



## Don't Take the Money and Run

### Be Careful When a Client Pays in Cash

I am an assistant U.S. attorney in Seattle, Wash. During the past 12 months, I have participated in the investigation and prosecution of four attorneys for felony offenses which they committed in their professional practices. Each of these attorneys has either been disbarred or is in the process of disbarment proceedings. As a result of their conduct and prosecution, their law practices have been ruined. I write out of a concern for what has happened to them, a concern for

our common endeavor to practice law, and a concern for the public perception of lawyers. Also, I write in the hopes that by reading this article, attorneys may avoid such misconduct in the future.

Let me make a few observations at the outset. First, I subscribe to the view that my job and the work that I do in furtherance of the criminal justice system are no more important than your own, whether your practice is criminal defense or on the civil side. We all have a contribution to make to our profession and to our system of justice, and the system works best when we work best. As a corollary, the system breaks down when we become compromised. Second, the criminal conduct which is described below is completely avoidable. The attorneys who committed these offenses have only themselves to blame for their misconduct and predicament. At the same time, when an attorney commits a crime in his professional practice as an attorney, in a sense we all stand convicted of it because we all suffer in the eyes of the public. While it is nice to know that there is a U.S. Attorney's Office actively pursuing such cases, it is far better that the rules be obeyed in order to avoid the need for any such prosecutions.

In the main, the criminal conduct involved monies received by attorneys in their professional capacities from their clients. The federal criminal statutes that were violated fell into two categories: (a) failure to file the IRS Form 8300 for currency transactions involving more than \$10,000 in violation of 31 U.S.C. §§ 5331(a) and 5322; and (b) money laundering in violation of 18 U.S.C. § 1956. Both violations are felonies carrying sentences of imprisonment under the federal Sentencing Guidelines.

In discussing these cases, I refer to the four defendants involved as Attorney A, B, C, and D. I do this in an effort to be instructive and because no particular purpose is served by mentioning their names. The investigating agencies in these cases included the Internal Revenue Service — Criminal Investigation, the Drug Enforcement Administration, and Immigration and Customs Enforcement.

### Attorney A

During 2005, Attorney A, a criminal defense attorney, was visited in his office by a client who delivered to

BY RONALD J. FRIEDMAN

Attorney A a backpack filled with approximately \$100,000 in cash. The client had not been charged with any crime, but was the subject of an ongoing drug trafficking investigation. The currency was intended as a down payment on legal services to be rendered.

Attorney A had a close relationship with his client and was aware that his client was involved in drug trafficking. Furthermore, Attorney A knew the client had no independent means of support, and that the currency was derived by the client through drug trafficking. As the amount of currency exceeded \$10,000, Attorney A failed to fulfill his legal duty to file an IRS Form 8300 documenting his receipt of these funds from the client. Nor did the attorney deposit the funds into a bank account, which would have triggered a federal currency reporting requirement by the bank (31 U.S.C. § 5313 requires a bank to file a report for cash deposits in excess of \$10,000). Instead, knowing the funds were illegally derived, and intending to conceal his actions, Attorney A took the backpack to his residence and kept it hidden. Thereafter, he spent the money in a variety of ways, including both personal and professional expenditures.

Attorney A's misconduct was revealed following the arrest of the client on drug trafficking charges, and included cooperation provided by those charged with criminal offenses. Attorney A was charged with, and pleaded guilty to, money laundering in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and (ii). In December 2005, Attorney A was sentenced in U.S. district court in Seattle to 18 months in prison, to be followed by a three-year period of supervised release. Attorney A is serving that sentence.

## Attorney B

Attorney B, a criminal defense attorney, was contacted by Attorney A in 2005, and asked to represent an individual who had been arrested by federal law enforcement. Attorney B agreed to take on the representation. Attorney B met Attorney A in a parking lot and received \$10,000 cash from Attorney A as partial payment for the representation. Weeks later, Attorney B received an additional \$10,000 cash from Attorney A for representing the individual in the same matter. Having received in excess of \$10,000 currency for the representation of the individual, Attorney B was lawfully bound to file an IRS Form 8300 documenting his receipt of \$20,000 to represent the client. He did not, and his actions were uncovered.

Attorney B was charged with, and pleaded guilty to, willful failure to file a currency transaction report (IRS Form 8300) in violation of 31 U.S.C. §§ 5331(a) and 5322. Attorney B was sentenced in U.S. district court to three months in prison, to be followed by three years of supervised release. He is serving that sentence.

## Attorney C

Attorney C, a real estate attorney with an active escrow practice, took delivery in 2005 of more than \$600,000 cash intended to be used for the purchase of a residence. The attorney received the money in duffle bags, and made no effort to report his receipt of this cash as required by law. Attorney C was aware that this money had been derived from drug trafficking.

In order to conceal his receipt of cash, Attorney C took the money to his home and kept it secreted. He did not deposit the currency out of concern that the bank or the IRS would notice the large cash deposit into his account, and he did not want to have to explain or document the cash. Thereafter, Attorney C engaged in a financial transaction with the funds. He was charged with, and pleaded guilty to, money laundering in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and (ii). In November 2006, Attorney C was sentenced in federal district court to 18 months in prison, to be followed by three years of supervised release. Attorney C is serving that sentence.

## Attorney D

Attorney D, a criminal and civil practitioner, represented a client who wanted to invest money in a laundromat. Attorney D was closely associated with this client, having previously represented him in civil and criminal matters. Attorney D agreed to conduct the transaction on behalf of the client. The negotiated price of the laundromat was \$160,000. Attorney D received two cashier's checks from the client totaling \$56,000, in the names of third parties, which Attorney D deposited into his client trust account to be used in partial payment for the laundromat. Attorney D then met the client at a residence and received approximately \$120,000 cash from the client to be used to pay the balance for the laundromat. The money was received in paper bags. Attorney D brought the money to his law office and stored it in a safe.

Attorney D failed to file a currency transaction report (Form 8300) documenting his receipt of this currency from his client as required by law. Subsequently, Attorney D met with the seller of the laundromat and delivered a check drawn on his client trust account for approximately \$60,000. In addition, Attorney D delivered approximately \$100,000 of the cash received from the client to complete the purchase. The purchase and sales agreements were drafted by Attorney D to reflect a total sales price for the laundromat of approximately \$60,000, whereas the true sales price was approximately \$160,000. Of the remaining cash received from the client, some was used to pay laundromat expenses and some was taken by Attorney D as his fee. Evidence in the case established that this was one of multiple instances during the preceding 12 months in which Attorney D received more than \$10,000 cash from a client and failed to file a currency transaction report as required by law.

Attorney D was charged with, and pleaded guilty to, willful failure to file a currency transaction report in violation of 31 U.S.C. §§ 5331(a) and 5322. In January 2007, Attorney D was sentenced in federal district court to 18 months in prison, to be followed by a three-year period of supervised release. Attorney D will soon surrender to begin serving that sentence.

## Avoiding Misconduct

### IRS Form 8300

The requirements of the law are clear. Anytime you, as an attorney, receive more than \$10,000 currency in your trade or business in one or more related transactions, such as the representation of a client or the performance of an act for a client, you have a legal obligation to complete IRS Form 8300 in regard to such transactions. The form is due within 15 days of your receipt of the funds that triggered the reporting requirement.

The failure to file Form 8300 is a felony violation of §§ 31U.S.C. 5331(a) and 5322. The offense is punishable by up to five years in prison, a \$250,000 fine, and a period of supervised release to follow imprisonment of three years. In the event the government alleges that the offense was "part of a pattern of illegal activity involving more than \$100,000 in a 12-month period," the statutory maximum rises to 10 years in prison, coupled with a \$500,000 fine. The failure to file offense is treated under Section 2S1.3 of the federal Sentencing Guidelines.

Form 8300 is freely available online.

Simply type "IRS Form 8300" into any search engine. You will be led to the IRS Web site where you can easily download the form. Furthermore, there are accompanying IRS instructions that are designed to answer any questions you may have concerning the form and your obligations pursuant to it. Please take a moment to review the form and its instructions to make sure you are familiar with it. Consult with counsel if you have any questions concerning its application.

The information requested on the form is straightforward. Form 8300 requires the recipient of the currency who is involved in a trade or business to report the receipt of the cash, including the amount, and to: (1) indicate the identity of the persons from whom the cash was received, (2) indicate the identity of persons on whose behalf the transaction was conducted, and (3) describe the transaction. The requirement to file Form 8300 applies not only to lawyers, but to car dealers, mortgage brokers, and anyone who, in the course of a trade or business, receives more than \$10,000 cash in related transactions. Some of you may feel that this requirement to file Form 8300 is intrusive. My only response is that it is required by law.

### Money Laundering

I am sure you are all quite familiar with the concept of money laundering. If you have any questions, however, as to what constitutes money laundering, review 18 U.S.C. § 1956, which defines and prohibits such activity. While the statute may be a bit cumbersome, the common sense broad rule is as follows: Anytime you receive money, in any form and from anyone, which you know (meaning the evidence can establish beyond a reasonable doubt that you know) was derived from criminal activity, such as drug trafficking, and you then use that money to conduct any transaction, you are probably committing the offense of money laundering.

In the above instances involving Attorneys A through D, the evidence established that the attorneys were aware, based upon a variety of circumstances, that the money they received was derived from illicit narcotics trafficking, and conducted transactions with such funds with the intent of concealing the source of the funds in violation of law. Money laundering is punishable by up to 20 years in prison, a \$500,000 fine, and a three-year period of supervised release to follow imprisonment. It is treated under Section 2S1.1 of the federal Sentencing Guidelines.

### Avoidable Conduct

As indicated at the outset, all of the above misconduct was avoidable. Moreover, such offenses committed by attorneys in their professional capacities plainly serve to tarnish the public perception of attorneys as a whole, and as such, diminish the effectiveness of all of us. Why attorneys would make the poor choices made by Attorneys A through D is a difficult matter to consider, whether it be a desire for money, a desire to enamor oneself to one's client, or the mistaken view that one will simply not get caught. The job of the criminal defense attorney is a difficult one, but it is certainly not made less difficult by such poor reasoning.

My suggestions to you in this regard are the suggestions of common sense. Assume that if you ever commit such an offense, you will be caught. Make the further assumption, or at least consider the specter, that the clients who sit in your office today asking for advice and favors may on some later day do their best to relate to law enforcement every misdeed they believe you ever committed. I say this not to create a sense of paranoia, but to insure a healthy sense of prudence and due

(Continued on page 45)

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|---|--|---|--|---|--|
| <b>IRS Form 8300</b><br>(Rev. December 2004)<br>OMB No. 1545-0082<br>Department of the Treasury<br>Internal Revenue Service   |  | <b>Report of Cash Payments Over \$10,000 Received in a Trade or Business</b><br>See instructions for definition of cash.<br>Use this form for transactions occurring after December 31, 2004. Do not use prior versions after this date.<br>For Privacy Act and Paperwork Reduction Act Notice, see page 5. |  | <b>FinCEN Form 8300</b><br>(Rev. December 2004)<br>OMB No. 1526-0016<br>Department of the Treasury<br>Financial Crimes<br>Enforcement Network |  |
| 1 Check appropriate boxes) if: a <input type="checkbox"/> Amends prior report; b <input type="checkbox"/> Suspicious transaction.   |  |   |  |   |  |
| <b>Part I Identity of Individual From Whom the Cash Was Received</b><br>2 If more than one individual is involved, check here and see instructions.   |  |   |  |   |  |
| 3 Last name   |  | 4 First name  |  | 5 M.I.  |  |
| 7 Address (number, street, and apt. or suite no.)   |  |   |  |   |  |
| 9 City  |  | 10 State  |  | 11 ZIP code   |  |
| 12 Country (if not U.S.)  |  |   |  |   |  |
| 13 Occupation, profession, or business  |  |   |  |   |  |
| 14 Identifying document (ID)  |  | a Describe ID   |  | b Issued by   |  |
| <b>Part II Person on Whose Behalf This Transaction Was Conducted</b><br>15 If this transaction was conducted on behalf of more than one person, check here and see instructions.  |  |   |  |   |  |
| 16 Individual's last name or Organization's name  |  | 17 First name   |  | 18 M.I.   |  |
| 19 Taxpayer identification number   |  |   |  |   |  |
| 20 Doing business as (DBA) name (see instructions)  |  |   |  |   |  |
| 21 Address (number, street, and apt. or suite no.)  |  |   |  |   |  |
| 23 City   |  | 24 State  |  | 25 ZIP code   |  |
| 26 Country (if not U.S.)  |  |   |  |   |  |
| 27 Alien identification (ID)  |  | a Describe ID   |  | b Issued by   |  |
| <b>Part III Description of Transaction and Method of Payment</b><br>28 Date cash received (M M D D Y Y Y Y)   |  |   |  |   |  |
| 29 Total cash received  |  | 30 If cash was received in more than one payment, check here  |  | 31 Total price if different from item 29  |  |
| 32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):   |  |   |  |   |  |
| a U.S. currency \$ .00 (Amount in \$100 bills or higher \$ .00)<br>b Foreign currency \$ .00 (Country) _____<br>c Cashier's checks \$ .00 Issuer's name(s) and serial number(s) of the monetary instrument(s) _____<br>d Money orders \$ .00 _____<br>e Bank draft(s) \$ .00 _____<br>f Traveler's checks \$ .00 _____                                    |  |   |  |   |  |
| 33 Type of transaction  |  |   |  |   |  |
| a <input type="checkbox"/> Personal property purchased<br>b <input type="checkbox"/> Real property purchased<br>c <input type="checkbox"/> Personal services provided<br>d <input type="checkbox"/> Business services provided<br>e <input type="checkbox"/> Intangible property purchased<br>f <input type="checkbox"/> Other (specify in item 34) _____ |  |   |  |   |  |
| 34 Specific description of property or service shown in 33. Give serial or registration number, address, deck number, etc. _____  |  |   |  |   |  |
| <b>Part IV Business That Received Cash</b><br>35 Name of business that received cash  |  |   |  |   |  |
| 36 Employer identification number   |  |   |  |   |  |
| 37 Address (number, street, and apt. or suite no.)  |  |   |  |   |  |
| 38 City   |  | 39 State  |  | 40 ZIP code   |  |
| 41 Nature of your business  |  |   |  |   |  |
| 42 Under penalties of perjury, I declare that to the best of my knowledge the information I have furnished above is true, correct, and complete.  |  |   |  |   |  |
| Signature _____ Authorized official _____ Title _____   |  |   |  |   |  |
| 43 Date of signature M M D D Y Y Y Y  |  | 44 Type or print name of contact person   |  | 45 Contact telephone number   |  |

|   |  |               |  |   |  |
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| <b>IRS Form 8300</b><br>(Rev. 12-2004)  |  | Page <b>2</b> |  | <b>FinCEN Form 8300</b><br>(Rev. 12-2004) |  |
| <b>Multiple Parties</b><br>(Complete applicable parts below if box 2 or 15 on page 1 is checked)            |  |               |  |   |  |
| <b>Part I Continued—Complete if box 2 on page 1 is checked</b>  |  |               |  |   |  |
| 3 Last name   |  | 4 First name  |  | 5 M.I.                                    |  |
| 7 Address (number, street, and apt. or suite no.)   |  |               |  |   |  |
| 9 City  |  | 10 State      |  | 11 ZIP code                               |  |
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| 13 Occupation, profession, or business  |  |               |  |   |  |
| 14 Identifying document (ID)  |  | a Describe ID |  | b Issued by                               |  |
| 3 Last name, 4 First name, 5 M.I., 6 Taxpayer identification number   |  |               |  |   |  |
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| 14 Identifying document (ID)  |  | a Describe ID |  | b Issued by                               |  |
| <b>Part II Continued—Complete if box 15 on page 1 is checked</b>  |  |               |  |   |  |
| 16 Individual's last name or Organization's name  |  | 17 First name |  | 18 M.I.                                   |  |
| 19 Taxpayer identification number   |  |               |  |   |  |
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Finally, from Cincinnati, Ohio, President Martin Pinales. Under his leadership, we are on the precipice of securing passage of legislation that will at long last help ease the debt burden on young lawyers who choose a career in public service. The John R. Justice Prosecutors and Defenders Incentive Act has overwhelmingly passed the House and enjoys broad bipartisan support in the Senate. It will provide up to \$10,000 per year of debt relief for public defenders. Marty, please stand and let New York's lawyers say thank you.

So I take great pride in all this, but I also take pride in what defense lawyers do every single day in advocating for the accused. After nearly 30 years at your side, I see an indelible image. In my mind's eye I will always see the defense lawyer — answering that phone call in the dead of night with the desperate plea for help from a terrified mother, friend, or neighbor whose son has just been arrested. I see her laboriously preparing for trial — missing family events and even when present, mentally absent, fearing that to overlook that one key report could lose a human life to the ages. I see her gearing up for the cross-examination of a vital witness, with little discovery, or worse, a mountain of it, delivered with scant time to prepare through the wee hours.

I see him enduring that slow-churning ache in the pit of the stomach as a critical moment in the trial approaches. I see him struggling over writing pad or keyboard to find just the right phrase that will enable a sterile legal argument to resonate with the chimes of justice. I see the defense lawyer pacing, through agonizing hours and days, the corridors of a deserted courthouse while a jury deliberates, haunted by the hollow eyes of a prayerful family. She wonders whether the human soul to whom she has given every last ounce of mental and emotional energy will return to family or will be consigned to a jail for more decades than a mind can grasp.

I see the defense lawyer basking in the indescribable elation of the *not guilty* verdict, or striving with earnest creativity — patience strained to the limit — to pierce the hard heart of a cold, self-righteous young prosecutor or callous, jaded judge. And I see the defense lawyer bearing witness to the tears of fear and frustration of the unjustly accused, and the sad and lonely lament of those gentle souls sealed inside a cell for the simple crime of human imperfection.

And I see the defense lawyer always striving valiantly to save a life and give a second chance, and always defending the dignity of the individual and the majesty of law. This is the American defense lawyer. This is who we are. We are the conscience of society, the last refuge of compassion. We wield the check on tyranny and the balance against persecution. To us is entrusted the ever-flickering torch of justice.

Of all the memorable words spoken by the president of my youth, John F. Kennedy, my favorite was how he phrased his call for a vigorous space program. It is a metaphor for the aspirations of humanity. “We choose to go to the moon,” John Kennedy said. “We choose to go to the moon not because it is easy, but because it is hard.”

Well, we choose to be criminal defense lawyers, not because it is easy, but because it is hard. The fight — the ceaseless fight to restrain the excesses of governmental power and to defend the simple dignity of every blessed human life — is a fight worth fighting. No matter the adversity, no matter the attempts to silence, shame, or intimidate us, we fight on. We fight on knowing that the founders who wove the right to counsel into our national fabric did not intend it to be a mere ornament. They intended that right to be an impermeable barrier against tyranny. We fulfill the solemn, sacred mission of the founders every time we enter a courtroom to stand beside the accused.

Now, inklings of mortality prompt me to ponder my life's choices. A week ago, while away with my wife, Linda, whose support I so treasure, I had time for reflection and reconsideration. Tonight, I reaffirm that my decision to choose the cause of criminal defense as my life's mission was the right one. There are less demanding callings, and, to be sure, there are more lucrative ones. But there is none about which it can so truly be said: “The journey is the joy.” Thank you for honoring me for the simple act of serving the cause I love. ■

### About the Author

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## Don't Take the Money and Run

(Continued from page 36)

care in regard to all of your activities on behalf of clients.

Remember that all of the judgments you make in your professional capacity as an attorney have to withstand the scrutiny of law. Such judgments may be tested someday by the common sense judgments of ordinary citizens. When dealing with a client in cash, be careful. Be prudent. Exercise due diligence in ensuring that the funds are from a legal source. If there is a duty to file Form 8300, file it. If the money, in whatever form, appears as though it might be tainted, do not accept it. I, along with Attorneys A, B, C, and D, promise you, it is not worth it to violate the law.

Our world is a better one with defense attorneys making the lives of prosecutors difficult through their exercise of skill and diligence, within the law, on behalf of causes and clients. This is what makes our system of justice thrive. This is what helps foster reliable results. It is my hope that this article will assist in ensuring that you are always able to fulfill this role and give your best to our common pursuit of the law.

*The views expressed in this article do not necessarily represent the views of the Department of Justice or the United States.* ■

### About the Author

Ronald J. Friedman is an assistant U.S. attorney in the Western District of Washington assigned to the Criminal Enterprise Unit. He is a graduate of Harvard Law School and a former law clerk to U.S. District Judge Martin Feldman of the Eastern District of Louisiana. Prior to his 20 years as an assistant U.S. attorney, Friedman was in private practice with Schwalb, Donnenfeld, Bray, and Silbert in Washington, D.C. He has taught in NITA Programs, at the Department of Justice National Advocacy Institute, and as an instructor in the Tulane Law School and University of Washington Law School trial advocacy programs.

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