Austin Mitchell

Prem Sikka

Hugh Willmott

THE ACCOUNTANTS' LAUNDROMAT

Association for Accountancy & Business Affairs

Working for an Open and Democratic Society

The **Association for Accountancy & Business Affairs** (AABA) is an independent and non-profit making body limited by guarantee (company number 3480632). AABA is funded entirely from donations and subscriptions from individuals concerned to make the world a better place. AABA is devoted to broadening public choices by facilitating critical scrutiny of accountancy and business affairs. AABA will publish monographs and papers to advance alternative analysis and public policy reforms. Its principal objects are:

(i) to advance the public interest by facilitating critical scrutiny of commercial and non-commercial organisations *inter alia* companies, partnerships, sole traders, public bodies, local authorities, charities, non-profit making organisations and any other form of commercial or non-commercial organisation;

(ii) to facilitate critical scrutiny of professional bodies, regulatory bodies, employer organisations, employee organisations, government departments and business organisations;

(iii) to campaign for such reforms as will help to secure greater openness and democracy, protect and further the rights of stakeholders and to make disclosures where necessary;

(iv) to engage in education and research to further public awareness of the workings, the social, political and the economic role of accountancy and business organisations.

Please support AABA to achieve its aims. All donations and inquiries should be addressed to the **Association for Accountancy & Business Affairs**, P.O. Box 5874, Basildon, Essex SS16 5FR, UK.

THE ACCOUNTANTS' LAUNDROMAT

Austin Mitchell
Member of Parliament for Great Grimsby

Prem Sikka
University of Essex

Hugh Willmott
University of Manchester Institute of Science & Technology

ISBN 1-902384-01-6

First published in 1998
by
Association for Accountancy & Business Affairs
P.O. Box 5874, Basildon, Essex SS16 5FR, UK.

CONTENTS

THE CAST

For ease of reference, a list of various persons and names encountered in this monograph is provided here.

NAME	DETAILS
Sophie Ban Hassine	A prominent Tunisian. Assumed grand-daughter of the Bey of Tunis.
Yves Coulon	French lawyer and middleman, shot dead.
Euro-Arabian Jewellery	A limited liability company registered England through which some of laundered proceeds passed.
Ian Griffin	Employee, Jackson & Co.
Roger Humphrey	Tax manager, Grant Thornton (previously known as Thornton Baker).
ICAEW	The Institute of Chartered Accountants in England & Wales, the UK's largest professional accountancy body.
Barry Jackson	Partner, Jackson & Co, chartered accountant.
Jackson & Co.	A firm of Chartered Accountants, operating from the Isle of Man.
Kinz Joaillier SARL	A company incorporated in France, and a subsidiary of Euro-Arabian Jewellery.
Lloyds Bank	A major British commercial bank.
John Major	British Prime Minister, 1990-1997.
Philip Monjack	Chartered accountant and an insolvency expert, liquidator for Euro Arabian Jewellery Limited.
Mr. Mongi Zdiri	Chief Accountant, AGIP (Africa) Limited.

SUMMARY

Money laundering, described as the 'mother of all crimes', is on the increase. The amounts laundered through Western financial markets are estimated to be anywhere between US$ 750 billion and a trillion dollars: large enough to dwarf the Gross Domestic Product (GDP) of many nations and destroy thriving economies. Such large amounts cannot easily be laundered without the (direct or indirect) involvement of accountants for they, like the lawyers and financial experts, have the technical knowledge of the world's financial systems. It is accountants who create and manipulate the complex transactions that make it difficult to identify and trace the origins and ultimate destiny of the illicit funds. When acting as auditors, the accountants are also incapable or reluctant to reveal and report such activity.

Throughout the world, regulatory agencies are drawing attention to the involvement of accountants in laundering money. The Financial Action Task Force (FATF), an organisation created by the G-7 nations to combat money laundering, has reported that there is "an increase in the number of .... accountants ..... whose services are deployed to assist in the disposal of criminal profits" and that their "ploys include the establishment of shell corporations, trusts and partnerships ..... Working through these business entities, the professionals spin webs of intricate transactions to mask the origin of criminally derived funds and to conceal the identities of the parties and beneficiaries. In many cases, professionals act as directors, trustees, or partners in these transactions, or they will supply nominal directors, trustees, or partners". The UK based National Criminal Intelligence Service (NCIS) has reported that "Criminals continue to use .... professional money launderers (including ..... accountants)". The statistics published by the NCIS show that UK accountants are least likely to notice instances of money laundering, and are perhaps unwilling to report what they know. The Economic Secretary to the UK Treasury has reported that "There is increasing use of ….. the services of accountants …. to launder money".

In the 1990 High Court case of *AGIP (Africa) Limited v Jackson & Others*., Mr. Justice Millett judged that "[Accountants] are professional men. They obviously knew they were laundering money. .... It must have been obvious to them that their clients could not afford their activities to see the light of the day. Secrecy is the badge of fraud. They must have realised at least that their clients *might* be involved in a fraud on the plaintiffs". The court also judged that other accountancy firms may be involved.

By using the *AGIP* affair as a case study, we show that the claims of successive

governments to be combating money laundering are not supported by their actions. The strong High Court judgement should have prompted the Department of Trade and Industry (DTI) and other regulators to investigate the matters. They did not. When urged to investigate, various government departments, the Prime Minister, the Serious Fraud Office, the Attorney General, the Police and the Institute of Chartered Accountants in England & Wales (ICAEW), all considered it to be someone else's responsibility. Despite the court revelations, there has been no investigation and no public report. Some 20,000 pages of evidence is available to shed further light on the matters disclosed during the High Court judgement, but no UK regulator is interested in examining it. There is a wall of silence and buck-passing. In this monograph we show the responses of various regulators to the High Court judgement.

Any effective fight against money laundering requires greater openness and public accountability. But deregulation, increased secrecy and ineffective public surveillance have been the preferred government policies. There is little reflection on the social values which encourage individuals to make quick gains even by anti-social and predatory actions. Professionals, such as accountants, are involved in laundering money, but the government expects these same occupations to somehow help in the fight against money laundering. It relies upon accountancy trade associations to investigate the involvement of accountants in money laundering. In fact, these trade associations have no independence from their members. They have failed to combine their regulatory responsibilities with their primary role of trade associations. They do not owe a 'duty of care' to any citizen. So there is no check on the involvement of accountants in money laundering. Unless the government is prepared to act rather than continue to indulge the accountancy trade associations, the involvement of accountants in money laundering will continue unchecked.

CHAPTER 1
THE MOTHER OF ALL CRIMES

IT'S BIG AND IT'S GLOBAL

'Money laundering', described as "the mother of all crimes" (Castells, 1997, p. 260) entered popular vocabulary in the 1970s in the aftermath of the Watergate scandal. It refers to the processes that enable knowledgeable persons to transmit "illicit funds through the banking system in such a way as to disguise the origin or ownership of the funds" (Bingham, 1992, p. 25) and thereby launder and legitimise the dirty monies. The amounts being laundered[1] are estimated to be anything between US $750 billion (Castells, 1997, p. 260) and a trillion dollars (Wiener, 1997), large enough to dwarf the Gross Domestic Product (GDP) of many nation states, including the United Kingdom.

The laundered amounts are large enough to stimulate and/or destabilise financial markets, national/world economies and social order (Home Affairs Committee, 1994; Rider, 1996). They can facilitate bribery and corruption at senior policy making levels and play havoc with democratic politics. Laundered monies enable some to maintain private armies of thugs and enforcers. The loss of tax revenues and the scale of illicit proceeds make it difficult for governments to manage national economies. Money laundering produces instability which can threaten the stable economic and political environment necessary for smooth accumulation of profits and revenues by business enterprises. It can threaten the safety of people's pensions, savings and bank deposits.

Money laundering has become a major activity because of the emergence of global markets and information technologies which enable footloose capital to move easily across national boundaries. The geographical mobility of capital has been vastly increased by the formation of global stock markets and markets in money, futures, derivatives, and currency and interest rates. Money easily roams the world and is itself traded as a commodity. Under pressure from international financiers and wheeler-dealers, governments have been obliged to restructure their economies to encourage an 'enterprise culture' by lowering of international barriers to free flow of money. Combating money laundering requires greater openness, public accountability and empowerment of stakeholders, but deregulation and the reduction of public scrutiny and accountability has been the main political ideology. Unsurprisingly, organised white-collar crime is on the increase.

This easy flow of money has encouraged the development of new tax havens and offshore financial centres, such as the Channel Islands, which ask few questions, guarantee secrecy to their clients and obstruct inquiries by international regulators (Kerry and Brown, 1992; Hampton, 1996; Organisation for Economic Co-operation and Development, 1998; United Nations Office for Drug Control and Crime Prevention, 1998). As Barnet and Cavanagh (1994) put it, “Tax havens are nesting grounds for criminal gains or untaxed profits. Indeed, most of the deposits sitting in these out-of-the-way places are there to avoid scrutiny by regulators and taxing authorities” (p. 389). It is estimated that at least 10% of all the deposits held in offshore havens represent either the proceeds of tax evasion or drug money (Inman, 1997). Jersey, with a population of 86,000 has bank deposits of nearly £100 billion. How much of this is ‘dirty money’ is not known.

Money laundering is not just the exclusive domain of offshore financial centres. Even in the major international financial centre, such as London, companies can be formed with minimum issued share capital of just £1 and used for legitimate and illegitimate purposes. The ownership of these companies can remain secret with professional nominees and agents providing respectable fronts. Some of these companies never undertake any trading and have little direct contact with the public. Instead, they can easily be used to launder the proceeds of drug-trafficking, robberies, smuggling, terrorism, tax evasion, bootlegging, art theft, vehicle theft, fraud and other anti-social activities.

Money laundering requires the services of an international elite. As the White House director of National Drug Control Policy put it, “You can’t hide billions of dollars or move them around physically. ….. They have to be turned into transactions, cybercash, credit cards or offshore accounts” (Financial Times, 20 July 1998, p. 3). These facilities are provided by professionals, such as accountants and lawyers, commanding very high fees - as much as 20% of the money laundered (Hook, 1998). Those indulging in money laundering need to know the international financial systems, create and manipulate complex transactions and devise misleading transaction trails. The finger is firmly pointed at accountants. Large amounts of money cannot easily and expertly be laundered without the (direct or indirect) involvement of accountants (Kochan and Whittington, 1991; Barchard, 1992; Davies, 1992; Kerry and Brown, 1992; Financial Crime Enforcement Network, 1992; Ehrenfeld, 1992). The 1997 case of *R v Abdul Chiragh* showed that a chartered accountant[2] created false documentation and transaction trails to enable the Bank of Credit and Commerce International (BCCI) to launder monies through shell-companies located in the Channel Islands. It is accountants who are able to create and manipulate the complex transactions which make it difficult to identify and trace the origins and the ultimate destiny of the illicit funds (McBarnet, 1991). It is accountants who acting as auditors, are reluctant to reveal and report such activity (Bingham, 1992).

Contrary to the popular image, money laundering is not just the activity of deviant individuals in some Dickensian `den of crimes'. Rather it is planned, executed, minuted and concealed in clean, respectable, well-lit city centre offices by accredited professionals, wearing expensive clothes, driving expensive cars and living in fashionable suburbs. As the forced closure of BCCI showed, money laundering is facilitated through “the use of shell corporations, bank confidentiality, secrecy havens, layering of corporate structures, the use of front-men and nominees, guarantees and buy-back arrangements; back-to-back financial documentation, kick-backs and bribes, the intimidation of witnesses, and the retention of well-placed insiders to discourage government action" (Kerry and Brown, 1992, p.1). Like any other white-collar crime, money laundering is best understood as an activity that is increasingly undertaken by organised groups, corporations and elite occupations.

WHAT IS TO BE DONE?

Successive governments will have the public believe that they are effectively combating the laundering of money. The reality is different. A lot of legislation, such as the Criminal Justice Act 1993, has been introduced. But robust, independent and effective regulators have not accompanied it. Money laundering, like other white-collar crime, thrives on secrecy. The biggest check against it is greater openness and increased public accountability. Yet the UK governments have been devoted to rolling back corporate accountability. Deregulation has been the dominant ideology of the 1980s and the 1990s and spokespersons for big business want even less public scrutiny and accountability (Committee on Corporate Governance, 1998). Not surprisingly, the UK government has been unable able to check organised white-collar crime.

The government has relied upon accountants and auditors to report suspicious transactions to the regulators. The World Bank advocates this policy even though the alleged/real involvement of accountants in white-collar crime is often reported in the press[3]. It encourages governments to place greater reliance upon accountants/auditors to monitor company transactions and inform the regulators of any suspicious transactions (Wolfensohn, 1998), especially as accountants claim to have the necessary expertise to identify, investigate and report suspicious transactions (Bond, 1994; ICAEW, 1994; Auditing Practices Board, 1997). This advice presupposes that accountants themselves are not a party to money laundering transactions. Yet the National Criminal Intelligence Service (NCIS) and the Financial Action Task Force (FATF) state that accountants are increasingly involved in laundering money.

The World Bank edicts resonate with the UK practices[4] where the government places considerable reliance upon accountants/auditors to monitor the activities of financial businesses and report suspicious transactions to designated regulators, even without the knowledge of their clients (Bingham, 1992; Power, 1993; Sikka and Willmott, 1995; Auditing Practices Board, 1995; Sikka et al, 1998). Yet at the same time, a large number of real/alleged audit failures (e.g. BCCI, Maxwell, Polly Peck, Astra, Queens Moat Houses, Atlantic Computers and many others) have raised questions about the public spirit of major auditing firms. For example, the US investigation of the 1991 closure of the Bank of Credit and Commerce International (BCCI)[5] concluded that "By the end of 1987, given Price Waterhouse (UK)'s knowledge about the inadequacies of BCCI's records, it had ample reason to recognise that there could be no adequate basis for certifying that it had examined BCCI's books and records and that its picture of those records were indeed a "true and fair view" of BCCI's financial state of affairs ...... the certifications by BCCI's auditors ..... had the consequence of assisting BCCI in misleading depositors, regulators, investigators and other financial institutions as to BCCI's true financial condition" (Kerry and Brown, 1992, p. 259).

Calls for the continued reliance upon accountants are based upon a mistaken image of accountants as altruistic and public spirited individuals. This ignores the fact that as managers and owners of significant businesses accountants are not immune from the structural pressures to make quick 'private' profits. Public service does not form any part of professional accountancy education or training. Based upon a study of the internal workings of major accountancy firms, Hanlon (1994) concludes that the socialisation processes within accountancy firms are mainly concerned with "being commercial and on performing a service for the customer rather than on being public spirited on behalf of either the public or the state" (p. 150). Indeed, in pursuit of private gains, accountancy firms have shown a long history of "turning a blind eye on the wholesale abuse by client company directors of [legal] provisions" (Woolf, 1983, p. 112) and "disclosing considerably less than what they actually know" (Woolf, 1986, p. 511; also see Sikka and Willmott, 1995).

The reluctance of accountants to act in a socially responsible way is aided by the absence of an independent and robust system of regulation. Successive governments have indulged accountants by relying upon self-regulation, more commonly known as ‘chaps regulating the chaps’. The accountancy trade associations (e.g. the Institute of Chartered Accountants in England & Wales) are expected to combine trade association and regulatory roles. These bodies were formed to secure niches and markets for their members rather than to prosecute them. Their instinct is to shield their members by sweeping things under their dust-laden carpets. This is borne by the fact that little effective action has been taken against firms implicated in audit failures (Sikka and Willmott, 1995) or even those who violate the ethical strictures issued by the accountancy bodies (Mitchell et al, 1994).

THE STRUCTURE OF THIS MONOGRAPH

Money laundering is a murky affair. Those indulging in it do not easily volunteer information and the truth is often elusive. Therefore, the onus is on regulators to investigate matters. This monograph examines the regulatory dynamics of the fight against money laundering by focusing on the UK government’s response to allegations of money laundering against accountants. Our case study is based upon the High Court case of *AGIP (Africa) Limited*[6] *v Jackson & Others (1990) 1 Ch. 265* in which a partner and an employee of a small accounting firm were judged to have 'knowingly' laundered money and assisted in the misapplication of the funds. The case study illustrates how money laundering activity is undertaken. It also draws attention to the fact that the court judgement also referred to the possible involvement of a larger firm. More importantly, the monograph highlights the operations of the regulatory apparatus in the UK in addressing cases of money laundering. Despite the court judgement, the reluctance of regulatory authorities to investigate evidence and allegations brought out in this case indicates an alarming degree of inertia and buck-passing within the UK regulatory process. The evidence of this case suggests the existence of a deeply ingrained indifference to the apparent involvement of major accounting firms in money laundering activity or, at least, an institutionalised disinclination to undertake vigorous and open investigation of such cases.

The monograph is organised into seven further chapters. The first of these (chapter two) focuses on the attempts to combat money laundering. It is noted that accountants claim to have the necessary expertise to detect and report money laundering, but it appears that this expertise is more often used to facilitate money laundering. The government’s statistics show that accountants are least likely to report suspicious transactions to the regulators. Chapter three is based upon the ‘facts’ which transpired from the evidence given in open court and from a review and summary of the judgement read out by Mr. Justice Millett in the case of *AGIP (Africa) Limited v Jackson & Others (1990) 1 Ch. 265.* In this case, an accountancy firm (Jackson & Co.) was judged to have used a series of shell companies to launder money (also see Mansell, 1991a; Robinson 1994, p. 293). By drawing upon the court judgement, the monograph details the way in which very large sums of money passed through the offices of this firm, though the only benefit derived by those involved took the form of standard fee income. As the High Court judgement stated that a number of contacts and schemes were provided to Jackson & Co. by a Grant Thornton partner, the fourth chapter examines this link. It also poses some questions about the efficiency of external audits. The clarity of the High Court judgement and the many unanswered questions surrounding the comparatively high-profile AGIP case should have attracted the attention of UK regulators. More specifically, allegations made during the course of the court case should have prompted an investigation of the involvement of the larger accountancy firm in the AGIP affair. This apparent lack of action prompted a dialogue with the regulators. Through a series of questions raised in Parliament and numerous letters to regulators and Ministers, including the Prime Minister, attempts were made to discover how the regulatory apparatus was responding to the revelations of the AGIP case. This correspondence is reported in the fifth chapter. In this chapter, we also note the Ministers parried all questions and responsibilities by referring to an ICAEW report that no outsider had seen. We eventually obtained a copy of the ICAEW report and our evaluation is given in chapter six. The ICAEW report is a whitewash. The serious matters raised by the High Court judgement had not been investigated. On the basis of the findings derived from our investigation of the response of the regulators and Ministers, chapter seven argues that regulatory indifference and inaction is indicative of the close and indulgent relationship between the UK accountancy industry and the state. It suggests that the UK government is more concerned with creating an impression of combating money laundering rather than taking action which would inconvenience accountants Chapter eight concludes the monograph by outlining some proposals for reform.

CHAPTER 2
ACCOUNTING FOR MONEY LAUNDERING

THE LEGISLATIVE FRAMEWORK

The UK framework for combating money laundering consists of a variety of laws ranging from the Criminal Justice Act 1988, the Prevention of Terrorism (Temporary Provisions) Act 1989, the Drug Trafficking Act 1994 to the Proceeds of Crime Act 1995. However, the principal weapon is the Criminal Justice Act (CJA) 1993 and the Money Laundering Regulations made thereunder (also see Bosworth-Davies and Saltmarsh, 1994; Bingham, 1992; Birks, 1995). Under the CJA (for a discussion, see Bosworth-Davies and Saltmarsh, 1994; Auditing Practices Board, 1997; Wiener, 1997), it is an offence to knowingly launder money, or assist another person to launder the proceeds of crime. It is also an offence to acquire, possess or use the proceeds of criminal conduct; conceal the proceeds of criminal activity and fail to disclose knowledge of suspicion of money laundering.

Under the Money Laundering Regulations 1993, entities undertaking financial business are required to devise procedures to prevent and detect money laundering. Thus banks, building societies, insurance companies, credit unions and financial services businesses are required to have adequate internal controls, records and procedures to identify suspicious transactions. They are required to train their staff and have suitable internal controls for detection and reporting of money laundering transactions. The CJA's main focus is banks and financial institutions but it also places special responsibilities on all citizens to report money laundering, or suspicious transactions to a specially designated agency, the National Criminal Intelligence Service (NCIS). Failure to disclose knowledge or suspicion of money laundering to the authorities, or tipping-off any person about an actual or impending investigation by the authorities into any alleged money laundering activity is an offence. Money laundering (including, assisting a criminal to hide proceeds of crime) attracts a maximum penalty of 14 years imprisonment or an unlimited fine or both.

THE ROLE OF ACCOUNTANTS

Accountants claim to have the expertise to detect and report money laundering. They sell this expertise as part of fraud investigation services. The Institute of Chartered Accountants in England & Wales (ICAEW) draws attention to possible signs of money laundering. These include, "transactions with little commercial logic taking place in the normal course of business; the forming of companies or trusts with no apparent commercial or other purpose; unusual transactions with companies registered overseas; transactions with companies whose identity is difficult to establish as they are registered in countries known for their commercial secrecy; transactions where there is a lack of information or explanation or where explanations are unsatisfactory; payments for unspecified services" (ICAEW, 1996, p. 7-8; also see ICAEW, 1994; Auditing Practices Board, 1995; Bond, 1994).

Is this expertise used for the public good? One of the conclusions of the National Criminal Intelligence Service (NCIS) is that

> "Criminals continue to use .... professional money launderers (including **accountants**)... [our emphasis]
>
> **Source**: The 1996/97 report of the NCIS, page 9.

The Economic Secretary to the UK Treasury has reported that

> "There is increasing use of ……… the services of accountants ….. to launder money"
>
> **Source**: H.M. Treasury Press Release, 1st June 1998.

The conclusion of the G-7 sponsored, the Financial Action Task Force (FATF) is that

> "[An] important trend has been the rise of a class of professional money laundering facilitators ..... an increase in the number of ..... **accountants** ..... whose services are deployed to assist in the disposal of criminal profits" (our emphasis).
>
> **Source:** Financial Action Task Force (FATF), 1996, para 20.

The FATF has reported that the ploys used by these professionals "include the establishment of shell corporations, trusts and partnerships by .... accountants and other professionals. Working through these business entities, the professionals spin webs of intricate transactions to mask the origin of criminally derived funds and to conceal the identities of the parties and beneficiaries. In many cases professionals act as directors, trustees, or partners in these transactions, or they will supply nominal directors, trustees, or partners" (Financial Action Task Force, 1996, para 21).

Might one expect accountants/auditors to report money laundering to the regulators? Accountants enjoy state guaranteed market of external audits. As auditors, they have more powers than the Police. Their rights are enshrined in Sections 389A and 390 of the Companies Act 1985. Unlike the Police, they do not need a court warrant to have access to company books, records, vouchers and files. Accountants and auditors of financial businesses have a statutory 'duty' to report suspicious transactions, even without client knowledge, to the regulators (Hansard, 15 February 1994, cols. 852-875). The legislation provides that making a disclosure to the regulators shall not be treated as a breach of any duty of confidentiality to a client. By acting in 'good faith', accountants/auditors also enjoy qualified privileges from the laws of libel. So what is an auditor's 'duty' as regards money laundering, which is a category of fraud?

"There is a statutory 'duty' on auditors to report money laundering to the regulators by virtue of the provisions in the Criminal Justice Act 1993. These require reports to be made to the appropriate authorities of any suspicious transactions of money laundering relating to terrorist activity or drug trafficking. Although these provisions do not relate to all serious crime, in practice suspicious reports are often likely to be made where the nature of predicate offence is not known".

Source: Letter (13 September, 1997) from the Economic Secretary to the Treasury.

"Auditors are of course subject to the statutory duty in the Criminal Justice Act 1993 which requires all persons to report to the appropriate authorities any suspicions of money laundering related to drug trafficking or terrorist activity, gained in the course of their work. The further requirements on auditors in particular to report other instances are imposed through guidance issued by the Auditing Practices Board .....

Source: Letter (13 October, 1997) from the Minister for Corporate Affairs.

"Just like banks and building societies, accountants .... have an obligation to ensure they are not assisting criminals to hide the proceeds of their crime".

Source: NCIS Press Release, dated 17 August 1998.

However, the spokespersons for the UK accountancy industry are only too willing to abdicate their moral and legal obligations.

"Auditors have no statutory responsibility to plan or perform their audits in such a way as to detect money laundering"

Source: The Institute of Chartered Accountants in England & Wales (1996).

"No statutory duties have been placed on auditors (underlined in the original) as such in relation to money laundering; the statutory requirements relate *either* to persons generally (in the case of the statutory duty to report suspicions) *or* to those undertaking "relevant financial business" .... who are required by the Money Laundering Regulations 1993 to take steps to help prevent or detect money laundering). Auditing is not a relevant financial business, though accounting firms may undertake other activities, such as investment advice, which falls into this category"

Source: Letter (17 September 1997) from the Chairman of the Auditing Practices Board.

It should be noted that the Auditing Practices Board (APB) issues auditing standards which all auditors are required to comply with. However, the APB has no independence from the auditing industry. It is controlled by the UK accountancy trade associations. It enables auditors and company directors to negotiate dilution of auditor obligations. The compliance with auditing standards is monitored by the accountancy bodies who, under the Companies Act 1989, function as public regulators of the auditing industry. However, the accountancy bodies have no independence from the auditing industry. It is significant that on the topic of 'money laundering' the APB has a issued a '*Practice Note*' rather than an '*Auditing Standard*'. The significance is that the auditor monitoring regime introduced by the Companies Act 1989 requires the accountancy bodies to monitor compliance only with 'auditing standards'. 'Practice Notes' are for auditor guidance only. Compliance with them is not mandatory. The institutional pressures on accountants and auditors to report money laundering are virtually non-existent.

Despite a plethora of professional statements presenting a veneer of public respectability (e.g. ICAEW, 1994, 1996; Bond 1994, APB, 1997) accountants are least likely (compared even to solicitors) to report suspicious transactions (see Table 1) to regulators[7].

TABLE 1

TOTAL NUMBER OF DISCLOSURES MADE TO NATIONAL CRIMINAL INTELLIGENCE SERVICE

TOTAL	DISCLOSURES BY

YEAR	DISCLOSURES	ACCOUNTANTS	SOLICITORS
1992	11,289	1	4
1993	12,750	2	4
1994	15,007	6	86
1995	13,710	38	190
1996	16,125	75	300
1997	14,148	44	236
1998	14,129	98	269
1999	14,500	84	291

Source: Annual Reports of the National Criminal Intelligence Service.

The above statistics show a consistently "disappointing failure on the part of .... accountants ..... to meet their legal and moral obligations to report suspicious transactions to the authorities" (NCIS press release dated 17 August, 1998): a failure which is directly responsible for drug-trafficking and degradation of our daily lives. In defence, one might argue that perhaps accountants are not aware of their public 'duties'. But this would be a feeble excuse. It could be that they lack an adequate knowledge base and thus fail to notice instances of money laundering. Yet accountants and their trade associations routinely trade upon their claims of expertise for detecting and reporting fraud. Perhaps accountants do notice instances of money laundering, but are more concerned to advance the private interests of their clients and enhance their own fee income. The relatively low number of notifications to the NCIS may be due to the accountants' own involvement in the processes of money laundering. Accountants would hardly report their own involvement in facilitating money laundering. Certainly, with the absence of independent regulators, their failures to discharge social obligations have not been investigated and punished. Whatever the reason, the accountants' inability or reluctance to report suspicious transactions needs to be investigated. Without the appropriate regulatory structures, accountants are unlikely to act in a socially responsible way. So the remainder of this monograph will show that accountants are involved in laundering money and that the present regulators have shown a marked unwillingness to investigate the involvement of accountants in money laundering activities.

CHAPTER 3
THE PUBLIC WASH

The allegations of money laundering involving accountants came in the High Court case of *AGIP (Africa) Limited v Jackson & Others (1990) 1 Ch. 265.*

In the late 1970s and early 1980s, AGIP (Africa) Limited, a company incorporated in Jersey[8] was engaged in drilling for oil in Tunisia, under permits and concessions granted by the Tunisian Government. The Tunis branch held a US dollar account at Banque du Sud from which overseas suppliers were paid. Over a period of many years (since 1976), both before and after 1983 when accountants Jackson & Co. became involved in the matter (see below), AGIP was systematically defrauded of millions of dollars by its chief accountant, a Mr. Zdiri. Though not a director of the company or a signatory of any bank account, he was responsible for collecting invoices and matching them to the completed payment orders prior to obtaining approved signatures for the same. He was also responsible for banking. The court judged that Mr Zdiri had used his position to misappropriate the funds by altering the name of the payee on the payment orders after obtaining authorised signatures.

Mr. Justice Millett's judgement stated that between March 1983 and January 1985, Mr. Zdiri defrauded AGIP of US $10.5 million by altering some 27 orders which found their way to England. The payees were all companies registered in England and managed by Jackson & Co., based in the Isle of Man. Seven different companies, each holding a US$ account at a major branch of Lloyds Bank (a major British bank) were used in succession to receive the monies. However, AGIP did not bring a criminal case for fraud or even a case for the recovery of US $10.5 million or anything (said to be in excess of $17 million) dating back from 1976. Instead, it took civil action under `law of trust' to recover only the sum of US $518,822.92 (being the last of the diverted monies), paid on 7th January 1985 to Baker Oil Services (for details see below), on the ground that this was all that Jackson & Co. could reasonably afford to repay.

The case was defended by Mr. Barry Jackson and a Mr. Edward Bowers[9], who practised as chartered accountants in the Isle of Man, under the name of Jackson & Co. The third defendant, a Mr. Ian Griffin (not an accountant), was an employee of Jackson & Co. The defendants, the judge noted, were acting on the instructions of a French lawyer, Monsieur Yves Coulon, who in turn was acting for principals whose identity is not known. The court judgement recorded that Jackson & Co. were introduced to the prevailing arrangements by Roger Humphrey of Thornton Baker (now Grant Thornton) who also provided some of the payee companies (see further details below). Each of the companies had a nominal share capital which was usually registered in the names of service companies provided by Jackson & Co. In each case, Mr. Jackson and Mr. Griffin were the directors and the authorised signatories on the company's bank account. Roger Humphrey was also a director and a signatory in the case of the first few companies. None of the companies had any assets or carried on any genuine business activity. In the case of each company, except that of Baker Oil, after two or three payments had been received and paid out, the account was closed and a new account opened for the successor company. Its predecessor was then put into liquidation and either Jackson or Bowers was appointed liquidator. All bank statements of the payee companies' showed the receipts to be derived from payments made by AGIP.

All receipts by the payee companies were transferred, usually on the same day, to another company, Euro-Arabian Jewellery Limited, which also maintained a US dollar account at the same branch of Lloyds bank. Euro-Arabian was registered in England with Mr. Jackson as one of its three directors. Jackson, Humphrey and Griffin were the authorised signatories of its bank account, with the agreement that either could act as a signatory in his own right. The court judgement recorded that there was “no evidence to show that Euro-Arabian carried on any genuine business activity”. As soon as Euro-Arabian received any payment from a payee company, it paid it out to parties located abroad. Most of the money went to Kinz Joaillier SARL, incorporated in France, which appears to be a subsidiary of Euro-Arabian Jewellery. Mr. Jackson was a director of the company with Yves Coulon acting as its legal adviser. Coulon had no authority to operate the bank accounts of any of the payee companies or Euro-Arabian, but the bank's assistant manager (who was not involved in the fraud in any way whatsoever) was authorised to disclose information about the accounts to him. The bank’s assistant manager was told to expect payments of about US $500,000 per month from Tunis. When a payment was expected, the assistant manager would be notified by Jackson & Co. Upon receipt of the money, he would telephone Jackson & Co. and inform them that the sums had been received. After a short interval, but usually on the same day (presumably after instructions from someone e.g. Coulon), upon Mr. Jackson's instructions, the monies would be paid out.

The case brought by AGIP centred on a payment to Baker[10] Oil which was incorporated on 12 December 1984. Mr. Jackson and Mr. Griffin held the entire issued share capital of £1 each. They were also its bank signatories and directors. Baker Oil opened a US$ account at the same London bank branch on 17th December 1984. Just a day later, a Mr. Del Sorbo, an AGIP official, had signed a payment order of US$ 518,802.92 in favour of Maersk Supply

(Tunisia) Limited, payable at Morgan Guaranty Trust Company of New York. After the signature, the payment had been altered and made payable to `Beker-Service Cie' with the address of the London branch of Lloyds Bank and the correct number of Baker Oil's U.S. dollar account. The altered payment order was executed by Banque du Sud on 7th January 1985. Jackson & Co. had already told Lloyds Bank to expect a payment and asked to be informed of its arrival. On 7th January Mr. Del Sorbo also became aware of the fraud as he visited Banque du Sud. He asked the bank to stop the payments, but due to time differences between London, Tunis and New York, payments had already been made and could not be reversed. The sum of US$ 518,822.92 was received to the account of Baker Oil and then transferred to the account of Jackson & Co. (opened in March 1984), held at the same branch of Lloyds and Baker Oil's account was immediately closed. These transactions were confirmed in a letter to Baker Oil. On 9th January 1985, the same amount was transferred to Jackson & Co.'s 'Client's' account at the Isle of Man Bank Limited. On 15th January, most of the amount[11] was paid out from this bank account to Kinz Joaillier SARL. Subsequently, Baker Oil, Euro-Arabian and Kinz were all put into liquidation. AGIP brought proceedings in Tunisia against Banque du Sud and also sought to recover US$ 518,822.92 from Baker Oil (which no longer existed) and Jackson & Co.

During the court case, Jackson & Co. "elected to call no evidence", therefore, the court attached considerable importance to some documents presented to it. One of these related to the minutes (dated 22nd March 1984) of the first meeting of Keelward Limited, another of the payee companies. The minutes[12] noted that

> "the receipt of monies from Tunisia .... formed part of a long standing arrangement .... the arrangements resulted in the extraction of monies from Tunisia in circumvention of the Tunisian Exchange Control Regulations".
>
> **Source**: The High Court judgement in *AGIP (Africa) Limited v Jackson & Others (1990) 1 Ch. 265.*

In another document, a letter (dated 14 August 1984) addressed to Mr. Jackson by a firm of solicitors noted that:

"Agip may be able to establish a cause of action by claiming that the payments were obtained by fraud. Agip could also rely on English law as the fraud would presumably have taken place within England, at the time when monies were transferred out of Agip's account into the account of the U.K. company.

.... although Agip may be able to establish a cause of action, it would still be necessary for Agip to establish fraud (as defined under English law) for any action for the recovery of the monies to be successful .... Because of the general principle of banking confidentiality, it would be extremely difficult for the Tunisian Government or Agip to obtain an order requiring Lloyds Bank to disclose banking transactions, unless disclosure is ordered by the English Courts".

Source: The High Court judgement in *AGIP (Africa) Limited v Jackson & Others (1990) 1 Ch. 277-278.*

In his judgement, Mr. Justice Millett stated (also see The Times, 20 May 1989, page 3; 5 June 1989, page 41) that:

"Mr. Jackson and Mr. Griffin knew .... of no connection or dealings between the Plaintiffs and Kinz or of any commercial reason for the Plaintiffs to make substantial payments to Kinz. They must have realised that the only function which the payee companies or Euro-Arabian performed was to act as "cut-outs" in order to conceal the true destination of the money from the Plaintiffs .... to make it impossible for investigators to make any connection between the Plaintiffs and Kinz without having recourse to Lloyds Bank's records; and their object in frequently replacing the payee company by another must have been to reduce the risk of discovery by the Plaintiffs".

"Mr. Jackson and Mr. Griffin are professional men. They obviously knew they were laundering money. .... It must have been obvious to them that their clients could not afford their activities to see the light of the day. Secrecy is the badge of fraud. They must have realised at least that their clients *might* be involved in a fraud on the plaintiffs".

Source: High Court judgement in *AGIP (Africa) Limited v Jackson & Others (1990) 1 Ch. 265.*

To recap, monies were being transferred from AGIP to Kinz Joaillier SARL via a number of other `cut out' companies and their bank accounts. In this process, accountants Jackson & Co. were judged by the courts to have dishonestly assisted in the misapplication of funds. Another argument advanced was that the processes "formed part of a long-standing arrangement .... the arrangements resulted in the extraction of monies from Tunisia in circumvention of the Tunisian Exchange Control Regulations". This may have been done with the intention of bribing Tunisian officials or Ministers.

Jackson & Co. appealed against the court judgement by arguing that they merely took over on-going arrangements and schemes. They also argued that the monies paid by AGIP to the said English Companies were in fact intended to be received by senior Tunisian politicians and their families. They argued that the payments were voluntarily made by AGIP to circumvent Tunisian exchange control regulations (also see Mansell 1991a, 1991b and an article in French magazine Jeune Afrique Economie, Sept/Oct 1986, pages 59-63). The appeal was unsuccessful (see *AGIP v Jackson & Co (1991) 1 Ch. 547*; also see Financial Times, 18 January 1991, p. 36) and Jackson & Co. were ordered to pay US $700,000 to AGIP.

CHAPTER 4
THE ACCOUNTING CIRCLES

There are two further accounting aspects which need to be examined. The first of these relates to the involvement of Grant Thornton tax manager Roger Humphrey. The second relates to the efficiency of the AGIP audits.

THE GRANT THORNTON CONNECTION

In his judgement, Mr. Justice Millett stated that a Grant Thornton partner introduced Jackson & Co. to various schemes and payee companies. This link is now examined.

> "Jackson & Co. were introduced to the High Holborn branch of Lloyds Bank Plc. in March 1983 by a Mr Humphrey, a partner in the well known firm of Thornton Baker [now part of Grant Thornton]. They probably took over an established arrangement. Thenceforth they provided the payee companies... In each case Mr Jackson and Mr Griffin were the directors and the authorised signatories on the company's account at Lloyds Bank. In the case of the first few companies Mr Humphrey was also a director and authorised signatory".
>
> **Source:** Judgement by Mr. Justice Millett in the case of *AGIP (Africa) Limited v Jackson & Others (1990) 1 Ch. 275.*

So how did Roger Humphrey (not an accountant) and Grant Thornton become involved?[13]

Before joining Grant Thornton, Roger Humphrey was employed during 1979/80 by Minet Financial Management Limited in London. This company had a subsidiary in Guernsey, Minet Trust Co. (International) Limited. In common with other off-shore havens, Guernsey legally enables individuals and companies to hold nominee accounts and facilitates secrecy/privacy concerning their financial dealings. Over the years, major finance houses have located in places like Guernsey and offer services to a variety of clients. In common with many other financial intermediaries, part of Minet Trust's business involved the handling of funds through trusts and other arrangements for wealthy clients who wished to keep their monies in secret "off-shore" tax havens, such as Guernsey.

In late 1979/80, Humphrey made a business trip to Guernsey. By chance he met the managing director of Minet Trust who was accompanied by Yves Coulon, a French lawyer. Coulon eventually invited Humphrey to act as an intermediary, an offer which Humphrey accepted as it required him to pass on, rather than execute, the instructions. These instructions were dictated to Humphrey and Coulon did not put them in writing.

During the course of his dealings with Coulon, Humphrey became aware that payments were being received from Tunisia and that the amounts were then placed to the account of various shell-companies created by Minet Trust. The first such company, Humphrey recalls, was Anderfield Limited (incorporated in February 1980). Humphrey was not an officer of this company but became aware that funds received were transmitted onwards to various bank accounts in France, in accordance with Coulon's instructions. He also became aware that the arrangements were being operated for the benefit of Sophie Ben Hassine[14], a prominent Tunisian. Humphrey understood that Ben Hassine had substantial funds which she wished to transfer to France via England and knew that although she lived in France, she did not wish to have her funds in France in her name. There was nothing unusual in these arrangements, as Minet Trust was routinely and quite legally engaged in the handling of funds off-shore for prominent and wealthy European clients.

Humphrey left Minet in November 1981 to join Tyndall Bank in London. In common with other respected businesses, the Bank was also engaged in the provision of off-shore services to clients. Coulon suggested that the existing scheme or arrangements should also move with him. Humphrey suggested the idea to John Botting, a director of Tyndall Trust International (IOM) Limited. Humphrey recalls that Botting and Coulon probably met without his presence; he is not sure what enquiries were made of the links with Coulon or Ben Hassine. Humphrey was not concerned since he was acting as a messenger/intermediary. During his employment at Tyndall, Humphrey also eventually met Ben Hassine.

On 14th December 1981, shortly after Humphrey had moved to Tyndall Trust, Euro-Arabian Jewellery Limited[15] was incorporated (originally under the name Boldford Limited) and Humphrey became an authorised bank signatory to its Bank account held with Midland Bank in London. Humphrey was also a signatory for Lenthorpe Limited and Palmerstone Limited and three further shell-companies (or 'cut-outs') created by Tyndall Bank. In his capacity as a signatory on the account of Lenthorpe Limited, Humphrey became aware, for the first time, that the funds in question were being remitted from AGIP (Africa) Limited.

In November 1982, Humphrey left Tyndalls and joined Thornton Baker (now Grant Thornton). Once again, Coulon suggested that the schemes move with him. Humphrey was not certain whether this would be possible but soon became aware that Grant Thornton had a `correspondent firm', Jackson & Co. in the Isle of Man which engaged in similar operations. In January 1983, Humphrey introduced Coulon to Barry Jackson, but for many months Coulon continued to pass his instructions to Jackson & Co. through Humphrey. Thereafter, Humphrey claims that Coulon dealt directly with Jackson & Co. and that May 1983 was the last time he was actively involved in relation to instructing the Bank to effect transfers through another payee company, Windlist Limited.

The relationship between Grant Thornton and Jackson & Co., however, continued[16] until 1989 when, in the wake of the High Court judgement, Grant Thornton's senior partner announced that

> "With effect from today's date I have, with the authority vested in me by the International Policy Board, suspended the defacto agreement between GTI and Jackson & Co.
>
> ..... a management decision has been taken to suspend Barry Jackson and this will be reviewed when the Court of Appeal decision is known.
>
> **Source**: Grant Thornton International Bulletin 89-32, dated 30 October 1989.

In response to press comments, Grant Thornton's senior partner, Michael Lickiss[17], acknowledged:

> "I don't think there is any doubt that Humphrey met this man [Yves Coulon], passed on instructions, did things for him"
>
> **Source**: Grant Thornton senior partner cited in Mansell, 1989b; also see Mansell 1991c).

WHERE WERE THE AUDITORS?

The High Court judgement and allegations of money laundering also raise questions about the efficiency of external audits (Accountancy Age, 20 April 1989 p. 3; 18 May 1989, p. 2; 13 July 1989, p. 3; 20 July 1989, p.1; 30 May 1991, p. 2; also Mansell, 1991d), especially as auditors are expected to state whether the financial statements show a 'true and fair' view.

AGIP (Africa) Limited had been audited by the Channel Islands based part of Coopers & Lybrand (now part of PriceWaterhouseCoopers). In an affidavit dated *29th March 1985*, Coopers & Lybrand audit partner explained that Coopers only became aware of the fraudulent payments in mid-January 1985. He further recalls that

> "On 1st February 1985 ..... I returned a call from Barry Jackson, who had some years ago been the partner in an associated firm of Coopers & Lybrand but which association had ceased in the late 1970s. ..... he told me of the allegations of fraud and asked me whether we would confirm that a fraud had in fact been committed... he wished to co-operate fully .... he told me that the sums involved amounted to approximately $8.4 million and that remittances had commenced in March/April 1983 ...... I told him that we had not discovered the fraud in the 1983 audit".

The audit partner then added,

> "I now have the basic details of what occurred and I am aware of fraudulent payments made in 1983 and in 1984. **Indeed, I have now been asked to carry out an audit for 1984 as a matter of urgency and we are shortly to commence that audit** [our emphasis]".

However, Coopers **had already concluded the 1984 audit and issued an unqualified audit report** with the date *26 March 1985*.

> AUDITORS' REPORT TO THE MEMBERS OF AGIP (AFRICA) LIMITED
>
> We have audited the accounts on pages 2 to 12 in accordance with approved auditing standards. The accounts have been prepared under the historical cost convention.
>
> In our opinion, the accounts give a true and fair view of the state of affairs of the company at 31 December 1984 and of its loss and source and application of funds for the year then ended.
>
> Jersey 26 March 1985 Coopers & Lybrand
> Chartered Accountants

The 'approved auditing standards' mentioned in the audit report required that the "auditor should obtain relevant and reliable audit evidence sufficient to enable him to draw reasonable conclusions therefrom" (Auditing Practices Committee, 1980a). The same standards also advise that if "the auditor wishes to place reliance on any internal controls, he should ascertain and evaluate those controls and perform compliance tests on their operation" (Auditing

Practices Committee, 1980b).

A `letter of representation'[18] (dated 26th March 1985) obtained by Coopers from the AGIP Chairman and Vice Chairman in respect of the financial year ended 31 December 1984 noted that "Full provision has been made for financial losses in the Tunisian Branch arising from the misappropriation of funds". There is no such note in the representation letter relating to 1983. In contrast, the 1984 final accounts contained an extraordinary item of $7,078,384 described as `the charge for financial losses incurred by the Tunis Branch in 1984, which will form part of the basis for an insurance claim to be recovered in a future year'. Whether alerted by their internal discovery of fraud (in January 1985, see above), AGIP had already managed to adjust its financial statements to enable Coopers to give an unqualified audit opinion is not known.

For the AGIP audits, a number of questions are relevant. As the payments by AGIP were allegedly fraudulently diverted, how did the original creditors get paid? If the original creditors were not paid, did they ever complain? Did the company make duplicate payments to creditors? Major companies frequently have budgeting arrangements against which payments are recorded. In the case of AGIP, this could have shown either a large underspend or a large overspend. Did auditors or anyone notice? Following standard auditing procedures (Coopers & Lybrand, 1984), auditors may have examined supplier statements to ascertain the 'true' existence of the amounts owed to creditors. They may have written directly to major creditors and asked them to confirm the balances shown in their client's books. What did this reveal? In the light of the very public disclosures, did the AGIP management investigate the full extent of the frauds? If so, what did it discover and communicate to auditors? Perhaps, the misappropriations of monies were well concealed and standard auditing procedures were unable to detect them.

The AGIP case raised major issues and required that the regulators examine the details and the implications of the case. Such an investigation would not only serve to clarify the nature of this case, but could enable more effective ways of combating money laundering to be developed.

CHAPTER 5
THE WHITEWASHES

The High Court judgement stated that accountants knowingly laundered money. It also stated that other firms may be involved. The judgement raised questions about the efficiency of auditors and the resolve of the regulators to effectively combat money laundering. The case involved not only accountants, but also non-accountants (e.g. Ian Griffin, Roger Humphrey). It involved organisations operating from Jersey, England, Tunisia, France and the Isle of Man. Clearly, these matters could only be investigated by someone with independence from the accountancy industry. The investigator also needed to be able to secure evidence from accountants and non-accountants alike. Such considerations ruled out accountancy trade associations, such as the Institute of Chartered Accountants in England & Wales (ICAEW).

The High Court judgement should have prompted the Department of Trade and Industry (DTI) and possibly other regulators to act. Yet there was no public indication that any regulatory body was keen to do so. We, therefore, invited various regulators to investigate the matters. Our correspondence began with an approach to the DTI. Soon we discovered that various regulators were either unwilling or unable to examine the AGIP affair. On occasions, the UK regulators claimed to have examined the AGIP affair, but none were willing to let the public examine their reports and findings.

THE DEPARTMENT OF TRADE AND INDUSTRY

Through a written Parliamentary question, Austin Mitchell MP invited the Secretary of State for Trade and Industry to investigate the role of accountancy firms in money laundering.

Mr. Austin Mitchell: To ask the Secretary of State for Trade and Industry, if he will investigate the part played by auditing firms in laundering cash.
Mr. John Redwood: If the hon. Member has a particular case in mind and cares to let me have details, I shall be pleased to consider it.

Source: Hansard[19], 30 January 1991. col. 523.

The Minister was sent a letter (12 February 1991) accompanied by a `Law Report' from Financial Times (18th January 1991, page 36) and an article on the subject matter (Mansell, 1991b). In response, the Minister denied (28 February 1991) responsibility for investigating the involvement of accountants in money laundering and argued that it was either a criminal issue [it should be recalled that AGIP case was a civil case] to be referred to the police or a matter of `professional misconduct' to be taken up with the relevant accountancy body:

> "I have no power under the Companies Act to investigate the role of accountancy firms in this affair. Any question of their criminal involvement would be a matter for the police. The investigation of professional misconduct is a matter for the relevant professional body. ...
>
> I understand that the Institute of Chartered Accountants in England & Wales had noted the criticisms of one of its members made by the judge ..... and is making enquiries. However, the progress of the investigation at present is delayed by the continuing litigation. The Institute is also aware of the unsupported allegations in the press about the auditors, and a report will be made to its investigation committee at its next meeting".
>
> **Source**: Letter (28 February 1991) from the Minister for Corporate Affairs.

Since the Minister is directly responsible for regulation of business affairs which includes the regulation of accounting and accountants, he was urged (8th and 22nd March 1991) to set up an independent investigation, especially as the court judgement had ruled (see above) that '[Accountants] obviously knew they were laundering money'. The Minister rejected calls for an independent investigation and added that:

> "The police may have been alerted by the recent press articles, which is the only information that I could have given them. If you wish to pursue this matter I suggest that you speak to the police to find out any action taken by them.
>
> .... in view of the Court of Appeal's decision [i.e. the Appeal was lost], the litigation is no longer regarded as an impediment to an investigation by the ICAEW, and that the ICAEW is in fact actively reviewing the role of members and member firms in the whole affair" (letter dated 27 March 1991)[20].
>
> **Source**: Letter (27 March 1991) from the Minister for Corporate Affairs.

Dissatisfaction with the Minister's approach was again communicated on 29th April 1991 when the demand for an independent inquiry was repeated. In a subsequent dialogue, the Minister said the following:

> **Mr. Austin Mitchell:** To ask the Secretary of State for Trade and Industry, if he

will make a statement on the inquiries that he has conducted into the AGIP (Africa) affair.
Mr. John Redwood: It is not our practice to confirm or deny the existence of Companies Act inquiries in relation to a particular case unless there has been an announcement of an investigation.

Source: Hansard, 19 November 1991, col. 116.

THE PRIME MINISTER

The AGIP affair took an unexpected turn. In June 1991, Yves Coulon, the French lawyer and middleman in the money laundering schemes was due to give evidence (no immunity of any kind had been given to him) in France to the Tribunal de Grand Instants in Paris, in relation to the criminal charges associated with the AGIP theft. Yet he never gave this testimony because he was the recipient of a single bullet through the head, a murder which occurred only a day before his supposed co-conspirator Sophie Ben Hassine[21] was found guilty in France (Mansell, 1991b, Accountancy Age, 20 June 1991, pages 2 and 13) of defrauding AGIP of $11.8 million. Coulon had feared that he would be murdered. He was therefore keen to put some information on the public record. In particular, he made the claim that:

"a former Conservative [UK] Cabinet Minister still very prominent in politics .... was available to provide protection. ... a major organisation involved in the affair had the powers of `a government'. They've got an important politician in England who is looking after their interests in this and he will make sure things won't get out".

Source: (Mansell, 1991b).

In the light of the above allegations[22], correspondence with British Prime Minister, John Major, was opened on 26th June 1991. In reply, the Prime Minister did not say what the government had done or was doing. He followed the line provided by the Minister for Corporate Affairs, urging that "If you have evidence of wrongdoing the correct course is for you to pass it to the police" (letter dated 22 July 1991). Regarding the alleged involvement of a former Cabinet Minister, the Prime Minister remained silent. He neither confirmed it nor denied it and would not say what investigations, if any, had been made, or would be made. When reminded (9 August 1991) of his silence, he still avoided any direct reply, but observed that:

"The allegations are vague. If the suggestion is that a particular person, no matter who, is deliberately covering up criminal activity, then that is itself a criminal matter; as with the allegations of money laundering by accountancy firms, it is something for the police to investigate. ..... if you have evidence of wrong doing, the correct course is for you to pass it to the police"

Source: Letter from the Prime Minister, dated 11 September 1991.

TRADE AND INDUSTRY SELECT COMMITTEE

The claims concerning the involvement of a former Cabinet Minister and the involvement of accountancy firms in money laundering were referred to the Trade and Industry Select Committee. The Conservative Chairman of the Conservative dominated Committee was urged (letter dated 25 June 1991) to investigate the matters. Reminders were sent on 9th August and 16th October 1991. No reply was received.

Around the same time, we also corresponded with the Chairman about matters such as the DTI investigations. We received replies to our comments on this topic, but none on the topic of money laundering, or the alleged role of a former Cabinet Minister. Whether our concerns were communicated to members of the Select Committee is not known.

THE SERIOUS FRAUD OFFICE

On 8 August 1991, a letter was sent to the Serious Fraud Office[23] (SFO) in which it was urged to investigate the allegations against the former Minister and also the role of accountancy firms in money laundering, especially in view of the High Court judgement. The SFO Director declined to investigate these issues and added:

"..... our jurisdiction is limited to suspected offences which took place in England and Wales and Northern Ireland.

I understand that the Metropolitan and City Police Company Fraud Department conducted an investigation into allegations of fraud involving AGIP (Africa) Limited in 1985. A report outlining the results of the police investigations was sent to the Director of Public Prosecutions who advised that in his opinion there was insufficient evidence[24] to justify the institution of any criminal proceedings for offences within the jurisdiction of the English Courts".

Source: Letter from the Serious Fraud Office, dated 4 September 1991.

Referring to the High Court judgement, the SFO Director added,

"I do not regard the words of the Court of Appeal in this respect, where they were considering the question of whether a constructive trust existed, as a sufficient basis to justify re-opening the investigation which was concluded in 1985 ..... I am empowered ..... to investigate any suspected offence of serious or complex fraud, this Office is able to investigate only a limited number of cases. Of necessity we have to be selective in the cases which we accept ....

I have been informed that the Institute of Chartered Accountants is actively reviewing the role of members and members' firms in this affair and expect to conclude their deliberations shortly".

Source: Letter from the Serious Fraud Office, dated 4 September 1991.

In a letter dated 9 October 1991, the SFO's claims to lack jurisdiction over the matter were challenged: the shell-companies were formed and registered in England; the money was laundered through banks in England; one of the accountancy firms was based in England and it was the English High Court which judged that Jackson & Co. `knowingly' laundered money. Since the High Court had `sufficient' evidence to reach a judgement against Jackson & Co., how did the SFO come to conclude that the evidence was `insufficient'? Despite bringing these inconsistencies to the attention of the SFO (letter dated 18 October 1991), the position set out in its letter of 4 September was repeated.

THE POLICE

We resumed correspondence with the Prime Minister who was informed (16 September 1991) that the SFO claimed to have no jurisdiction for investigating the money laundering. Once again he was invited to say something about the alleged involvement of a former Cabinet Minister in money laundering. He would not be drawn on this allegation, but added:

> "I understand that the authorities in the Isle of Man are currently considering complaints by a former employee of one of the auditing firms alleged to be implicated in the affair to see whether there are grounds for further action"
>
> **Source**: Letter from the British Prime Minister, dated 7 October 1991.

When pursued, a spokesperson for the Isle of Man police stated,

> "At the moment we are not doing anything ....We are writing to [the Director of] the Serious Fraud Office as we want to know who's dealing with it"
>
> **Source**: Accountancy Age, 24 October 1991, p. 2.

On 18 November 1991, the Prime Minister again reiterated the view, first articulated by the Minister for Corporate Affairs, that it was up to the accountancy bodies to investigate the role of accountancy firms.

THE ATTORNEY GENERAL

On 23rd June 1994, the matter was raised with the Attorney General who was asked to investigate the involvement of accountants in money laundering and the AGIP affair in particular. In response, he confirmed that the authorities had known about the AGIP affair in 1985 and added,

> Police reports are confidential and it was never anticipated that the 1985 report to the Director of Public Prosecutions by the Metropolitan and City Police would be published.
>
> **Source**: Letter from the Attorney General, dated 13 July 1994.

The contents of the Director of Public Prosecutions' files are not known. The civil case brought in the High Court was not informed that the Police had previously investigated the matters. Therefore, neither the plaintiff nor the defendants were able to summon this evidence. The reasons for the Attorney

General’s silence either before or after the High Court judgement are not known.

THE INSTITUTE OF CHARTERED ACCOUNTANTS FOR ENGLAND & WALES

Correspondence with the ICAEW began during October 1991. The ICAEW replied by noting that it was considering the matter (letters dated 16 October 1991; 29 January 1992). Following an extended period of silence, a request for information about progress on this matter drew the response that

> "It is not the Institute's practice to make announcements on the conduct of an investigation in progress".
>
> **Sources**: Letters from the ICAEW, dated 28 May 1992; 26 June 1992; 21 July 1992.

The silence from the regulators, including the ICAEW, continued during 1993 and into 1994. Correspondence was re-opened with the DTI and the SFO on 4th March 1994. The SFO Director replied on 17th March 1994 and said:

> "..... I can confirm, from recent contact with the Institute, that they have recently concluded their consideration of this matter and have made a decision not to pursue the matter any further. No report will be sent by them to this office. .....[the SFO] would expect to receive a report only if the Institute found evidence of serious or complex fraud. It would seem, therefore, that none has been found as enquiries of the Institute have confirmed".
>
> **Source**: Letter (17 March 1994) from the Serious Fraud Office Director.

Seemingly, the SFO were happy for the ICAEW to decide whether evidence of `serious or complex fraud' existed, regardless of the court judgement. We are not aware of any legislation which authorised the ICAEW to investigate ‘serious or complex fraud’ involving accountants or non-accountants. The claim that the ICAEW has ‘concluded’ was not accompanied by any press release by the ICAEW, bearing in mind that the involvement of accountants in money laundering was the subject of a High Court judgement.

On 15th April 1994, the Minister for Corporate Affairs wrote, "My officials are discussing the AGIP case with the Institute of Chartered Accountants in England and Wales, and I shall write to you again when these enquiries are complete". He added, "I understand that the ICAEW are writing to let you know about the outcome of their investigation" (letter dated 9 May 1994). Coincidentally, the ICAEW wrote on the same day:

"It has been concluded that there is insufficient evidence available to the Institute to justify the bringing of a disciplinary case against any of its members.
The Committee was fully aware of the comments made in the course of the civil proceedings. However, the test to be applied is not that used in civil proceedings but rather the standards used in criminal cases. A formal complaint cannot properly be preferred unless there is adequate evidence supporting the contention that the members concerned knew or ought to have known that the activity with which they were associated was illegal or that they were recklessly indifferent as to whether or not the activity was wrong. No compelling evidence to satisfy the test required has been obtained".

Source: Letter from the ICAEW, dated 9th May 1994.

In our view, it seems, that the ICAEW considered itself better placed to evaluate the evidence than the High Court judge who concluded that accountants were `professional men' who `obviously knew that they were laundering money... '. It would also be recalled that the AGIP case was a ‘civil case’ yet the ICAEW was purporting to apply a ‘criminal case’ criteria.

The existence of the alleged ICAEW report enabled the Prime Minister to parry all questions[25] relating to the possible involvement of accountancy firms and a former Cabinet Minister in money laundering

Mr. Austin Mitchell: To ask the Prime Minister, whether he will appoint an independent committee, like that of Lord Justice Scott, to investigate all aspects of money laundering in AGIP (Africa) Limited.
Mr. Austin Mitchell: To ask the Prime Minister, whether, further to his correspondence with the honourable Member for Great Grimsby, if he has initiated inquiries into money laundering involving AGIP (Africa) Limited.
Prime Minister: As the honourable Gentleman will be aware the Institute of Chartered Accountants in England and Wales (ICAEW) investigated allegations of misconduct on the part of its members and concluded that there was insufficient evidence to justify bringing a disciplinary case against them.

Source: Hansard, 27 June 1994, col. 479.

A similar line was taken by the Minister for Corporate Affairs.

Mr. Austin Mitchell: To ask the President of the Board of Trade, if he will initiate an enquiry into the role of British accountancy firms in money laundering in the case of AGIP.
Mr. Neil Hamilton: No. The Institute of Chartered Accountants in England & Wales has already investigated this matter.

Source: Hansard, 29 June 1994, col. 610.

With a change of Ministers at the DTI, another attempt was made to persuade the Minister for Corporate Affairs not only to address the matter, but to make a public statement about it, especially as neither the ICAEW, nor any other regulatory body had published any report of its investigation of the case. In response (14 January 1995), the Minister of Corporate Affairs confirmed that he and his officials had seen a report by the ICAEW which, as we have already noted, claimed that there was insufficient evidence.

Without issuing a press release or a public report of any kind, the ICAEW claimed to have concluded the matter. Neither Jackson nor Griffin had been given sight of the alleged ICAEW report or invited to submit any evidence. Both had volunteered some 20,000 pages of evidence but this offer was neither taken up by the ICAEW, the SFO or anyone else (also see, Mansell, 1995). Investigative journalists Stuart Mansell and Sue Stuart had reported the affair, but were not invited to submit any evidence or shown any report prepared by the ICAEW. We had also urged the DTI and the ICAEW to investigate the affair and submitted evidence, but were not given any sight of the alleged report. Was our evidence even considered? If so, was it accepted, or rejected, and for what reasons? Why should the ICAEW's decision on matters which also involved non-accountants (e.g. Roger Humphrey, Ian Griffin) be final? Does the ICAEW really apply 'criminal case' test to disciplinary evidence? If so, how is it able to take disciplinary action against practitioners for matters such as 'failure to answer correspondence'? What was in the alleged ICAEW report which no outsider was allowed to see? Who exactly did the ICAEW consult in weighing up the evidence sent to it? No one was willing to answer any questions. Besides, how could the ICAEW investigate allegations over the involvement of a former Cabinet Minister, or the possible involvement of non-accountants which were highlighted in the High Court judgement? Having scoured a number of statutes, we could not find anything which authorised the ICAEW to investigate 'criminal' cases. Eventually, the ICAEW stated (letter dated 31 March 1995) that:

"The Institute has no statutory power to investigate criminal offences but, under its Bye-laws, is entitled to consider whether a member has brought discredit on himself or the profession of accountancy".

Source: Letter (31 March 1995) from the ICAEW Chief Executive.

So what was the point of claiming that the evidence submitted to the ICAEW had to meet the ‘criminal cases’ test? Despite requests (19th June 1995; 4th August 1995), the Prime Minister and the Minister of Corporate Affairs were either unable, or unwilling (letters dated 28th July 1995; 7th September 1995) to refer us to any statutory basis which empowers the ICAEW to interview (accountants and non-accountants) witnesses, demand evidence and investigate cases of money laundering.

On 15th May 1996, the Speaker of the House of Commons granted an adjournment debate (lasting thirty minutes) to allow Austin Mitchell MP to raise the AGIP affair on the floor of the House. The Minister continued to defend the status quo by arguing that the ICAEW had investigated the matter (Hansard, 15 May 1996, cols. 908-915). However, the Minister was unwilling to publish the alleged ICAEW report and/or offer any public evidence to show that the affair had been investigated.

CHAPTER 6
THE ACCOUNTANTS' SPIN

After the May 1997 general election, Labour formed the government. We once again urged the Department of Trade and Industry to examine the issues. In April 1998, the Minister for Corporate Affairs, Ian McCartney, arranged for the ICAEW to send us a copy of its report (hereafter the ICAEW Report).

The ICAEW Report is dated 1st March 1994 and is 27 pages long. Its contents are as follows:

THE CONTENTS OF THE ICAEW REPORT

Document	No. Of Pages
Cover Page	1
Letter from the Committee to Team Members	1
Directors' Review (dated 23 February 1994)	4
Report by the Director of Professional Conduct Dept.	5
A list of the parties involved	2
Press extracts	2
Two letters from Coopers & Lybrand	3
One letter from Grant Thornton	1
Correspondence relating to shell companies (including invoices received/issued by Jackson & Co.)	7
Letter from Lloyds Bank to Roger Humphrey	1
Total Pages	27

The copy of the report sent to us is incomplete. For example, the report contains a letter (dated 20 July 1993) from the Jersey branch of Coopers & Lybrand, but only the first page is included. However, the ICAEW Report does present an opportunity to examine the effectiveness of regulatory practices and deal with the involvement of accountants in anti-social activities.

The AGIP affair also presented an opportunity for examining the effectiveness of the standard auditing procedures and possibly developing more effective ones. Unfortunately, the ICAEW Report does not contain any evidence to show that matters relating to the AGIP audits have been investigated. The report does not contain a list of any questions for auditors, far less any answers. So we still do not know how the AGIP creditors got paid, when the original payments made to them were fraudulently diverted.

Much of the report prepared by the investigation 'Team' and the commentary by the 'Director of Professional Conduct Department' consists of summaries of newspaper reports and the publicly available transcripts of the court judgement and speculation thereupon. No reference could be found to any of the evidence that we had submitted to the ICAEW. In the case of AGIP, the fraudulent payments passed through Tunisia, England and France, with shell-companies often obscuring the origins and destination of illicit funds. There is nothing in the ICAEW report to show that any steps were taken to secure information, evidence and files from other jurisdictions. No attempt has made to request to secure any files from any accountant, accountancy firm or its associates. No attempt has even been made to look at the bank statements of the shell companies allegedly used to launder money.

We had always argued that the ICAEW did not have the capacity to investigate matters relating to allegations of money laundering. It had no independence from the auditing industry. The ICAEW certainly could not subpoena accountants, or non-accountants (e.g. Ian Griffin, Roger Humphrey), interview them and/or any witnesses. It had no capacity to examine their files and other relevant documents. Yet it became a willing party to the investigation even though the Secretary of the ICAEW Investigation Committee stated that:

"The public face of this case, that is the way in which Accountancy Age has criticised the Institute, is that "money laundering" has not been clamped down upon. The Institute's disciplinary procedures do not however lend themselves to this task."

Source: The ICAEW Report, page 2.

So why did the ICAEW, the DTI, the SFO, the Prime Minister and others continue to argue that allegations of 'money laundering' were being investigated or even could be investigated by the ICAEW? The ICAEW's own admission does not lend any credence to its claims that it has investigated the matter. By its admission, its disciplinary procedures were not competent to even begin an investigation.

Matters relating to AGIP had been reported in the newspapers since 1985. The High Court case was concluded in 1990/91. We had been pressing various regulators to act since early 1991. Given the High Court revelations, one might have expected the ICAEW to move with some urgency, but its Report shows little concern. The Secretary of the Investigations Committee wrote:

"I should like nothing better than to close the file on AGIP, not least because

...... I have contributed to delays by putting this matter aside in favour of more pressing and less intractable problems".

Source: The ICAEW Report, page 2.

What was more pressing than the views expressed by a High Court judge and the involvement of accountants in money laundering is not clear. Does the ICAEW admission mean that faced with "intractable problems", it does nothing? Certainly, there is nothing in the report to explain the delays. The correspondence with external parties is minimal and there is no indication that any face-to-face meetings took place with any of the parties. No evidence had been invited from Griffin and Humphrey. No correspondence had been sent to any of the journalists who investigated the AGIP affair. There appears to be absolutely no operational reason for the delay.

The ICAEW Report is not based upon any sworn affidavits from any of the parties concerned. There is no list of any questions which any individual accountant or accountancy firm had been asked to answer. The ICAEW Report speculates on three possible interpretations of the events. These are framed from the transcript of the publicly available High Court judgement and press reports rather than from any original investigation by the ICAEW. The Committee's favoured belief is "the possibility that the funds were intended as bribes to Tunisian officials or ministers" (page 2). Yet the report does not contain any evidence to show why the Committee believes this version of the events rather than any other interpretation. There is certainly no indication of any weights that might have been attached to any of the evidence to enable the Committee to reach its favoured conclusion. The ICAEW does not appear to have asked for the sight of any of the allegedly forged bank drafts. The report does not contain names of the directors, or the bank signatories of the companies through whom the money was laundered.

Our conclusion is that the ICAEW investigation is totally inadequate. The ICAEW Report does not meet the minimal standards expected for an investigation. Yet it had enabled the DTI, the Prime Minister and others to parry all questions. What were they all covering up?

CHAPTER 7
REFLECTIONS ON FIGHTING MONEY LAUNDERING

THE AGIP CASE

The AGIP affair is a murky affair, but it sheds a good deal of light on the involvement of accountancy firms in money laundering. At least two of the people connected with it have died under mysterious circumstances. Yves Coulon (the lawyer middleman) was murdered in 1991. Ian Griffin felt that no regulator wanted to know the 'truth' and he feared for his life. His body was found with a noose around his neck on 8th July 1998. Barry Jackson and Ian Griffin offered 20,000 pages of evidence to a number of regulatory bodies, but none took up their offer. We urged various Trade and Industry Ministers to write to Jackson and Griffin and invite them to submit any evidence that they wish to the DTI, but none have made this request and discharged their moral, ethical and administrative responsibilities. The Ministers have not explained why they have been unwilling to write a simple letter to request evidence. There does not appear to be any political will to investigate the involvement of accountants in money laundering.

AGIP had claimed to have suffered from massive frauds. Yet it did not bring 'criminal' proceedings. It brought a 'civil' case under the law of trust. It did not seek to recover the whole amount of which it claimed to have been defrauded of. It only sought to recover $518,822.92 (the Baker Oil money) on the grounds that this was all Jackson could afford to repay. AGIP won the High Court case and Jackson & Co. were required to repay (original sum plus interest) around $700,000 even though the monies had passed through various bank accounts and eventually reached Sophie Ben Hassine. After the High Court judgement, Jackson & Co. went out of business as the firm was unable to obtain sufficient professional indemnity cover. Having secured the High Court victory, AGIP did not collect the monies. It assigned the debt to C.T. Bowring (an insurance company and former professional liability insurer of Jackson & Co.), but Jackson & Co. refused to pay and sought a fresh court hearing in the Isle of Man so that additional evidence could be put on the public record. This hearing was not secured. No monies have been paid to C.T. Bowring either.

The laundered proceeds passed through shell-companies which can easily be formed for issued share capital of just one pound. Many of these nominee companies never traded and after receiving a few transfers of money were promptly liquidated. The monies were then transferred to other companies to obscure the trail of the transactions. Euro-Arabian and Kinz, through whom some of the laundered proceeds passed, probably never engaged in any commercial trading. Leonard Curtis (an insolvency firm) partner, Philip Monjack, was nominated liquidator of Euro-Arabian on 13 May 1985. In a circular dated 24 May 1990, he advised creditors of Euro Arabian Jewellery Limited that "the main asset of this company was a debt due from a French subsidiary, Kinz Joaillier". The letter is accompanied by a Liquidator's Account of Receipts and Payments from 13 May 1985 to May 1990. It shows total realizations i.e. cash at bank of £357.94 and disbursements of £357.94. No other assets existed. Kinz was placed into receivership on 17th July 1985 and then into liquidation on 17th March 1986. The French liquidators informed Philip Monjack that "there will be no funds available for the unsecured creditors, and accordingly there can be no distribution to the creditors of Euro Arabian Jewellery Ltd" (a circular dated 24 May 1990, from Philip Monjack to the creditors of Euro Arabian Jewellery).

Our correspondence with the regulatory apparatus revealed that the Metropolitan Police, the Attorney General and the Serious Fraud Office all had some knowledge about the AGIP affair and the possible involvement of accountants in the alleged illicit transfer of monies as far back as 1985. None presented their findings to the public or the High Court. Nor did they publish any reports either before or after the court case. The role of any other accountancy firm has not been investigated. When urged to investigate the allegations of money laundering which formed part of a High Court judgement, each of the regulators deemed it to be a matter for some other body. When the ICAEW eventually produced a (unpublished) report on the matter that allegedly found no hard evidence of misconduct, the other regulators were able to point to its conclusion, and legitimise their own inaction by referring to something which the ICAEW had never sent to either Mr. Jackson or Mr. Griffin.

Despite the very public concerns about the involvement of accountants in money laundering, the ICAEW report remains unpublished and therefore unavailable for public or Parliamentary scrutiny. From what we have seen, the report is totally inadequate. Anyone subscribing to conspiracy theories may well come to conclude that the regulators were keen to ensure that some aspects of the affair never saw the light of the day. The responsibility for the oversight of the accountancy industry rests with the Department of Trade and Industry (DTI), but it has no independence from the accountancy industry. The DTI faces numerous conflicts of interests, especially as it simultaneously acts as the sponsor, protector, defender, investigator and prosecutor of the industry. The public good has been the inevitable casualty. We are not aware of any evidence which shows that the DTI took any steps to investigate the allegations of money laundering involving accountants, or non-accountants.

One possible interpretation of the AGIP affair is that every assessment made by each regulator at every stage - from the first revelations in 1985, the judgement in the High Court to the ICAEW report - was entirely in accordance with an acceptable code of conduct. Jackson & Co. may have been judged to have knowingly facilitated money laundering. In contrast, the activities of other accounting firms associated with the AGIP amounted to no more than very marginal involvement or minor incompetence which did not merit further investigation. If this interpretation is accepted, then fundamental questions still need to be asked about how the regulators operationalise and interpret the law. Mr Jackson and Mr Griffin were extraordinarily naive if they did not realise that they were engaged, on behalf of their client, in laundering money. By the judge's own account, Jackson & Co. 'probably took over an establishment arrangement', yet regulatory action and the process of law had not been applied to other parties.

Another interpretation is that those associated with the AGIP case were effectively protected from criticism by the reluctance of regulators to act. At a time when the UK government has been actively using major accountancy firms to restructure the state through privatisation of industry (e.g. accountants valuing assets and reporting on the privatisation prospectuses of gas, electricity, water and other industries), management of the public sector (e.g. accounting and auditing based regulations to control schools, hospitals, universities and local authorities) and redesign the tax collection system (e.g. the introduction of income tax self-assessment), it was reluctant to do anything which might openly undermine the carefully constructed myth that accountants are somehow totally trustworthy and honest. Seemingly, the UK state was more concerned about managing the 'local' politically convenient situations rather than the public concerns about money laundering.

The AGIP case study provides further evidence of a close (but complex) relationship between the UK state, accountancy trade associations and major accountancy firms (Mitchell et al, 1994; Sikka and Willmott, 1995). It is likely that regulators will continue to express concerns about the increasing involvement of accountants in laundering money. In response to anxieties about money laundering and the reputation of the City, the government will produce new legislation. Yet the state's continuing reliance upon forms of self-regulation and accountancy firms[26] for advancing political projects (e.g. privatisation) makes it unlikely that any strenuous effort will be made to investigate the involvement of major firms in money laundering. The negative signals sent by the inaction of the regulators are most likely to result in an increased involvement of accountants in money laundering. As the NCIS data shows (see chapter 2), accountants are least likely to report money laundering transactions to regulators. The have little to fear from their trade associations who also act as their regulators. These bodies themselves do not owe a ‘duty of care’ to any individual citizen. In their capacity as auditors, accountants do not owe a ‘duty of care’ to any individual stakeholder either . Successive governments have granted accountants statutory monopolies (e.g. external audits, insolvency) without the imposition of any public responsibility and accountability.

MONEY LAUNDERING IN GENERAL

Successive governments point to ever increasing tomes of legislation as evidence of their attempts to combat money laundering. Enacting legislation, however, is the least onerous part of regulation. The real problem is effectiveness. Under the Drug Trafficking Act, for the period 1993-95, there were just 39 prosecutions for money laundering. Of these, 26 did not reach the trial stage. Under the CJA, there have been only three prosecutions (Hook, 1998). The UK laws do not apply to British offshore dependencies, such as the Bahamas, the Cayman Islands, the Channel Islands and the Isle of Man which facilitate secrecy and have become international centres for laundering dirty money (Organisation for Economic Co-operation and Development, 1998; United Nations Office for Drug Control and Crime Prevention, 1998). International regulators openly refer to British offshore financial centres as “inherently corrupt and corruptible” (Accountancy Age, 3 April 1997, p. 17). As the New York Assistant District Attorney, John Moscow, who started the investigation which eventually led to the closure of the Bank of Credit and Commerce International (BCCI) noted, “My experience with both Jersey and Guernsey[27] has been that it has not been possible for US law enforcement to collect evidence and prosecute crime. In one case we tracked money from Bahamas through Curacao, New York and London, but the paper trail stopped in Jersey .... it is unseemly that these British dependencies should be acting as havens for transactions that would not even be protected by Swiss bank secrecy laws” (The Observer, 22 September 1996, p.19). Successive British governments have not only tolerated these havens, but have encouraged, protected and nurtured their political and economic practices. The secrecy facilitated by these offshore havens does not easily enable regulators to collar either the criminals or the crime.

It may be tempting for the regulators to manufacture confidence in the system by taking high-profile action against ‘bent’ individuals and further individualise white-collar crimes, but such policies alone are likely to be of very limited help in effectively combating money laundering. Money laundering is, perhaps, best understood as an activity that is increasingly undertaken by organised groups, corporations and elite occupations that operate within the values of capitalism. The cultural shifts encouraged by an ‘enterprise culture’ and ‘deregulation’ have led many to believe that `bending the rules' for personal gain is a sign of business acumen (Coleman, 1994; Department of Trade and Industry, 1997; Partnoy, 1997). In a deregulatory environment, stealing a march on a competitor, at almost any price, to make money is considered to be an entrepreneurial skill. In such a climate, it is to be expected that `rule-bending’ shading into money laundering will increase, especially where competitive pressures link promotion, prestige, status and reward, profits, markets, niches with meeting business targets.

It may further be hypothesised that much of the reported increase in money laundering in the 1990s is connected with historical changes in the nature of capitalism in the Western world giving rise to a new class of entrepreneur. In the global markets, profits are increasingly made from speculative ventures such as currency trading, take-overs, futures trading, land speculation, insider trading, beating exchange controls; or what might be called `placing good bets'. People making these ‘bets’ rarely use their own monies. They use other people’s monies (e.g. bank deposits) to make ‘bets’. If the bets pay off they make huge personal gains. If the bets fail, the traders then resort to illicit means to cover their losses, as evidenced by the BCCI episode. Accompanying and amplifying these historical shifts has been an erosion of moral restraint and `gentlemanly conduct' (so far as this ever existed). In a deregulatory environment which encourages ‘secrecy’, any ‘deal’ becomes acceptable as long as it is profitable. So, increasingly, the crime resides more in being caught than engaging in dishonourable or illegal activity. Indeed, `smart' business activity resides in constructing mechanisms through which benefits are derived from illegal or suspect activities whilst escaping any (legal) responsibility for their operations (McBarnet, 1991). Through such activities little, if anything, is produced, but the gains are quick and big and can be made with anonymity. Any durable management of the risks of money laundering requires that attention be paid to the value systems of capitalism. Yet there is no sign that any government or regulator is keen to examine such issues. Instead, the legislative frameworks continue to individualise money laundering issues.

Regulation, detection and curtailment of money laundering pose major challenges as any business engaged in legitimate transactions and international financial transactions can also be used as a vehicle for illicit activities (McCormack, 1996). The state’s capacity to combat money laundering is severely constrained. At one level, under the weight of the liberalist ideologies, it is obliged to deregulate, reduce public surveillance and facilitate secrecy to businesses. This may appease some but it also facilitates secrecy necessary for the execution of money laundering activities (Gold and Levi, 1994; Home Affairs Committee, 1994). At the same time ordinary citizens expect the state to ensure that capitalism is not corrupt and that their savings and pensions are safe. The state's capacity to intervene in business affairs and investigate allegations of money laundering is also constrained when for ideological reasons (let the business get on with managing the business) its role in the internal affairs of enterprises is severely restricted. Faced with an ideological strait-jacket, the state is forced to rely upon businesses or those reporting upon businesses (e.g. accountants/auditors) to report suspicious transactions to regulators. But, as we have shown, accountants themselves are involved in money laundering. Under the current mode of regulation, there is no effective public check against money laundering.

CHAPTER 8
THE ACTION TO TAKE

The deregulation mania and inadequate public accountability has facilitated secrecy and encouraged money laundering activities. Successive governments have indulged the City, big business and elite occupations (e.g. accountants, lawyers) through the system of self-regulation, or more correctly little/no public regulation. Self-regulation has failed. Alternative institutional structures and policies need to be developed.

Any government interested in seriously combating money laundering has to make a start by creating independent regulatory structures. Thus accountants need to be regulated by a body independent of the DTI and vested accountancy interests. The independent regulator must not be a defender and protector of the system. Its sole objective must be to advance and safeguard the public interest.

There should be a clear 'statutory duty' upon accountants and auditors to detect and report money laundering to the regulators within 48 hours of them first becoming aware of it. Failure to act in a socially responsible way should attract a daily fine of £500,000.

The secrecy enjoyed by firms of accountants and their associates should be ended. They should all be required to publish meaningful information. This should include matters such as the number of shell-companies operated by them, the fees from such companies, the instances when they act as fronts for the real owners, the instances of money laundering that they report to the regulators, convictions of money laundering against them and so on.

The NCIS statistics clearly show that despite claiming to be experts in fraud detection and reporting, accountants/auditors are least likely to report suspicious transaction to the regulators. The public suffers from this contrived silence. Accountants should not be able to hide behind arguments of 'confidentiality to clients' which is really a phrase for advancing the 'private' interests of the accountancy industry at the expense of the 'public' interest.

Since auditor costs are directly borne by stakeholders, they or their nominees should be able to examine auditor files. The independent regulator should also have statutory powers to examine any files and documents held by accountants whether acting as auditors, tax advisers, or in any other capacity.

As the NCIS statistics show that accountants are least likely to notice and/or report money laundering transactions, their education training and organisational loyalties should be the subject of an independent investigation. Redesigning their curriculum and discussing the impact of their predatory actions on ordinary people should encourage changes in their value systems.

Any effective fight against money laundering requires greater openness and accountability of business affairs. Instead, “deregulation” has been the slogan for the 1980s and the 1990s even though it has encouraged a “cynical disregard of laws and regulations” (Department of Trade and Industry, 1997, p. 309). ‘Secrecy is the badge of fraud’, as Mr. Justice Millet asserted. Therefore, the ideologies of secrecy need to be challenged and reversed. Excessive business secrecy provides an environment for anti-social activities, such as money laundering and harms all of us.

Company stakeholders need to be empowered. For example, employees should be able to blow the whistle on corrupt practices without any fear of reprisals and loss of employment opportunities. A dedicated government department should be required to protect the interests of all ethical dissenters ensuring that they are not victimised by their employers.

If necessary, those blowing the whistle on money launderers should also be financially rewarded.

Nominee shareholdings and company registrations should not be permitted since this provides fronts for shell-companies engaged in money laundering.

Bankers should be required to report all receipts/payments of money greater than £10,000 to the regulators, thus enabling regulators to look for patterns of unusual transactions and cash transfers to connected parties.

On occasions, governments have used the powers of Inland Revenue and Customs & Excise to track down frauds, but they have rarely been used to combat money laundering or to probe secretive organisations. Greater use should be made of the powers of Inland Revenue and Customs & Excise to investigate suspicious transactions and examine records held by accountants, including some spurious tax avoidance schemes at tax havens.

With successive governments devoted to reducing public expenditure, the agencies investigating and fighting money laundering have invariably been poorly resourced. They need to be properly funded. The government needs to raise additional revenues. We recommend that the government close tax loopholes and other blind-spots. For example, virtually everyone has to pay Value Added Tax (VAT) on goods and services that they purchase. However, there is an anomaly. In the UK, companies are traded as commodities. Around £100 billion is spent each year on mergers and take-overs. But, the purchase of companies is not subjected to VAT. A reasonable rate of VAT on the vast amounts spent on buying and selling companies can raise large revenues to finance the fight against money laundering.

The prosecutions for money laundering should be made easier requiring lower burdens of proof. For example, individuals should be forbidden from using postal, telephone and other telecommunications technologies for money laundering activities. Thus regulators would not need to spend years chasing documentation to prove money laundering. They could, instead, secure conviction on the basis that the communications technologies were used for illicit purposes.

A range of civil penalties for money laundering need to be developed; ranging from confiscation of assets, large fines and statutory power for the regulators for raiding the premises of suspected money launderers. Regulators should always pay attention to the organisational context that encourages money laundering.

Britain should end the excessive secrecy that is the hallmark of the offshore centres, such as the Channel Islands. As long as these and other offshore centres facilitate secrecy and lax laws, there is little prospect of checking the global growth of money laundering. The secrecy and lax laws of these offshore havens are an outcome of their political and economic system. Any programme of reform will need to secure major constitutional and institutional changes.

The above proposals will not eliminate all money laundering problems, but can help to make a new start by tackling the social and organisational context of money laundering, as well as dealing with the deviant individuals.

REFERENCES

Auditing Practices Board, (1995). **Statement of Auditing Standards 120: Consideration of Law and Regulations**, London, APB.

Auditing Practices Board, (1997). **Practice Note 12: Money Laundering**, London, APB.

Auditing Practices Committee, (1980a). **Audit Evidence**, London, APC.

Auditing Practices Committee, (1980b). **Internal Controls**, London, APC.

Auditing Practices Committee, (1983). **Representations by Management**, London, APC.

Barchard, D., (1992). **Asil Nadir and rise and fall of Polly Peck**, London, Gollancz.

Barnet, R.J. and Cavanagh, J., (1994). **Global Dreams: Imperial corporations and the New World Order**, New York, Simon & Schuster.

Bingham, The Honourable Lord Justice, (1992). **Inquiry into the Supervision of the Bank of Credit and Commerce International**, London, HMSO.

Birks, P., (1995). **Laundering and Tracing**', Oxford, Clarendon Press.

Bond, M., (1994). **Accountants Digest No. 324: Money Laundering**, London, Accountancy Books.

Bosworth-Davies, R. and Saltmarsh, G., (1994). **Money-laundering: a practical guide to the new legislation**, London, Chapman and Hall.

Castells, M., (1997). **The Power of Identity**, Oxford, Blackwell.

Coleman, J.W., (1994). **The Criminal Elite: The Sociology of White-Collar Crime**, New York, St. Martin's Press.

Committee on Corporate Governance, (1998). **Committee on Corporate Governance**, London, Gee (the Hampel Report).

Coopers & Lybrand, (1984). **Manual of Auditing**, London, Gee.

Department of Trade and Industry, (1997). **Guinness PLC**, London, The Stationery Office.

Ehrenfeld, R., (1992). **Evil Money**, New York, Harper.

Financial Action Task Force, (1996). **FATF- VII Report on Money Laundering Typologies**, Washington DC, US Department of Treasury.

Financial Crimes Enforcement Network, (1992). **An Assessment of Narcotics-Related Money-Laundering**, Washington DC, US Department of Treasury.

Gold, M. and Levi, M., (1994). **Money-Laundering in the UK**, London, The Police Foundation.

Hampton, M.P., (1996). **The Offshore Interface: Tax Havens and Offshore Finance Centres in the Global Economy**, Macmillan, Basingstoke.

Hanlon, G., (1994). **The Commercialisation of Accountancy**, London, St. Martin's Press.

Home Affairs Committee, (1994). **Organised Crime: Minutes of Evidence and Memorandum**, London, HMSO.

Hook, P., (1998). No Laughing Matter, **Accountancy Age**, 12 February, pp. 16-17.

Inman, P., (1997). Chasing the money cheats, **Accountancy Age**, 3 April, p. 16-17.

Institute of Chartered Accountants in England & Wales, (1994). **The Recognition and Action to be taken in respect of Money Laundering (Technical Release FRAG 11/94)**, March, London, ICAEW.

Institute of Chartered Accountants in England & Wales, (1996). **The Laundering of the Proceeds of Criminal Conduct: A Discussion of the Audit Implications**, June, London, ICAEW.

Kerry, J. and Brown, H., (1992). **The BCCI Affair**, Washington DC, US Government Printing Office.

Kochan, N. and Whittington, B., (1991). **Bankrupt, The BCCI Fraud**, London, Gollancz.

Levi, M., (1987). **Regulating Fraud: White-Collar Crime and the Criminal Process**, London, Routledge.

Mansell, S., (1989a) Firms face institute's wrath over AGIP, **Accountancy Age**, 20 July, p.1.

Mansell, S., (1989b). Grant Thornton man linked to AGIP affair, **Accountancy Age**, 5 October, p.1

Mansell, S., (1991a). Ripples of Uncertainty Offshore, **Accountancy Age Magazine**, February, pp. 9-14.

Mansell, S., (1991b). Death of an AGIP middleman, **Accountancy Age**, 20 June, p. 13.

Mansell, S., (1991c). Invoices show Grant Thornton AGIP role, **Accountancy Age**, 28 February, p. 3.

Mansell, S., (1991d). Coopers' alleged AGIP role: English ICA knew, **Accountancy Age**, 28 March, p. 1.

Mansell, S., (1995). Secret institute report on AGIP revealed, **Accountancy Age**, 9 February, p. 1.

McBarnet, D., (1991). Whiter than white collar crime: tax, fraud insurance and the management of stigma, **British Journal of Sociology**, September, pp. 323-344.

McCormack, G., (1996). Money Laundering and Banking Secrecy in the United Kingdom, in P. Bernasconi (ed.), **Money Laundering and Banking Secrecy**, Amsterdam, Kluwer.

Mitchell, A., Sikka, P., Puxty, T. and Willmott, H., (1994). Ethical Statements as Smokescreens for Sectional Interests: The Case of the UK Accountancy Profession, **Journal of Business Ethics**, Vol. 13, No. 1, pp. 39-51.

Organisation for Economic Co-operation and Development, (1998). **Harmful Tax Competition: An Emerging Global Issue**, Paris, OECD.

Partnoy, F., (1997). **F.I.A.S.C.O: Blood in the Water on Wall Street**, London, Profile Books.

Power, M., (1993). Auditing and the Politics of Regulatory Control in the UK Financial Sector, in J. McCahery, S. Picciotto and C. Scott (eds.), **Corporate Control and Accountability**, Oxford, Clarendon Press.

Rider, B., (1996). **Money Laundering Control**, Dublin, Round Hall Sweet & Maxwell.

Robinson, J., (1994). **The Laundrymen**, London, Simon & Schuster.

Sikka, P. and Willmott, H., (1995). Illuminating the State-Profession Relationship: Accountants Acting as Department of Trade and Industry Investigators, **Critical Perspectives on Accounting**, Vol. 6, No. 4, pp. 341-369.

Sikka, P., Puxty, T., Willmott, H. and Cooper, C., (1998). The Impossibility of Eliminating the Expectations Gap: Some Theory and Evidence, **Critical Perspectives on Accounting**, Vol. 9, No. 3, pp. 299-330.

United Nations Office for Drug Control and Crime Prevention, (1998). **Financial Havens, Banking Secrecy and Money Laundering**, Vienna, United Nations.

Widlake, B., (1995). **Serious Fraud Office**, London, Little Brown.

Wiener, J., (1997). Money Laundering: Transnational Criminals, Globalisation and the Forces of 'Redomestication', **Journal of Money Laundering Control**, Vol. 1, No. 1, pp. 51-63.

Wolfensohn, J.D., (1998). Accountants and societies - serving the public interest, **Accounting & Business**, January, pp. 12-14.

Woolf, E., (1983). Banks: the substance over the form, **Accountancy**, September, pp. 111-112.

Woolf, E. (1986). **Auditing Today (Third Edition)**, Hemel Hempstead, Prentice-Hall.

NOTES

---

[1]The moving of money in violation of the established laws by [Western] intelligence services (e.g. through BCCI) for covert operations tends to be portrayed by governments as `patriotic' and `facilitating the national interest' whilst the same activities by others are often dubbed criminal (Gold and Levi, 1994, page 2).

[2]For details see the 1997/98 report of the Serious Fraud Office.

[3] ‘Accountants to face trial’, *Accountancy*, June 1992, page 14; 'Investors to sue after CKL man's conviction', *Accountancy Age*, 23 May 1991, page 1; 'Chartereds on insider dealing charges', *Accountancy Age*, 1 July 1993, page 1; 'Accountants guilty in Homes Assured fraud', *Accountancy Age*, 2 September 1993, p. 3; 'Grilling for Clark Whitehill over fraud', *Accountancy Age*, 28 October 1993, p. 1; 'Trainee in £500,000 bank fraud', *Accountancy Age*, 11 November 1993, p. 2; 'Trial opens for six on charges of tax fraud', *Accountancy Age*, 13 January 1994, p. 1; 'Firm sued over missing funds', *Accountancy*, January 1995, p. 14; ‘Accountant on money laundering charges’, *Accountancy Age*, 13 March 1997, p. 3; ‘Accountant fined over $17.6m fund’, *Financial Times*, 6 May 1997, p. 13; ‘Accountant reprimanded’, *Accountancy*, June 1997, p. 17; ‘Accountant masked BCCI trick, jury told’, *The Times*, 4 September 1997, p. 24; ‘Laundering case date set’, *Accountancy Age*, 5 March 1998, p. 1; ‘PW in drug money allegations’, *Accountancy*, July 1998, p. 22.

[4] The government is encouraging accountants/auditors to accept greater responsibilities for reporting money laundering (see the Ministerial speeches reported in The Accountant, October and November 1997).

[5] To date, there has been no investigation by any UK regulator of the auditing aspects of BCCI.

[6] AGIP (Africa) Limited is a wholly owned subsidiary of Agip SPA of Milan, the Italian oil company, itself a subsidiary of ENI, the Italian state holding company.

[7] Around 80% of the notifications are from banks and building societies.

[8] Jersey and Guernsey are part of the Channel Islands. They are British, but not part of the United Kingdom. They enjoy the status of self-governing dependencies of the British Crown, but the UK is responsible for their defence, foreign affairs and ‘good government’. The Channel Islands are not part of the European Union either. The islands are tiny, but a large number of multinational companies are based there to avoid taxation in their host countries. Corporate laws in these islands are relatively lax. Secrecy is preferred to public accountability (Hampton, 1996).

[9] The case did not find anything against him.

[10] Baker Oil was a successor to another payee company Parkfoot Limited,

which had been put into liquidation on 6th December 1984 shortly after receiving and paying out to Euro-Arabian on the same day a sum of US $502,458.33.

[11] The details are as follows according to the judgement: US$ 400,000 to Kinz; US$ 70,000 to (so far an unidentified) Mr. Chouck ben Abdeaziz; US$ equivalent of FF 34,330.70 to M. Coulon.

[12] The meeting took place at the offices of Jackson & Co. At this meeting Mr. Jackson and Mr. Griffin were appointed directors. The minutes were signed by Mr. Jackson.

[13] This section draws from a number of press reports (for example see Mansell 1989a, 1989b, 1991a) which in turn are based upon the High Court judgement and a 'proof of evidence' drawn up by Roger Humphrey in the presence of Grant Thornton solicitors

[14] For further information about her involvement see Mansell 1991a, 1991b; and an article in French magazine Jeune Afrique Economie (Sept/Oct 1986).

[15] Information at Companies House shows the company's number to be 1603703. In December 1981, its directors included John Botting with Tyndall Trust International (I.O.M) Limited acting as Secretary. On 1st July 1983, Botting was replaced by Barry Jackson. On 14th February 1985, Jackson resigned and Ian Griffin became a director.

[16] Accountancy Age (28 February 1991, p. 3; 2 May 1991, p. 3) reported that Grant Thornton continued to charge fees to Jackson & Co. for `acting as authorized signatory and in liaison between the owners of the company and the directors'.

[17] In 1989/90 Michael Lickiss was the Deputy President of the ICAEW. He became President for 1990/91 (see Accountancy, July 1990, p. 16).

[18]The purpose of such a letter is to enable the auditor to obtain written confirmation of the salient points relating to the company financial statements (Auditing Practices Committee, 1983, for details).

[19]Hansard is the official written record of all the proceedings in the British House of Commons.

[20] In a letter dated 8 April 1991, the Minister again asserted that the ICAEW was "reviewing the role of members and member firms in the whole affair".

[21] She was given a three-year prison sentence, but released immediately - on account of the time already spent in custody (Accountancy Age, 20 June 1991, p. 2 and 13). Her subsequent whereabouts are unknown (Private Eye, 22 September 1995, p. 14).

[22] Coulon was murdered before he could provide detailed evidence.

[23] For a discussion of the role, powers and purpose of the SFO see Widlake, 1995.

[24] This fact was not known during the High Court case where AGIP sought

civil rather than civil and/or criminal remedies.

[25] It was alleged that some of the individuals and organizations involved in this affair were connected with intelligence services. This was put to the Prime Minister on 20 June 1994, but he would not be drawn on it and added, "Successive Governments have refused to provide information on alleged operations of the security and intelligence services, and I have made it clear that the Government will maintain this policy" (letter dated 3 August 1994).

[26] These problems are further compounded by the secrecy afforded to UK accountancy firms who, despite enjoying statutory monopolies of auditing and insolvency, are not required to publish any meaningful information about their affairs. Accountancy firms have been able to shelter behind their partnership and international structures to deny information to regulators (Kerry and Brown, 1992), often by arguing that information about their clients is confidential. Such secrecy, as we note in our analysis of the AGIP case, can conceal the involvement of accountancy firms and their clients in money laundering.

[27]Under pressure from international regulators, on 20th January 1998, the UK Home Office announced a “wide-ranging review” of financial regulation in Jersey, Guernsey and the Isle of Man (Home Office press release, 20 January 1998)..