

In March 2010 Wachovia Bank, a US bank, entered into a deferred prosecution agreement, or DPA, with the US Department of Justice because Wachovia was involved in a scheme involving drug money laundered first through casas de cambio in Mexico and then through Wachovia bank in the U.S. The DPA itself is 14 pages long and the “Factual Statement,” which is an agreed statement of facts that Wachovia admits to, is a 12 page document annexed to that DPA, although if you are googling them you’ll find them as separate documents on the internet. I won’t take you through the mechanics of the scheme as it really isn’t necessary to make my point.

Wachovia acknowledged in the DPA that more than \$110mm was involved in transactions using Wachovia accounts in violation of sections 1956 and 1957 of title 18 of the United States Code, which are the US criminal statutes for laundering money. That was the money the DEA and the IRS could trace directly as drug money laundered through the casas de cambio and into Wachovia accounts. In the DPA, Wachovia agreed that the \$110mm was subject to forfeiture as proceeds of crime and had to be handed over to the government.

The DPA continues, **“The parties agree that in addition to the above forfeiture, Wachovia shall pay a fine of \$50mm.”** No real discussion of exactly what that fine relates to, but I am going to give the government the benefit of the doubt and say that it was the fine imposed for actually laundering the \$110mm in drug money that they were able to trace through because that makes some sense – a \$50mm fine for laundering \$110mm.

The drug money investigation is what led the DEA and the IRS to Wachovia’s door, but when they opened that door they found a much bigger problem. According to the Factual Statement, the government found that **between May 2003 and June 2007, over four years, Wachovia “seriously and systemically” violated the anti-money laundering and suspicious activity reporting requirements of the Bank Secrecy Act, which is title 31 of the United States Code, not title 18.**¹

In fact, the majority of the Factual Statement sets out the many ways in which Wachovia was seriously and systemically violating the Bank Secrecy Act for at least four years. The Bank Secrecy Act contains all of the rules, regulations and processes that banks must have in place to detect and report suspicious financial activity.

From May 2004-May 2007, three years of Wachovia’s wild west, devil-may-care period, Wachovia processed:

- At least **\$373.6bn** in wire activity on behalf of Mexican casas de cambio;
- And approximately **\$47bn** in remote deposit capture for *all* of its correspondent banking customers, which included the Mexican CDCs

¹ 31 USC 5311 *et seq.*

In other words, while Wachovia was seriously and systemically violating its anti-money laundering requirements under title 31, **hundreds of billions of dollars were flowing through Wachovia in casas de cambio and remote deposit capture activity alone, unchecked and unchallenged.** Hundreds of billions of dollars, not \$110mm.

I remind you that the bank was only fined \$50mm, and that appears to be for its violations of title 18. How much of the rest of that \$420bn was being laundered for human traffickers, other drug cartels, traders in precursor chemicals, or was being sent to terrorist networks around the world?

We don't know. We don't know because Wachovia decided it was better not to know. It was better to get and keep that line of lucrative business – business that Wachovia had actually picked up from other banks that had given it up because they felt the money laundering risk was too high.

But banks don't really launder money, do they? Banks are companies, and companies are legal fabrications. No, banks don't launder money – people do.

Not one Wachovia employee was ever prosecuted, much less went to jail, which I have to say is the biggest problem with this case. People, especially bankers who signed up to be bankers and not money launderers when they took their jobs, will shy away from doing things that have landed their colleagues in jail. There is only so much that a large end of year bonus can buy you in jail.

Today, the message law enforcement is giving bankers, including the management of banks, is that the worst that will happen to them for massive money laundering violations that they have either overseen or engaged in is perhaps losing their job in that particular bank. There will be no official mark on their criminal record however, so they can just go out and get another banking job, or better yet, a consulting job. Given that their bonuses have been extremely high because of all of this illicit money they've been bringing in, that is a pretty comfortable prospect for them, even if it takes a little time to find a new position.

The mind set here is critically important. A banker engages in this kind of activity and at the end of the day is viewed by everybody, including some of law enforcement, as a banker. He is not a banker. He is a criminal who has engaged in the crime of money laundering, and he uses his job as a banker to cover his criminal activity. He may have started out as a banker, but he didn't end up as one. And that criminal activity is dealing in blood money.

Blood money is a pretty inflammatory term, but it really is accurate. It is probably safe to say that the Mexican drug money that Wachovia bankers laundered was probably at least in part Los Zetas money. I don't have to tell you about the daily terror that Los Zetas money is

financing in Mexico and other countries, but I will remind you that Los Zetas are also working with Hezbollah. So you have to ask yourselves *what terror activities* the Wachovia money launderers were helping finance around the world. We are indeed talking about blood money.

I'd like to be clear that I have the highest respect for the law enforcement branches that investigate these highly complex and difficult to prove financial crimes with extremely limited resources and personnel. But I am very keen to see that their very good work is not wasted because the final settlements of these cases do not have the deterrent effect that they can and must if we are to cut off the criminals' lifeblood – their money. I am also keen to see government funds increased to support investigations and prosecutions of what this conference has called "facilitators" and I call money launderers.

We were asked to speak for 5 or 10 minutes so I will end by saying that I have given you one example, involving bankers, and that the Wachovia case I spoke about was actually considered a substantial success. Imagine if I had time to discuss bank-related examples in other countries, or to give you thoughts on the lawyers and governments around the world creating anonymous shell companies, or the real estate agents, the escrow agents, the jewelers, or the hawaladars or, in fact, **how the international financial system architecture, comprised of bank secrecy jurisdictions located around the world, is in and of itself the greatest of criminal network facilitators.**

Thank you.

N.B. – The Wachovia DPA and Factual Statement can be found at:

DPA: <http://www.justice.gov/usao/fls/PressReleases/Attachments/100317-02.Agreement.pdf>

Factual Statement: <http://www.justice.gov/usao/fls/PressReleases/Attachments/100317-02.Statement.pdf>