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Black/Parallel Markets: When is a Money Exchanger a Money Launderer?

Wilmer Parker, III

I. Introduction

In the late 1980s, the U.S. Department of Justice sought the forfeiture of funds that allegedly were derived from the sale of cocaine and then laundered and placed in domestic bank accounts. Throughout this litigation, the government was confronted by claimants protesting the restraint of "their" money, which they had acquired through money exchanges in a "black" or "parallel" market transaction. The insidious use of the "black" or "parallel" markets by narco-traffickers in their attempt to successfully launder drug proceeds constitutes the greatest subterfuge in their efforts to evade the law. The "black" or "parallel" markets developed as an alternative means of exchanging local currencies for U.S. dollars in those countries that engage in restrictive currency exchange policies, most of which are in Latin America. Those involved with these markets have not only facilitated the deposit of so-called "flight capital" into financial institutions within the United States, but have also been proven to have aided and abetted the laundering of millions of narco-dollars.

The use of parallel markets to facilitate the laundering of drug-tainted dollars effectively surfaces the drug proceeds from the underground economy into the economy of international business. This process is primarily enacted through a money exchanger and a drug money broker. As an example, a money exchanger may obtain pesos (or

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*B.S., M.B.A., J.D., University of Alabama; LLM (Taxation), Emory University; Assistant United States Attorney, Northern District of Georgia, Atlanta, Georgia. Portions of this Article were previously published. See Wilmer Parker, Money or Liberty? A Dilemma For Those Who Aid Money Launderers, 44 ALA. L. REV. 763 (1993). The opinions expressed herein are the author's and are not necessarily the opinions of the U.S. Department of Justice.


2. A noted expert in the field has described a "black" market as a currency market in a particular country, which is illegal under the laws of that country. A "parallel" market is one that is separate from the official currency market, but not illegal. See Robert Grosse, Colombia's Black Market In Foreign Exchange, 22 WORLD DEV. 1193, 1193 (1992). Often litigants cannot agree on whether a particular market is black, white, gray or something else. For purposes of this article, all unofficial channels will be referred to as the "parallel market.”

3. See supra parts II, III, IV.
any other currency) by selling drug dollars to customers who buy the dollars with the *pesos*.  

Whether the customers are seeking to convert their *pesos* to "flight capital" dollars or are merely obtaining dollars for commercial purposes, the customers request that the money exchanger transfer the dollars to U.S. bank accounts. With the customer's *pesos* the money exchangers "buy" the drug-tainted dollars from the drug money laundering broker and direct that the drug money broker wire-transfer the drug dollars to the customer's U.S. bank account. In exchange for the tainted dollars, the money exchanger transfers the *pesos* received from his customer to individuals and bank accounts identified by the drug money broker. The result is that drug-tainted money becomes located in accounts controlled by entities or individuals who most likely were not involved whatsoever in the distribution of the drugs or the exchange of drugs for money. As such, this money exchange creates a "layering process" that uses international commerce and parallel markets to "clean" the taint associated with drug money.

While money exchangers and drug money brokers may not have been involved with the distribution of drugs, they nevertheless are aiders and abettors in the laundering of millions of drug-dollars. Under the U.S.

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4. Typically, at this point, the dollars sold are not controlled by the money exchanger and have yet to be purchased by the exchanger who is purportedly selling them. Rather, the money exchanger is presenting dollars offered by a drug money laundering broker for the drug trafficker. The dollars, originally in the form of cash (bank notes), have through criminal laundering efforts been "placed" within the international banking system by being "deposited" into bank accounts resulting in a positive or "credit" balance. The accounts are usually opened in nominee names (often using foreign "shell" corporations that have no legitimate assets or activity). The subsequent transfer of dollars from one account to another constitutes in banking terms an "electronic funds transfer" or "wire transfer". Two noted investigations of drug money laundering brokers resulted in the identification of the involvement of the international banking system in facilitating the successful laundering of millions of narco-dollars. See United States v. Cuevas, 847 F.2d 1417 (9th Cir. 1988), cert. denied, 489 U.S. 1012 (1989) (involving the transportation of millions of drug dollars in cash from Los Angeles to London, depositing and wire transferring the monies from London to Miami bank accounts and elsewhere); United States v. Awan et al., 966 F.2d 1415 (11th Cir. 1992) (U.S. Customs' Operation C-Chase) (involving an undercover investigation of drug money laundering broker Gonzalo Mora, Jr. and his use of the Bank of Credit and Commerce International (BCCI) in facilitating the successful laundering of millions of dollars in drug proceeds using bank accounts in Tampa, Miami, London, Geneva and Luxembourg).

5. Flight capital refers to wealth transferred from one country to another by individuals for "different reasons including personal security (i.e., concerns over the lack of confidentiality of bank records which has led to violence, extortion and kidnapping) and preservation of wealth (due to the lack of stability of certain banking systems, high levels of devaluation of local currencies against the dollar, tax avoidance, and the perception of better investment opportunities available in the United States)." Alan S. Fine, Of Forfeiture, Facilitation and Foreign Innocent Owners; Is a Bank Account Containing Parallel Market Funds Fair Game, 16 NOVA L. REV. 1125, 1132 (1992).

6. Specifically, the money exchanger identifies the customer's bank account number.
Drug Abuse Prevention Act, one who "knowingly" aids and abets the laundering of drug proceeds is liable under the criminal laws of the United States, just as if one had conspired to distribute the controlled substance. This Act also provides for forfeiture of:

All monies, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all monies, negotiable instruments and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph to the extent of the interest of an owner by reason of any act or omission established by that owner to have been committed or omitted without the knowledge and consent of that owner.

Those involved in using parallel markets also may be found to have violated the Money Laundering Control Act of 1986 [hereinafter MLCA]. Under the MLCA, one who knows that property involved in a financial transaction represents proceeds of some form of unlawful

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10. 18 U.S.C. §§ 1956-1957 (1988 & Supp. 1993). In the Senate hearings debating the proposed money laundering legislation, the concept of a money exchanger being held criminally liable as a money launderer for activities involved in the business markets was recognized. The "knowing" scienter requirements are intended to be construed, like existing "knowing" scienter requirements, to include instances of "willful blindness". See United States v. Jewel, 532 F.2d 697 (9th Cir.), cert. denied 426 U.S. 951 (1976). Thus, a currency exchanger who participates in a transaction with a known drug dealer involving hundreds of thousands of dollars in cash and accepts a commission far above the market rate, could not escape conviction, from the first tier of the offense, simply by claiming that he did not know for sure that the currency involved in the transaction was derived from the crime. On the other hand, an automobile car dealer who sells a car at market rates to a person whom he merely suspects of involvement with crime, cannot be convicted of this offense in the absence of a showing that he knew something more about the transaction or the circumstances surrounding it. Similarly, the "intent to facilitate" language of the section is intended to encompass situations like those prosecuted under the aiding and abetting statute in which a defendant knowingly furnishes substantial assistance to a person whom her or she is aware will use that assistance to commit a crime. See, e.g., Backun v. United States, 112 F.2d 635 (4th Cir. 1940) (emphasis added).
activity, yet continues to conduct or attempt to conduct the transaction with such property, will be liable for imprisonment or criminal fines.11

Similar to the Drug Prevention Control Act, the MLCA mandates that any property or proceeds resulting from the illegal money laundering activities "shall be subject to forfeiture to the United States, unless the claimant satisfies the "innocent owner' defense."12 "Innocent owners" are those who, without knowledge, engage in financial transactions that involve property that resulted from illegal activities.13

Simply put, the difference between an innocent money exchanger, involved in the parallel market, and a knowing money launderer is knowledge of whether the dollars being bought and sold are drug tainted. Those who engage in financial transactions with a money exchanger, knowing that they are assisting the successful laundering of drug proceeds, are susceptible to criminal prosecution. The ability of the government to initiate such actions, however, is solely dependent on the government's ability to prove beyond a reasonable doubt that the accused had knowledge.

In contrast, the burden of proving that the defendants had knowledge is not present in forfeiture actions initiated against accounts that received drug-tainted monies through exchanges on the parallel market. As noted by one U.S. court: "The substantive law, procedures, and allocation of burdens of proof in forfeiture cases differ markedly from other civil proceedings, and give the United States prosecutor a substantial edge."14

This article surveys the recent forfeiture actions instituted by the U.S. Department of Justice, as a part of its continuing attempt to seize laundered drug money. Such actions, including Operation Polar Cap--Phase IV, the Hawaii All Monies Case, and the New York All Funds Case, are discussed in parts II, III, and IV respectively. Part V then

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12. Id. § 981(a)(1)(A).
13. Id. § 981(a)(2).
14. See generally 19 U.S.C. § 1615 (1988) (providing for the burdens of proof in forfeiture actions); United States v. All Funds on Deposit in Any Accounts Maintained at Merrill Lynch, Pierce, Fenner & Smith, 801 F. Supp. 984 (E.D.N.Y. 1992) aff'd sub nom., United States v. Daccarett et al., 6 F.3d 37 (2d Cir. 1993); Edward M. Genson & Marc W. Martin, A Guide to Handling Federal Narcotics Forfeiture Cases, 79 ILL. B.J. 180 (1991) (discussing forfeiture procedures). Once probable cause has been shown to ajudge by the government to initiate a forfeiture action, then those seeking claims to the forfeitable property have the burden of proving their entitlement to the property. Accordingly, standing is a threshold issue for a claimant. Once standing is shown, then a claimant must prove by a preponderance of the evidence that either the property did not come from illegal drug and money laundering transactions or that the claimant did not know or through willful blindness avoided learning that the source and nature of the property came from drug and money laundering transactions. In many forfeiture actions, it is incumbent on a claimant to prove a negative fact, such as a lack of knowledge or consent.
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chronicles the successful international efforts in bringing drug money laundering organizations to justice. Finally, in Part VI, it is recognized that those who participate in black or parallel markets face an increased risk of prosecution by the U.S. government.

II. Operation Polar Cap — Phase IV

In 1989, the U.S. government, in Operation Polar Cap, initiated a series of criminal prosecutions against the then-largest existing association of individuals and corporations involved in laundering drug dollars. This association, collectively-referred to as La Mina, laundered millions of drug dollars by and on behalf of Pablo Escobar and other notorious members of the Medellin Cartel. In April 1990, subsequent to the receipt of Panamanian bank records, the government sought restraining orders against more than one thousand U.S. domestic bank accounts.

The restraint of the monies expected to be found in the domestic accounts was premised on an analysis of the Panamanian bank records of Banco de Occidente (Panama), S.A., a criminal corporate defendant in the Atlanta Polar Cap indictment. The bank admitted its complicity in August of 1989 by pleading guilty to criminal charges of aiding and abetting drug money laundering broker Eduardo Martinez and others in the illegal laundering of millions of drug dollars on behalf of the Medellin Cartel.

The Panamanian bank records analyzed were of nominee accounts ("shell corporations") controlled by Eduardo Martinez. The Martinez Panamanian nominee accounts, previously identified through U.S. bank


16. The restraining orders were sought under § 853(e) of the Drug Abuse Prevention Act, which provides for the restraint of assets derived from the underlying criminal activity believed to be owned or controlled by the putative criminal defendant. 21 U.S.C. § 853(e) (1988). See United States v. Bissell, 866 F.2d 1343, 1348-54 (11th Cir.), cert. denied 493 U.S. 876 (1989). The Fourth and Second Circuits have also held that "substitute assets" (assets of a defendant not derived from the underlying criminal activity) may be restrained pre-trial. See In re Assets of Billman, 915 F.2d 916 (4th Cir. 1990), cert. denied 500 U.S. 952 (1991); United States v. Regan, 858 F.2d 115 (2d Cir. 1988). The Ninth and Fifth Circuits hold that § 853 does not allow the pre-conviction restraint of a defendant's substitute assets. See United States v. Ripinsky, 20 F.3d 359 (9th Cir. 1994); United States v. Floyd, 992 F.2d 498 (5th Cir. 1993), reh'g denied, 997 F.2d 883 (1993). A recent decision within the Eighth Circuit agrees with the Fifth and Ninth Circuit opinions. See United States v. Field et al., 867 F. Supp. 869 (D. Minn. 1994).

18. Id. at 847.
19. Id. at 844.
records of a Florida gold refiner, received, via electronic fund transfers, laundered drug monies that *La Mina* had collected in New York, Houston, Los Angeles, and Miami. In a process reminiscent of a shell game at a country fair, the laundered money was received in Panama, transferred within the bank to secondary and tertiary accounts, and subsequently wire transferred from *Banco de Occidente (Panama), S.A.* The approximately one-thousand U.S. domestic accounts into which the drug-tainted monies were traced from the Martinez accounts were the accounts frozen by the restraining order. Prior to the restraint of the U.S. accounts, the government knew through independent investigations that some of the accounts had been used to facilitate the purchase of aircraft later used to smuggle cocaine.

Following the issuance of the restraining order, the government was informed by various counsel for the account owners or by the account owners themselves that many of the frozen accounts were owned and controlled by individuals and entities claiming to be putative innocent owners who had obtained their money through Colombian parallel markets. Overwhelmed by the unexpected interrelationship between the clearly corrupt Panamanian accounts controlled by drug money launderer Eduardo Martinez and the owners of many of the U.S. accounts alleging “innocent ownership,” the government did not oppose modification of the restraining order to release monies in most of the accounts. In *United States v. Eighty-eight (88) Designated Accounts Containing Monies Traceable to Exchanges of Controlled Substances,* the government did, however, initiate a civil forfeiture action in the Southern District of Florida against eighty-eight of the accounts.

20. *Id.* at 847.
21. Further evaluation of the Panamanian bank records revealed that millions of drug dollars received by Eduardo Martinez were transferred within Panama to an account or accounts controlled by a purported Colombian money exchanger who subsequently transferred various monies to many of the same U.S. accounts frozen by the restraining order. The accounts controlled by the money exchanger were also maintained in nominee names.
23. Many account owners were incensed by the suggestion that they were in some manner involved with Pablo Escobar and other drug traffickers. Much ire was leveled at the government for its perceived faulty investigation. From the government’s perspective, it was simply tracing money to accounts where it could exercise legal jurisdiction to initiate action to clear title to the accounts’ contents. The burden of proving that the account owner was an innocent holder of the drug-tainted dollars was on the claimant, not the government. Therefore, the government was not required to investigate prior to restraint.
25. See *id.*
III. Hawaii *All Monies* Case

Contemporaneous with the Florida *Eighty-eight (88) Designated Accounts* litigation in Operation Polar Cap, the government in a related investigation initiated forfeiture proceedings in Hawaii in *United States v. All Monies ($477,048.62) in Account No. 90-3617-3*.26 The Hawaii investigation involved bank accounts implicated in drug money laundering wherein the claimants' alleged innocent ownership of the tainted money was based directly on currency exchanges in the parallel markets of Peru.27

The relevant facts of that litigation reflected that Emilio Melendez and his brother Carlos were members of a drug trafficking organization in Peru.28 To assist in the laundering of their revenues, the Melendez organization used the services of two professional money exchangers, Maria Elena Sarria and Luz Mary Aguad.29 Sarria and Aguad ran "Dirimex", a money exchange house ("cambio") in Peru that specialized in the exchange of U.S. dollars for Peruvian intis.30 Emilio Melendez brought to Dirimex the U.S. dollars earned by the organization through drug trafficking.31 Dirimex would "launder" these U.S. dollars by selling them to Peruvian capitalists through the black or parallel market in Lima. Business people would pay for the dollars with Peruvian currency to carry out the money laundering scheme. Sarria, Aguad, and Melendez would usually transfer the illegal dollars by wire to their own accounts in the United States.32 There, the money would be wired to the Peruvian business peoples' accounts held in New York and Miami.33 Emilio Melendez and his organization would then use the Peruvian intis to purchase raw materials necessary for their drug operations.34 Another laundering method involved direct transfers from accounts of the Medellin Cartel to the Peruvian business peoples' accounts in New York and Miami.35

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27. *Id.* at 1469.
28. *Id.*
29. *Id.*
30. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*
The claimant in the *All Monies* case was Henry Lelouch, who owned another Peruvian *cambio*. Like Aquad and Sarria, a major part of Lelouch's business was the buying and selling of U.S. dollars and Peruvian *intis*. LeLouch maintained his own bank account under the name "Ontivero" at the Israel Discount Bank in New York. This account received several deposits of dollars from the Melendez organization, which had been laundered by the Sarria organization. The funds in the Ontivero account were seized, and the government sought forfeiture of the funds in Hawaii, where the criminal prosecution had been brought against Emilio Melendez and others. The government sought the forfeitures of the money based upon five alternative grounds. The court, in granting partial summary judgment in favor of the government, found that the property was forfeitable under the forfeiture provisions of either the Drug Abuse Prevention Act or the MLCA.

The facts presented by the government in the Hawaii litigation reflected that drug-tainted dollars had been wire transferred from Eduardo Martinez' bank accounts at Banco de Occidente (Panama), S.A. to Lelouch's Ontivero account at the Israel Discount Bank in New York. The court found that the monies transferred from the Martinez accounts were narco-dollars. Furthermore, the court found that the money exchangers, Sarria, Aguad, and Melendez likewise transferred narco-dollars to the Ontivero account. While recognizing that the Ontivero account received "legitimate" monies through Lelouch's *cambio* operation, the court nonetheless found that:

The account provided a repository for the drug proceeds in which the legitimate money could provide a "cover" for those proceeds, thus making it more difficult to trace the proceeds. There is, therefore, probable cause to believe that all of the money in the Ontivero account facilitated the illegal activities of the Melendez and Dirimex organizations, making the entire account forfeitable under either 18 U.S.C. § 981(a)(1)(A) or 21 U.S.C. § 881(a)(6).

37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
42. *All Monies*, 754 F. Supp. at 1470.
43. *Id.* at 1475.
44. *Id.*
45. *Id.* at 1475-76. The Seventh Circuit Court of Appeals, in a case involving the forfeiture
The court then addressed the issue of whether Lelouch should be granted summary judgment based on his claim of "innocent ownership" of the seized monies. The court found that there were, "[m]aterial issues of fact... as to whether Lelouch knew or should have known that his account was receiving tainted money or was facilitating illegal activities. Material issues of fact exist as to whether Lelouch took all reasonable steps to prevent his account from being used for illegal activities." The court further noted that financial institutions that engage in transactions with customers that are not economically advantageous may be deemed to have knowledge of their customer's illegal activities. As such, this precludes the financial institution from being "innocent." As stated by the Court:

Our district courts have addressed similar issues relating to banks. In United States v. One Single Family Residence Located at 6960 Miraflores Avenue, Coral Gables, Florida, the government had probable cause to believe that Indalecio Iglesias bought real property of monies derived from the fraudulent sales of stereo speakers, rejected the facilitation theory of forfeiting in toto an account under § 981:

An "account" is a name, a routing device like the address of a building; the money is a "property". Once we distinguish the money from its container, it also follows that the presence of one illegal dollar in an account does not taint the rest as if the dollar obtained from fraud were like a drop of ink falling into a glass of water. To the extent United States v. Certain Funds on Deposit in Account No. 01-0-71417, and United States v. All Monies ($477,048.62) in Account No. 90-3617-3 treat the account as the "property" for purposes of 981, we disapprove of their holdings.

*United States v. $448,342.85 et al., 969 F.2d 474, 476-77 (7th Cir. 1992).* "Black's Law Dictionary defines an account as "a detailed statement of the mutual demands in the nature of debit and credit between parties, arising out of contracts or some fiduciary relation." *BLACK'S LAW DICTIONARY 18 (6th ed. 1990). The Eleventh Circuit, in United States v. 15603 85th Avenue North, 933 F.2d 976, 982 (11th Cir. 1991), recognized the "ink" analysis and ruled that, when an individual with actual knowledge of the illegal activity commingles tainted money with "clean" money, all of the money found within the account may be forfeited, since one with actual knowledge cannot be deemed to be an innocent owner. But see United States v. Account No. 50-2830-2, Located at First Bank, 857 F. Supp. 1534 (M.D. Ala. 1994) (comparing the "ink" analysis of the Seventh Circuit to an account that received monies from alleged structuring violations of 31 U.S.C. § 5324 to the facilitation theory of forfeiture in the *All Monies* case). Further, § 1522(a) of the Ann滋zio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, 106 Stat. 3672, 4063-64 (1992), created a new civil forfeiture statute providing for the forfeiture of all monies in a bank account that equal the amount illegally received by that account within one year of the establishment of probable cause, regardless of whether the monies currently in the account are "clean". See 18 U.S.C. § 984 (1992). The theory of the forfeiture of the money is a "proceeds" theory and one that recognizes an account balance as an intangible fungibly property interest. See Marine Midland Bank, N.A. v. United States, 11 F.3d 1119, 1126 (2d Cir. 1993) (holding that in a § 984 forfeiture, the government no longer is required to show that money in a bank account is the specific money involved in the underlying offense)."

46. *All Monies*, 754 F. Supp. at 1482.
47. Id. at 1476-79.
and constructed a residence worth $1.2 million with drug profits. Upon learning of an Internal Revenue Service investigation, Iglesias obtained a mortgage from Republic National Bank of Miami (Republic) for $800,000. After approving the loan, Republic transferred the loan proceeds to a Swiss bank account through two cashier's checks. At the time of the loan, Iglesias had listed the house for sale.48

In essence, in terms unmistaken in simplicity, the All Monies court identified the issue of being an “innocent owner” in “black” and “white” constants. There is no “gray” innocent owner. All persons and entities connected with the property subject to forfeiture are wrongdoers except those who are innocent owners. Innocent owners are those who have no knowledge of the illegal activities and who have not consented to the illegal activities.49 The court further held that because the burden of proving “innocent ownership” is on those asserting the defense, the government need not investigate potential claims prior to restraint or

48. Id. In the One Single Family Residence case cited by the All Monies court, Republic's contribution consisted of legitimate funds. Nonetheless, the district court denied Republic's innocent owner claim, finding that the facts when considered in their totality suggested Republic knew of Iglesias' illegal activities. United States v. One Single Family Residence Located at 6960 Miraflores Avenue, Coral Gables, Florida, 731 F. Supp. 1563 (S.D. Fla. 1990). Republic appealed, but the Eleventh Circuit dismissed the appeal, for lack of jurisdiction. See 932 F.2d 1433 (11th Cir. 1991). Subsequently, the U.S. Supreme Court reversed the Eleventh Circuit's dismissal and remanded the case for consideration on its merits. __ U.S. __, 113 S. Ct. 554 (1992). On remand, the Eleventh Circuit reversed, finding that the lower court made erroneous findings of fact and that Republic, without actual knowledge of Iglesias' illegal activities, must be deemed an innocent owner. U.S. v. One Single Family Residence, 995 F.2d 1558, 1564 (11th Cir. 1993).

49. See United States v. 15603 85th Avenue North, 933 F.2d 976, 981 (11th Cir. 1991). In 15603 85th Avenue North, the Eleventh Circuit held that whether an account owner can prevent forfeiture of the entire account depends on the owner's knowledge, not the government's ability to prove that all monies in the account were tainted. Moreover, when a claimant to a forfeiture action has actual knowledge, at any time prior to the initiation of the forfeiture proceeding, that claimant's legitimate funds are commingled with drug proceeds, the legitimate funds are also subject to forfeiture. However, the Supreme Court in Austin v. United States, __ U.S. __, 113 S. Ct. 2801 (1993) held that under a facilitation theory of forfeiture, the government may be prohibited from forfeiting an entire res, as it may violate the Eighth Amendment prohibiting the imposition of excessive fines. Some post-Austin courts post have adopted the "substantial connection" test. See United States v. Myers, 21 F.3d 826 (8th Cir. 1994). See also United States v. Premises known as RR #1, 14 F.3d 864 (3rd Cir. 1994) (adopting a value of property test); United States v. One Parcel of Real Property Located at 9638 Chicago Heights, 27 F.3d 327 (8th Cir. 1994); United States v. Real Property Located at 6625 Zumirez Drive, 845 F.Supp. 725, 732 (C.D. Cal. 1994); United States v. Real Property Known and Numbered as 429 South Main Street, 843 F.Supp. 337, 341-342 (S.D. Ohio 1993) (adopting a multi-factor test weighing "harshness" of the forfeiture vis-a-vis the underlying crime); United States v. Real Property Located at 2828 N. 54th Street, 829 F. Supp. 1071 (E.D. Wis. 1993) (adopting a quantitative test).
seizure of the money in a bank account. The government's burden is merely to adduce sufficient evidence to prove the existence of "probable cause for belief" that a substantial link exists connecting the defendant property to the exchange of a controlled substance.

IV. New York All Funds Case

In June 1990, associates of Jose Santacruz-Londono, an alleged member of the Cali Cartel who was indicted for extensive narcotics and money laundering activities, were arrested on money laundering charges by Luxembourg officials. Immediately after the arrests, a "flurry of wire transfer activity" occurred when European banks received instructions to electronically transfer millions of dollars to beneficiaries who maintained accounts in branches of Colombian banks. Based on action taken by the U.S. Attorney's Office for the Eastern District of New York, U.S. intermediary banks, functioning as correspondent banks of both the European banks and the Colombian banks, were instructed to "freeze" all monies designated for certain named customers of the Colombian banks. In excess of ten million dollars was seized by the government, which initiated the forfeiture actions pursuant to the forfeiture provisions of the Drug Abuse Prevention Act and the MLCA.

The account holders engaged in an aggressive assault against the seizure, including the filing of a separate action against the U.S. intermediary banks for, among other things, the loss of use of their money. The claimants, primarily Colombian businesses, alleged

50. Other courts, such as the Eleventh Circuit Court of Appeals have adopted the "all reasonable efforts" language for forfeiture action under § 881(a)(6) of the Drug Abuse Prevention Act. See United States v. 15603 85th Avenue North, 933 F.2d 976 (11th Cir. 1991). In 15603 85th Avenue North, the court recognized that once probable cause is established by the government, the burden of proof shifts to the purported "innocent owner" to establish by a preponderance of the evidence a defense to the forfeiture. Id. at 979. The burden is met either by rebutting the government's evidence that the property was purchased with proceeds of illegal drug activities or a showing that the claimant is an "innocent owner" who did not know of the property's connection with drug sales. Id. Accord United States v. Two Parcels of Property at Castle Street, 31 F.3d 35, 39 (2d Cir. 1994).


53. Id.

54. Id.

55. Id.


that they had lawfully acquired the seized dollars through currency exchanges on the Colombian "parallel" market.\textsuperscript{58} The district court dismissed the complaint against the U.S. banks finding no merit to the plaintiff's claims.\textsuperscript{59} Noting the banks' compliance with government requests and subpoenas and court orders, the court concluded that "... those who assist the government are not liable to those who claim ownership of what the government contends is already forfeited by the taint of drug trafficking."	extsuperscript{60} Although many of the grounds for relief raised by the claimants required extensive legal analysis in discounting their validity, the central legal principle undermining the plaintiff's position was the "relation-back doctrine" of forfeiture law.

The U.S. government notified the New York banks by telephone that certain electronic funds transfers would be credited to the banks from European sending banks.\textsuperscript{61} The New York banks then examined all incoming wire transfers for their correspondent banks in Columbia, notifying the U.S. Attorney of all transfers designated for the identified beneficiaries.\textsuperscript{62} In addition, the banks notified the U.S. Attorney of other wire transfers to third-party beneficiaries and awaiting notification of whether those funds were intended for "related individuals and entities" and should also be seized.\textsuperscript{63} Acting on oral instructions, the New York banks "froze" the tainted monies.\textsuperscript{64} The government then sought seizure warrants against the money, thus initiating legal process.\textsuperscript{65} The banks in this case, acting at the discretion of the government, seized money which the government considered its own because of the taint of narcotics trafficking.

The forfeiture case was subsequently tried before a jury, which returned verdicts in favor of the government and against eighteen of twenty-two claimants.\textsuperscript{66} Thus, in \textit{United States v. All Funds On Deposit In Any Accounts Maintained At Merrill Lynch, Pierce, Fenner and Smith (All Funds)}, the court, in denying post-verdict motions for judgment notwithstanding the verdict, found that the interrelationship

\begin{flushright}
\textsuperscript{58} Id. at 185.
\textsuperscript{59} Id.
\textsuperscript{60} Id. at 187-88.
\textsuperscript{61} See id. at 185.
\textsuperscript{62} \textit{Industrias Marathon Ltda.}, 792 F. Supp. at 184.
\textsuperscript{63} Id. at 187.
\textsuperscript{64} Id.
\textsuperscript{65} Id.
\textsuperscript{66} All Funds, 754 F. Supp. at 987.
\end{flushright}
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of the “parallel” market did aid and abet the drug money laundering activities of the Cali Cartel.

Most of the funds seized and forfeited were proceeds of the Cali Cartel, led by Jose Santacruz Londono.67 Londono and others conducted extensive narcotics trafficking and money laundering activities involving hundreds of millions of dollars and thousands of kilograms of cocaine smuggled into the United States.68 These activities included using international electronic fund transfers from companies nominally in the clothing, manufacturing or import-export business; driving cars packed with cocaine from Florida to New York, where the drugs were exchanged for cash, which was returned to Florida; flying huge amounts of cash to Panama, and depositing it in banks; exchanging drug dollars on the parallel market in Colombia for Colombian pesos; shipping manufactured goods from Colombia to Panama to cover up dollar transfers; and many other procedures used to disguise the true source and nature of the funds.69

In short, the New York All Funds case is a classic example of the infusion of the underground economy into the world of international commerce. This world is a world in which participants choose to conduct their business in secret ways to protect their competitive advantage, to avoid paying duties of taxes and to conceal their wealth. This is a world of “flight capital”; a world involving cambios or money exchangers; and a world involving the use of U.S. money derived from illicit transactions conducted within the United States. Into this world the government has ventured seeking forfeitable property. Courts have held that “those who normally do business with drug dealers do so at their own risk.”70 Those who engage in money exchanges with drug-tainted dollars in the parallel market likewise do so at their own risk.71

V. International Efforts

The unquestioned documented symbiotic relationship between the “parallel” markets and the dollars generated by narcotic trafficking organizations exposes all money exchangers, together with those who use

67. Id. at 987.
68. Id.
69. Id. at 987-88.
70. United States v. $4,255,000, 762 F.2d 895, 905 (11th Cir. 1985).
71. Testimony at the New York All Monies trial revealed an officially-sanctioned parallel street market for drug dollars in Colombia. There was testimony that it was common knowledge in the streets and board rooms of Colombia that the source of the millions of U.S. dollars in circulation in the "black" market was largely the drug trade in New York and other U.S. cities.
their services, to the potential loss of liberty, through prison sentences invoked as aiders and abettors in laundering drug money, in addition to the loss of property, through the forfeiture of such drug money. Operation Polar Cap and other government investigations into the complexities of the schemes used by the money launderers employed by the cartels of Colombia have identified numerous individuals, and brokers, who actively seek to purchase drug dollars generated from the sale of cocaine. The purchase of the drug dollars by the cambista is accomplished through the “exchange” of pesos, intis, or any other currency, including currencies of many European nations. The broker in turn negotiates to purchase drug dollars from the narco-traffickers. The broker concludes the deal by instructing the money exchanger to release the foreign currencies to the narco-trafficker and correspondingly causing the drug dollars to be transferred to “legitimate accounts” designated by the money exchanger.

In the context of international criminal organizations, many putative defendants remain outside the jurisdiction of the United States and therefore, beyond traditional means of arrest. Without question, the most culpable narco-traffickers have evaded arrest. Their criminal activities are motivated by greed. Indeed, one may view their conduct as a business: A deadly business in which breaches of “oral contracts” are adjudicated by sicarios (assassins) rather than in a court of law.

Effective law enforcement against these cartels requires coordination among nations. In September 1992, law enforcement authorities from the United States, Colombia, and Italy announced the arrests of over 160 individuals, the seizure of multiple kilograms of cocaine and the seizure of millions of drug tainted dollars all related to the laundering of money from sales of cocaine by the Sicilian Mafia and the Cali Cartel.

Operation Green Ice was yet another coordinated effort among law enforcement authorities to bring to justice narco-traffickers and their

72. See supra note 30.

73. The process of converting the cash derived from the sale of drugs into an intangible property interest represented by a positive “account” balance at a financial institution is the first step in the laundering process. La Mina performed this service in the Polar Cap case and was the initial focus of the government investigation. The Colombian money launderers called the organization, La Mina, the mine, because of its use of purported imported gold to justify the large quantities of cash being deposited in Los Angeles banks by individuals who claimed to sell jewelry. Once in the banking system, the drug-tainted monies were wired to numerous accounts throughout the world, including the nominee accounts at Banco de Occidente (Panama) S.A., controlled by Colombian drug money broker Eduardo Martinez. See Rachel Ehrenfeld, Evil Money: Encounters Along the Money Trail, 57-122 (1992).

money launderers. As reported, the investigation involved undercover penetration of drug money laundering organizations servicing both the Sicilian and Colombian criminal organizations. Through this penetration, the government discovered yet another case of attempts to conceal drug monies through international commerce vis-a-vis accounts at large commercial banks in the United States. Monies seized by the government in U.S. banks accounts were claimed to be owned by “business” people who purchased the dollars in the parallel market.

Still more recently, on December 16, 1994, the U.S. Drug Enforcement Administration Administrator Thomas Constantine and International Revenue Service Commissioner Margaret Richardson announced Operation Dinero, the culmination of a two-year joint enforcement drug money laundering operation coordinated among the U.S. Drug Enforcement Administration, Internal Revenue Service, Federal Bureau of Investigation and the Internal Nationalization Service and international law enforcement counterparts in the United Kingdom, Canada, Italy and Spain. Operation Dinero resulted in eighty-eight arrests, the seizure of approximately nine tons of cocaine, as well as over $50 million in cash and other property, including masterpieces of art by Peter Paul Reubens, Pablo Picasso and Sir Joshua Reynolds. The investigation, which started in Atlanta, involved the first use of an undercover bank authorized by the United Kingdom and operated by Atlanta Drug Enforcement Administration office and Internal Revenue Service personnel.

The first phase of the operation focused on undercover money pickups that identified the connection between drug trafficking and drug cell money groups in the United States. The second phase focused on the operation of a private “Class B” bank established in Anguilla, British West Indies. Once the bank became operational, the government worked undercover to promote the bank’s services within the international criminal community, including the Cali Cartel in Colombia and the Italian Mafia.

As a result of opening accounts for various Colombian drug trafficking and money laundering organizations, the government gained a wealth of knowledge concerning methods used by the traffickers, including the use of the parallel markets to facilitate drug money laundering. Through a review of the documentation surrounding the

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76. Id.
77. Id.
monies coming into the account and orders for disbursements, the
government gained intelligence that led to related investigations in other
jurisdictions throughout the United States and abroad.

Two European investigations were also initiated as a result of this
intelligence. First, Operation Dinero targeted the criminal network of the
Locatelli organization which operated in France, Romania, Croatia, Spain,
Greece, Italy and Canada. This Italian crime organization headed by
Pasquale Locatelli was directly linked to the Cali Mafia. Locatelli was
serving a twenty-year sentence for drug distribution in a French prison,
when he escaped by helicopter in a dramatic shootout with French
officials. On September 6, 1994, however, Locatelli was arrested in
Spain. In addition, the Italian and Spanish investigation of this
organization resulted in the arrest of numerous mafia-organized crime
subjects in Italy, as well as key individuals in Spain.\textsuperscript{78}

The Locatelli organization used ships off the coast of Colombia to
pick up drugs that were transported near the coast of North Africa, where
smaller boats were sent out from Southern Europe to intercept the
shipments. Also, a vessel tied to the organization was intercepted by
NATO forces suspecting that the ship was smuggling arms in violation
of the United Nations arms embargo concerning Bosnia. The ship was
taken to an Italian port and searched resulting in the seizure of small arms
and ammunition. A second Italian investigation uncovered three
supermarkets and a car rental business in Rome used to launder drug
money.\textsuperscript{79}

Most recently, evidence has been publicized identifying the
economic risks attributed to parallel markets' use to facilitate drug money
laundering activities. In a detailed analysis of Mexico's current economic
turmoil, including the devaluation of the Mexican peso, the \textit{Washington Post} asserted that Mexican drug cartels' expanding drug trade while
contributing to "a web of corruption and complicity among Mexico's
rulers also was partially responsible for the peso's devaluation."\textsuperscript{80}

Increasing the cost of engaging in the illegal business of drug money
laundering is one form of deterrence. Disruption of an efficient money
laundering scheme increases the cost of doing business. Forfeiture laws

\textsuperscript{78} Id.

\textsuperscript{79} Id.

\textsuperscript{80} Tod Robberson and Douglas Farah, \textit{Mexican Cartels Expanding Role In Trafficking}, \textit{WASH. POST}, March 12, 1995 ("Experts say the Mexican [narcotics organizations] have built a financial empire using the country's booming tourist industry and stock market, converting billions of dollars in drug profits into legitimate forms of capital that are integral to Mexico's financial health. Bankers here are not discounting the possibility that the December financial crunch that led to the peso's devaluation was the result at least in part, of a massive transfer of drug money from the country").
BLACK/PARALLEL MARKETS

are tools provided by the U.S. Congress to U.S. law enforcement agencies that can be used to disrupt the business of money laundering, as the ability of the government to “freeze,” seize and forfeit tainted monies derived from criminal violations of U.S. law poses risks of loss that increase the cost of doing business by all who deal with tainted money. With increased assistance from foreign governments, including providing banking information of financial transactions with cambista, the U.S. government will enhance its ability to seize and forfeit drug dollars.

VI. Conclusion

It has been written that the government’s efforts to combat drug money laundering through the seizing of U.S. bank accounts owned or controlled by foreigners without “selectivity” has “imposed significant hardship on hundreds if not thousands of innocent bystanders in our war on drugs.” Selectivity implies that the government should “investigate” the owner of the account prior to the restraint. There is no such legal requirement.

The courts have held that those who knowingly deal with drug traffickers do so at their own risk. A drug money broker with knowledge that he is aiding and abetting a drug trafficker is just as guilty as the drug trafficker. A money exchanger who knowingly aid and abets a drug money broker is just as guilty as the drug trafficker. A customer of a money exchanger who knowingly aids and abets a drug money broker by purchasing drug dollars through a parallel market exchange with a cambio is just as guilty as the drug trafficker. If the government sought to bring criminal charges against such a customer, then it must investigate the state of knowledge of the customer. It need not investigate such knowledge to initiate a forfeiture action. Those who choose to obtain dollars from the black or parallel market face an increased risk of litigation against the U.S. government. This risk, if quantified, may prove to outweigh the difference in the official exchange rate and the parallel market rate. A prudent business person would be wise to choose the less risky method of purchasing dollars.

81. Fine, supra note 5, at 1160.
82. The government likewise need not accept at face value the putative innocent owner’s protestations that he dealt with a reputable cambio and did not know that the dollars he purchased were drug-tainted. As with any witness, a thorough cross-examination, including questioning about the parallel market, is relevant to the credibility of the claimant-witness.