives can cast

the legislative process in a revealing light. The testimony, moreover, of the informants suggests that critical legal theory might profitably be employed to explore the role that cultural ideals and values underwrite in the legislative process.

The analysis does not convincingly indicate that ruling class theory has the explanatory power of other points of view. This theory simply places too much burden on elite power and influence to adequately explore the legislative process in all of it's complexity. The pluralistic theory and the dialectical approach would seem to be able to deal quite well with the influence of a social elite while taking account of other factors that might be equally important or even more important in producing legislative outcomes.

Another factor is that the gravity of crimes seems to be defined by the self interests of those with a stake in the control or containment of laws or with a relaxed or more benign enforcement attitude towards laws. Location in an organizational environment appears to effect perceptions of, and attitudes towards crime.

The study also suggests that some accommodation among the remaining theories or approaches might profitably be made to explore the full dimensions of the legislative process. Further studies would have to consider other dimensions of the legislative process not explored here,

most notably the interaction among the legislators and among those actually drafting the legislation.

In addition this study will foster and encourage further scrutiny of the Bank Secrecy Act from 1981 to the present. Reviews of this period suggest that there still exists many problems with the implementation and enforcement of the law. The U.S. Comptroller General Bank Secrecy Report of 1986 included a study of the effectiveness of the enforcement effort behind the Secrecy Act provisions. It found that the Treasury Department did not play an active role in administering the Act until 1985 when the Bank of Boston pled guilty to criminal violations under it's provisions. In 1985, as the revisions of the Act took hold, the number of civil penalties for compliance increased to seventy six, most resulting from "voluntary admissions of possible non compliance" by banks and other financial institutions. Eleven of the seventy six reviews initiated by Treasury resulted in fines totaling $5.1 million.

Until the revised Act, the potential of the Bank Secrecy Act to deter money laundering had not been fully realized. As the report revealed, the Treasury Department "lacks current and specific information" about the way the various reporting agencies are handling their duties and, therefore, it cannot even determine "the number of financial institutions examined or the number of violations

identified." (U.S. Comptroller-General, 1986, pps. 15-19).

The U.S. President's Commission on Organized Crime (1987) suggested, on the basis of the Bank Secrecy Act's ability to interfere with money laundering operations that similiar laws on the state level could do much to impede organized criminal operations. The laws would "reflect the critical need state law enforcement officials have for information contained in the currency transaction reports." As the Commission noted "this need can also be met by greater cooperation between state and federal officials" (p. 169).

This clearly shows that further study of the creation, implementation and compliance of the Bank Secrecy Act is needed.

APPENDIX A-32-25

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

REPORT OF INTERNATIONAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS

Form Approved OMB No. 1515-0079

Customs Use Only

Control No.

31 USC 1101, 31 CFR 103.23 and 103.25

Please Type or Print

This form is to be filed with the United States Customs Service

Privacy Act Notification on reverse

PART I - FOR INDIVIDUAL DEPARTING FROM OR ENTERING THE UNITED STATES

1. NAME (Last or family, first and middle)
2. IDENTIFYING NO. (See instructions)
3. DATE OF BIRTH (Mo./Day/Yr.)
4. PERMANENT ADDRESS IN UNITED STATES OR ABROAD
5. OF WHAT COUNTRY ARE YOU A CITIZEN/SUBJECT?
6. ADDRESS WHILE IN THE UNITED STATES
7. PASSPORT NO. & COUNTRY
8. U.S. VISA DATE
9. PLACE UNITED STATES VISA WAS ISSUED
10. IMMIGRATION ALIEN NO. (If any)
11. CURRENCY OR MONETARY INSTRUMENT WAS: (Complete 11A or 11B)

A. EXPORTED		B. IMPORTED	
Departed From: (City in U.S.)	Arrived At: (Foreign City/Country)	From: (Foreign City/Country)	At: (City in U.S.)

PART II - FOR PERSON SHIPPING, MAILING OR RECEIVING CURRENCY OR MONETARY INSTRUMENTS

12. NAME (Last or family, first and middle)
13. IDENTIFYING NO. (See instructions)
14. DATE OF BIRTH (Mo./Day/Yr.)
15. PERMANENT ADDRESS IN UNITED STATES OR ABROAD
16. OF WHAT COUNTRY ARE YOU A CITIZEN/SUBJECT?
17. ADDRESS WHILE IN THE UNITED STATES
18. PASSPORT NO. & COUNTRY
19. U.S. VISA DATE
20. PLACE UNITED STATES VISA WAS ISSUED
21. IMMIGRATION ALIEN NO. (If any)
22. CURRENCY OR MONETARY INSTRUMENTS DATE SHIPPED / DATE RECEIVED
23. CURRENCY OR MONETARY INSTRUMENTS — NAME AND ADDRESS
☐ Shipped To
☐ Received From
24. IF THE CURRENCY OR MONETARY INSTRUMENT WAS MAILED, SHIPPED, OR TRANSPORTED COMPLETE BLOCKS A AND B.
A. Method of Shipment (Auto, U.S. Mail, Public Carrier, etc.)
B. Name of Transporter/Carrier

PART III - CURRENCY AND MONETARY INSTRUMENT INFORMATION (SEE INSTRUCTIONS ON REVERSE) (To be completed by everyone)

25. TYPE AND AMOUNT OF CURRENCY/MONETARY INSTRUMENTS — Value in U.S. Dollars

Coins	☐ A.	▶$
Currency	☐ B.	▶
Other instruments (Specify Type)	☐ C.	▶
(Add lines A, B and C)	TOTAL AMOUNT	▶$

26. IF OTHER THAN U.S. CURRENCY IS INVOLVED, PLEASE COMPLETE BLOCKS A AND B. (SEE SPECIAL INSTRUCTIONS)
A. Currency Name
B. Country

PART IV - GENERAL - TO BE COMPLETED BY ALL TRAVELERS, SHIPPERS AND RECIPIENTS

27. WERE YOU ACTING AS AN AGENT, ATTORNEY OR IN CAPACITY FOR ANYONE IN THIS CURRENCY OR MONETARY INSTRUMENT ACTIVITY? (If "Yes" complete A, B and C) ☐ Yes ☐ No

	A. Name	B. Address	C. Business activity occupation or profession
PERSON IN WHOSE BEHALF YOU ARE ACTING	▶		

Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief it is true, correct and complete.

28. NAME AND TITLE
29. SIGNATURE
30. DATE

A-32-26

Form **4789**
Rev. Sept. 1980)
Department of the Treasury
Internal Revenue Service

Currency Transaction Report

File a separate report for each transaction
(Complete all applicable parts—see instructions)

Part I Identity of individual who conducted this transaction with the financial institution

Name (Last)	First	Middle initial	Social Security Number
Number and Street			Business, occupation, or profession
City	State	ZIP code	Country (if not U.S.)

Method of verifying identification:
☐ Driver's permit ..... (State) ..... (Number) ☐ Alien ID card ..... (Country) ..... (Number)
☐ Passport ..... (Country) ..... (Number) ☐ Other (specify) .....

Part II Individual or organization for whom this transaction was completed (Complete only if different from Part I)

Name			Identifying number
Number and Street			Business, occupation, or profession
City	State	ZIP code	Country (if not U.S.)

Part III Customer's account number

☐ Savings account ..... (Number) ☐ Share account ..... (Number) ☐ Safety deposit box ..... (Number)
☐ Checking account ..... (Number) ☐ Loan account ..... (Number) ☐ Other (specify) .....

Part IV Description of transaction. If more space is needed, attach a separate schedule and check this box ☐

1. Nature of transaction (check the applicable boxes)
☐ Deposit ☐ Withdrawal ☐ Check Cashed ☐ Check Purchased (See item 6) ☐ Currency Exchange ☐ Mail/Night Deposit ☐ Other (specify)

2. Total amount of currency transaction (in U.S. dollars)	3. Amount in denominations of $100 or higher	4. Date of transaction (Month, day, and year)

5. If other than U.S. currency is involved, please furnish the following information:

Currency name	Country	Total amount of each foreign currency (in U.S. dollars)

6. If a check was involved in this transaction, please furnish the following information (See instructions):

Date of check	Amount of check (in U.S. dollars)	Payee

Drawer of check	Drawee bank and City

Part V Financial institution reporting the financial transaction

Name and Address	Identifying number (EIN or SSN)
	Business activity

Sign here ▶ ..... (Authorized Signature) ..... (Title) ..... (Date)

INTERVIEW FORMAT

BANK SECRECY ACTS - THE CREATION OF LAW

This portion of the interview will concern the passage of the Bank Secrecy Acto of 1970.

1. How were you and your organization involved in the Congressional Hearings for the Bank Secrecy Act of 1970.

   1a. What was your role?

2. How would you describe the extent of your participation in the Congressional Hearings?

   Deeply Involved _____
   Moderately Involved _____
   Somewhat Involved _____
   Not Much Involved _____

3. What was your organization's position concerning the 1970 Bank Secrecy Act?

   Strongly in Favor _____
   Weakly in Favor _____
   Weakly Opposed _____
   Strongly Opposed _____

4. What did your group do to influence the legislature during the passage of the Bank Secrecy Act? Please be as specific as possible.

5. Which of the following lobbying techniques did your group employ?

   List:

6. What was your Congressional testimoney about?

7. How do you believe your group's efforts influenced the passage of the 1970 Bank Secrecy Act?

8. As you see it to what extend did your testimony influence the final passage of the Bank Secrecy Act?

To a Large Extent _____
To a Moderate Extent _____
To a Small Extent _____

9. More generally could you describe the group and/or the factors that you believe (were not significant) to the passage of the Bank Secrecy Act?

10. Which of the following techniques do you believe were the most effective in the passage of the Bank Secrecy Act?

11. Please identify the group that you believe was the most powerful in influencing the passage of the Bank Secrecy Act?

12. Concerning the passage of the Bank Secrecy Act on a scale of 1-5 (Strong to Weak) rate the importance of each of the following groups?

Banking Community _____
General Public _____
Treasury Dept. _____
I.R.S. _____
F.B.I. _____
Civil Liberations _____
Local Law Enforcement _____
Other _____ _____

(2) CIVIL PENALTIES

(a) Title 31 U.S.C. 1102(a) - Seizure/forfeiture of currency or monetary instruments: Any currency or other monetary instruments which are in the process of any transporation with respect to which any report required to be filed under 31 USC 1101(a) either has not been filed or contains material omissions or misstatements are subject to seizure and forfeiture to the United States.

(b) Title 31 U.S.C. 1103 - Civil liability - The Secretary may assess a civil penalty upon any person who fails to file any report required under 31 USC 1101, or who filed such a report containing any material omissions or misstatements. The amount of this penalty shall not exceed the amount of the monetary instruments with respect to whose transportation the report was required to be filed. The liabilities imposed are in addition to any other liabilities, civil or criminal, except that the liability under this section shall be reduced by any amount actually forfeited under 31 USC 1102.

(3) ADDITIONAL INFORMATION ON APPLICABLE LAWS

Additional information on currency and Customs laws can be found in Chapter 35 of this Handbook. To thoroughly understand the Act, Special Agents must read part 103 of title 31 of the Code of Federal Regulations. Laws and regulations dealing with currency violations are in a constant state of flux so Special Agents should consult the latest copy of the U.S. Code and Code of Federal Regulations before taking enforcement action.

(D) SEARCH WARRANT AUTHORITY

If there is reason to believe that currency or monetary instruments are in the process of transportation and a report required under 31 USC 1101 has not been filed or contains material omissions or misstatements, application may be made to any court of competent jurisidiction for a search warrant (31 USC 1105). Additional information on search warrants can be found in Chapter 42 of this Handbook. Appendix A-32-19 is an example of a currency search warrant and affidavit. A search exclusively for currency may also be conducted where exigent circumstances preclude the obtaining of a warrant, or where the subject consents to the search.

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