



Bauerle's Bank Notes

BSA/AML Reconsidered

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One of our banker correspondents in California last week reported Bank Secrecy Act and anti-money laundering (AML) infractions are the focus of all but handful of the six dozen or so legal enforcement actions currently pending against banks in that state. Closer to home, two Southern West Virginia community banks recently paid colossal (for them) fines to the Treasury Department for AML violations. In the case of Bank of Mingo, the \$4.5 million fine represented half the capital of the bank.

According to the Charleston Gazette-Mail, two pharmacies in the banks' home communities dispensed 18 million doses of hydrocodone from 2007 to 2012. Kermit, West Virginia, where one of the pharmacies is located, has a population of 392 souls.[\[i\]](#) Although the published bank enforcement orders do not say so, one can infer that the opioid epidemic that grips Southern West Virginia was at the heart of the AML enforcement effort. Four counties in Southern West Virginia rank 1, 2, 3 and 4 among U.S. counties for having the highest per capital rate of opioid overdose deaths in the nation. According to the Gazette-Mail's articles, the major culprits in the crisis are large prescription drug distributors like McKesson Corp (NYSE: MCK).

As an instrument of law enforcement, BSA/AML is a blunt force weapon deployed against crime's symptoms rather than its causes. Like wielding axes against whisky barrels during Prohibition, BSA/AML enforcement is largely a feel good exercise.[\[ii\]](#) Meanwhile, the villains evolve their game, developing new methods and locating new victims. Riggs Bank's money laundering for dictators justifiably led regulators to drive the bank out of business in 2005. Equity does not so strongly favor crippling banks in places like Mingo County, West Virginia, whose citizens are struggling for survival.

More generally, bankers question why Congress conscripts them to be deputy sheriffs. "Why must I be my customers' conscience?" they ask. And what if the bankers' judgments are based on inaccurate information?

An investment banker client last year opened a checking account in his Ohio hometown at a branch of a large national bank. Two days later the bank telephoned him and asked him to

come to the branch. There, they handed him his money back and said he was not welcome as a customer. When he asked why, they refused to provide a reason.

His call to us for assistance led to a series of go-nowhere calls with bank operating personnel. Finally I wrote to the bank's CEO seeking an explanation. More calls ensued. We discovered that ten years earlier, a disgruntled former employee of a company the banker's private equity fund owned stole the banker's and his secretary's identities and engaged in a series of fraudulent transactions in their names. The banker was therefore a "high risk" customer.

Banks are currently implementing the next wave of identity-based enforcement: the regulatory requirement that they research and document the identity and bona fides of investors in companies that are customers. This and similar changes in banking practice recently led us to another teachable moment, in which the bank rather than the customer bore the brunt of misunderstanding about changes in banking law and practice.

During an otherwise pleasant cocktail party, a long-time PNC Bank customer castigated a PNC banker friend of ours, saying the bank no longer knows how to treat good customers. "Everybody at PNC knows who I am," the customer intoned. "It is ridiculous that your people require me to confirm my identity when completing transactions in my accounts," he continued. No amount of explaining legal requirements or efforts to protect his assets satisfied the customer. "[Charles] Schwab [Investments] doesn't treat me that way," said the man. "Well maybe they should," the PNC banker and I replied in unison.

As the financial services economy evolves, expecting bankers to do double duty as deputy sheriffs is increasingly unhelpful. The public is oblivious to BSA/AML requirements because Congress made no effort to explain them when it enacted the legislation or afterward. Consumers are regularly told via advertising that banking is a pain-free experience when they get their "rocket mortgages" and other catchy-name products from non-bank providers.

In any effort to streamline the Dodd-Frank Act's requirements, Congress should also tackle BSA/AML, revoke bankers' deputy sheriff badges and duties, and appropriate funds to educate the public about the risks of electronic financial commerce. As with overconsumption of beer, wine and spirits, education trumps enforcement as an instrument of social policy, all day long.

[i] <http://www.wvgazette.com/news-cops-and-courts/20170301/mino-bank-to-pay-14-million-to-feds>; <http://www.wvgazette.com/news-health/20161217/drug-firms-poured-780m-painkillers-into-wv-amid-rise-of-overdoses>; https://www.theet.com/statejournal/williamson-bank-won-t-contest-million-forfeiture-action/article_19e500d7-ea94-5a8b-bb95-af9f2df5a57e.html

[ii] See Daniel Okerent, *Last Call: The Rise and Fall of Prohibition*, New York, NY: Simon & Schuster, 2011. According to Okrent, Midwest and Southern Protestants in farming communities felt threatened by surging immigrant populations in booming industrial cities, as well as by Catholics, Negroes, and changing social mores. Anti-German sentiment during WW I also fed the movement; beer brewers were overwhelmingly of German descent. The Ohio-based Anti-Saloon League built a national political operation that cowed officeholders in both parties. Congressman voted for Prohibition, but underfunded Treasury Department enforcement and privately flouted the law. Enforcement was erratic and targeted the poor and politically powerless. Banks and bankers were, nevertheless, occasionally targeted as accomplices of bootleggers and speakeasy operators.