CHAPTER 3

HISTORICAL BACKGROUND OF THE MONEY LAUNDERING
The term “money laundering” is said to originate from Mafia ownership of Laundromats in the United States – Gangsters there were earning huge sums in cash from extortion, prostitution, gambling and bootleg liquor. They needed to show a legitimate source for these monies.\(^{11}\)

Al Capone’s troubles came as a giant wake up call to criminals everywhere. Here was a man who had climbed to the very top of his chosen profession creating an organization grossing an estimated $100 million annually. Capone’s convicted on changes of tax evasion and his attention getting 11 year Al Catraz vacation were milestone event in law enforcement.

For the first time, criminals could be jailed, not for their participation some murder, shake down, or drug deal, but solely because they had made some money and didn’t report it. It anyone had been paying attention (and the smart ones were). They knew by 1932 that something was going to have to change.

They tried challenging the law. Bootlegger Manley Sullivan was the first to question whether dirty money could be taxed under the relatively new federal income tax statute. The United States Supreme Court, in ruling against Sullivan, said that it saw no reason. The fact a business is unlawful should exempt it from paying the taxes that if lawful it would have pay. The court also ruled against Sullivan’s claim that admitting to the income would violate his Fifth Amendment privilege against self-incrimination.

After the 1927 Sullivan decision the Treasury Department moved out smartly against other illegal vague earners, the most notable of whom was the King of Chicago, Al Phonse Capone. Capone’s defeat meant that the proceeds of bootlegging, prostitution, gambling and assorted corruption were all subject to the government’s taxing authority;

\(^{11}\) Steel, Billy, “Money Laundering – A Brief History”, www.laundryman.u.net.

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any one in these businesses was now on notice that the “easy money” not want quite as easy any more.  

Some did not get the message. Frank Nitti is Capone’s right-hand man and eventual successor, did a short stretch for tax evasion. After taking over Capone’s operation, Nitti came into the sights of the tax men again and committed suicide as he was about to be arrested on new tax evasion charges. Others, however, learned the message well. One of these Meyer Lansky.

Born Maier Suchowljansky in Poland, the man who would become the financial genius of organized crime fought his way through the world of crime and gangs in New York City. The streets of New York were dangerous places in the early 1900s, and young immigrants from all over Europe banded together in gangs self-defense and to profit from a wide array of criminal activity.

Lansky had a terrible and violent reputation. Although he was known for extreme brutality, including contract murders, he was also smart and politically savvy. Lansky titillated himself not only with the Jewish gangsters, but also with Italian elements headed by Salvatore Luciana, also known as Charles “Lucky” Luciano. This alliance, forged early in Lansky’s criminal career, would bet him foundation of organized crime in America for the next five decades.

Meyer Lansky was more than a hired killer and co-founder of “Murder, Incorporated”. Lansky understood business. He also appreciated the critical relationship between truly “organized” crime, business and politics, this as a result of an association with another Jewish gangster from New York, Arnold “The Big Bankro’Il” Rothstein.

Three key elements of what would become a criminal enterprise with a worldwide reach were visible even in Lansky’s earliest days in crime.

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1 - Ibid, p.16
First, he clearly grasped the value of business, both as bootlegging and as mechanisms to launder money. One of his closest friends, Benjamin “Bugsy” Siegel, is credited with founding the gambling Mecca of Los Vegas – with Lansky’s financial backing. Lansky once boasted of organized crime. “We’re bigger than United States Steel.” It’s not a coincidence that he chose a multi-national corporation for comparison.

Second, Lansky, better than anyone before him, fully appreciated the usefulness of foreign countries as heavens for his criminal activity. Although he is best known for his attempted takeover in 1958 of Cuba as a base for gambling and possibly drug trafficking operation, Lansky was involved in offshore activity as early as the 1920s.

He was believed to have killed Capone associate Sam Bloom, gaining control over profitable bootlegging operations in the Bahamas in 1929, and was heavily involved in bootlegging through Canada. Later in life Lansky would hold untold millions in Swiss Bank accounts, using banks and corporations in Hong Kong, Israel, Switzerland, various South American countries, and just about anywhere else a dollar could be made or hidden.

Finally, Lansky understood the near for organized crime to work in consort with flexible government officials. Some of these, like those corrupted in the Batista regime in Cuba, were brought on board wholesale, while others were selected for their ability to assist in one area of a one issue. In this, Lansky learned well from Rothstein, whose political connection were legendary.

The intent of all these machinations was to launder hundreds of millions of dollars in mob money. This became Meyer Lansky’s role later in life, as he left the more mundane aspects of crime to his associates. If there is a patron saint of money launderers. It’s probably Meyer the Bug. When he died in 1983, he had beaten every tax evasion and related criminal case brought against him, never suffering a day’s incarceration for the King’s ransom he laundered for the mob.
Lansky’s sophistication in laundering money for organized crime was instructive for his money associates. Some took the lesson, safely hiding their money, building networks of legitimate business, and moving their money offshore.

Others were less successful. Mickey Coben, an associate of Lansky and Siegel, received 15 years for tax evasion in 1961. Frank Costello got five years in 1954. Albert Anastasia, supposedly the head of the Murder, Inc. Syndicate organized by Lansky, received a year for a tax case in 1955. Tony Accardo, who followed Frank Nitti and Paul “The waiter” Ricca into Copone’s old chair in Chicago, got six years in 1960, although the conviction was later reversed on appeal.

There were many other examples, enough that the lesson was clear. If you are going to the trouble of making all that money, you would better find some way to hide it. Lansky lived this motto and ironically, we can not really tell just how sophisticated were Lansky’s schemes, because most were apparently never detected. Some of the more grandiose, like his takeovers of Cuba and Paradise Island in the Bahamas, as well as his indirect influence over the entire Nevada gaining industry, hint at a laundering operation so big if almost defies imagination. One author has commented that Lansky’s schemes were not complete, in the sense that they did not fully integrate the money back into the American economy.

While it is true that this would leave incomplete the cycle as described in the last chapter, the fact that many millions of dollars disappeared for decades – and have never turned up – certainly argues that Lansky figured out how to integrate at least some of the money.

The fight against money laundering aims at a more effective enforcement of the criminal law in relation to profit-oriented crime. This chapter seeks to clarify the background of this fight. It will be shown that the introduction of the two main legal devices that are used in the fight against money laundering, the confiscation of the proceeds from crime and the incrimination of money laundering, are closely linked to changes that occurred on a legal and a socio-economical level.
These criminal law instruments have, however, created a momentum of their own. The most important example of how the fight against money laundering has separated itself from the background that gave rise to it is the drastic expansion of the application field of the confiscation of the proceeds from crime and the incrimination of money laundering also signifies an evolution of the norm-making process in the field of law enforcement law.¹

For a long time this seems to have been the prevailing attitude of most criminal justice systems and, in a sense, of most societies in general, towards proceeds from crime. Until quite recently, most criminal justice systems – implicitly if not explicitly – allowed offenders to enjoy the fruits of their crimes. This attitude should be set against the backdrop of the type of offences that criminal courts traditionally had to deal with.

When an offence had resulted in damages of any kind, the victim of the offences would most probably institute civil proceedings which would normally result in the reinstitution of any ill-gotten gains, some criminal justice systems (e.g. those of Belgium and France) even allow the victim (the parties civil) to institute civil claims in the course of the criminal proceedings.

In the post-Second World War era, however, legislators increasingly started to make criminal acts which often did not cause any direct harm to an identifiable victim. A great number of commercial, fiscal or environmental offences are crimes without a victim. Even though this type of offence normally does not result in any direct damages to a victim, this does not mean that offenders do not reap any benefits from these crimes.

On the contrary, this type of offence often generates huge profits for whose removal the law generally fails to provide adequate legal mechanisms.¹ Give the absence of identifiable victims, the only legal instrument which could ensure that offenders were deprived of their illegal profits was the confiscation of the proceeds of crime.

¹ Ibid, p.4
Whereas the majority of criminal justice systems were familiar with the more traditional forms of confiscation, namely, the confiscation – often known as forfeiture – of the instruments or the subject of crime, most of these systems did not provide for the confiscation of proceeds from crime.

This gap in the law often became painfully clear in the course of criminal proceedings against drug traffickers, for example in the English case of R.V.Cuthbertson (1981), where criminal counts had to acknowledge their lack of competence to take away the profits from crime.

In the other countries, such as Belgium, where the confiscation of proceeds from crime was provided for in respect of drug offences, this possibility did not extend to other offences. In those countries whose legislation provided for the confiscation of proceeds from crime (e.g. Switzerland and the Netherlands), it was perceived that the provisions concerned did not in practice result in an effective deprivation of the proceeds from crime.

One of the first countries to take legislative action in order to fill this gap, was England. Following one of the main recommendations of the Hodgson Committee, Parliament empowered courts to confiscate the proceeds of drug trafficking through the Drug Trafficking Act 1994.

Urged on by the international initiatives that were taken in this respect at the end of the 1980s (the 1988 UN Convention against Illicit Traffic in Narcotic and Psychotropic Substances and the 1990 Council of Europe Convention on Laundering, search, seizure and confiscation of the proceeds from crime).

Other countries soon followed suit. Thus, the Belgian law of confiscation was changed in 1990, Dutch law in 1992 whiles the Luxembourg and Swiss Parliaments amended their legislation in respect of confiscation in 1994.

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1 Ibid, p.
Criminals, who, through their criminal activities, dispose of huge amounts of money, need to give this money a legitimate appearance they need to “launder” it. The phenomenon of money laundering is essentially aimed at two goals: preventing “dirty money from serving the crimes that generated it, and ensuring that the money can be used without any danger of confiscation.

The interest of law enforcement authorities in detecting the link between an offender and the proceeds of the crimes he has allegedly committed is consequently also twofold, detecting the crimes that were committed in order to bring the alleged perpetrators to trial and identifying the proceeds from crime so that they can be confiscated.

It is useful to point out that most forms of money laundering eventually result in the injection of “dirty money” into the legal economy.