THE ROLE OF INTENT IN THE RISE OF INDIVIDUAL ACCOUNTABILITY IN AML-BSA ENFORCEMENT ACTIONS

Tyler Halloran[*]

ABSTRACT

The statutory framework which prohibits individuals at financial institutions from engaging in money laundering attributes criminal or civil liability on the basis of an individual's culpability with respect to the prohibited conduct. A recent Department of Justice policy shift has begun to place a greater focus on the prosecution of individuals within corporations. This shift has led to increased prosecutions of compliance personnel and bank officials in recent years.

Through analysis of recent cases, this Note seeks to explore how the requirement of intentional and/or willful conduct defines the potential for criminal and/or civil exposure for compliance personnel and bank officials under the AML-BSA statutory framework. This shift in enforcement has been criticized as unfair and overly harsh; however, through analysis of recent AML-BSA enforcement actions, this Note demonstrates that the statutory and prosecutorial focus on culpable conduct undermines that criticism. Further, this Note demonstrates that the recent shift towards individual accountability in AML-BSA enforcement can help serve to deter violations of the BSA, and money laundering activity generally, moving forward.

[*] J.D. Candidate, Fordham University School of Law, 2020; B.A., Finance, Villanova University School of Business, 2015. Thank you to everyone at the *Fordham Journal of Corporate & Financial Law* for their assistance in developing this Note and to Professor James L. Kainen for his thoughtful comments. Also, a special thanks to my parents, John and Suzy Halloran, for their support throughout both law school and life.

TABLE OF CONTENTS

INTRODUCTION

Historically, criminal prosecutions and civil actions against financial institutions for violating the requirements of the Bank Secrecy Act[1] ("AML-BSA enforcement actions")[2] did not seek to hold individuals accountable for specific violations.[3] As a result of this practice, the government faced significant public criticism for a perceived failure to pursue seemingly intentional misconduct.[4] Ultimately, regulators began to acknowledge that individual accountability for wrongdoing within

1. *See infra* Part I.B.2 (discussing the obligations of financial institutions under the Bank Secrecy Act, such as, the requirements for a risk-based compliance program and reporting obligations for suspicious activity).

2. "AML" stands for "anti-money laundering." For the purposes of this Note, the term "AML-BSA enforcement action" is intended to encompass civil liability under the BSA, criminal liability under the BSA, and liability for money laundering as an independent crime for individuals at financial institutions.

3. *See* Brandon L. Garrett, *The Corporate Criminal as Scapegoat*, 101 VA. L. REV. 1789, 1816 (2015) (finding that "[n]o individual officers or employees were prosecuted in cases accompanying the fourteen deferred and non-prosecution agreements involving banks violating the Bank Secrecy Act" between 2001 and 2014).

4. *See*, *e.g.*, Jeffrey R. Boles, *Financial Sector Executives as Targets for Money Laundering Liability*, 52 AM. BUS. L.J. 365, 405 (2015) (discussing public expectations that individuals should be held directly accountable for money laundering violations).

corporations is essential to ensure effective deterrence[5] and to maintain the public's faith in the justice system.[6] A recent policy shift within the Department of Justice (DOJ) has begun to place a greater focus on the prosecution of individuals within corporations.[7] This has led to increased prosecutions of compliance personnel and bank officials for violations of the Bank Secrecy Act (the "BSA") and other money laundering statutes.[8] This shift in enforcement has been criticized as unfair and overly harsh.[9] However, this Note demonstrates that the statutory and prosecutorial focus on an individual's culpability in relation to the conduct substantially mitigates any such concerns.[10] Further, this Note demonstrates that the recent shift towards individual accountability in AML-BSA enforcement can help deter violations of the BSA and restore public confidence in the justice system.[11]

Part I of this Note reviews relevant concepts in criminal law, explores the harm of money laundering, and explains the importance of intentional conduct in the AML-BSA statutory framework. Part II outlines the recent rise of individual accountability in AML-BSA enforcement actions and describes criticism which has been offered against it. Part III explains how (1) AML-BSA enforcement actions against individuals require a high degree of culpability by compliance personnel or bank officials; (2) criticisms offered against increased individual accountability are largely misguided because of the focus on culpability; and (3) the recent shift towards individual accountability in AML-BSA enforcement can serve to deter violations of the BSA and restore the public's faith in the justice system.

---

5. *See* Mary Jo White, Chair, SEC, NYU Program on Corporate Compliance and Enforcement (Nov. 18, 2016) https://www.sec.gov/news/speech/chair-white-speech-new-york-university-111816.html) [https://perma.cc/M3HN-XN9D] (stating that "[h]olding individuals liable for wrongdoing is a core pillar of any strong enforcement program. A company, after all, can only act through its employees, and to have a strong deterrent effect on market participants . . .").

6. *Cf.* Memorandum from Sally Q. Yates, Deputy Att'y Gen., U.S. Dep't of Just., to all U.S. Att'ys et al., at 1 (Sept. 9, 2015), https://www.justice.gov/archives/dag/individual-accountability [https://perma.cc/P9BZ-8AHG] (noting that individual accountability "promotes the public's confidence in our justice system.").

7. *Id.*

8. *See infra* Part II.

9. *See infra* Part II.C.3.

10. *See infra* Part III.B.

11. *See infra* Part III.C.

I. THE ROLE OF CULPABILITY IN THE STATUTORY FRAMEWORK PROHIBITING MONEY LAUNDERING IN THE UNITED STATES

The statutory framework prohibiting money laundering in the United States establishes criminal or civil liability only for culpable individuals who have engaged in some form of intentional or reckless misconduct.[12] This section provides a detailed discussion of the role of culpability in various federal statutes that prohibit money laundering in the United States.

A. CRIMINAL LAW CONCEPTS: CULPABILITY, DETERRENCE, AND RETRIBUTION

This Note argues the law should be applied to punish *culpable* individuals with balanced consideration of retributive and utilitarian motivations for punishment.[13]

Retributive justice calls for punishment because the conduct itself deviates from what society deems morally acceptable and serves as a form of retaliation by society against the criminal.[14] Utilitarian justice calls for punishment as a form of deterrence to prevent the individual criminal, and society in general, from engaging in the prohibited conduct in the future.[15]

In the context of individual accountability for money laundering by financial institutions, public demands for individual accountability reflect retributive motivations for punishment of wrongdoing,[16] whereas regulators' focus on individual accountability generally reflects utilitarian motivations seeking deterrence.[17] Prosecuting individuals in a manner that reflects both retributive and utilitarian objectives is essential to

---

12. *See infra* Part I.B.

13. *See* Alan M. Gershel, *In Sentencing, Utilitarianism vs. Retributivism*, N.Y. TIMES: THE OPINION PAGES (Feb. 18, 2014, 8:33PM) https://www.nytimes.com/roomfordebate/2014/02/18/affluenza-and-life-circumstances-in-sentencing/in-sentencing-utilitarianism-vs-retributivism [https://perma.cc/S8DC-3HL9].

14. *See* JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 17 (7th ed. 2015).

15. *Id.* at 15.

16. *See* Daniel Richman, *Corporate Headhunting*, 8 HARV. L. & POL'Y REV. 265, 276 (2014).

17. White, *supra* note 5 (former SEC Chair White stated, "[h]olding individuals liable for wrongdoing is a core pillar of any strong enforcement program. A company, after all, can only act through its employees, and to have a strong deterrent effect on market participants, it is absolutely critical that responsible individuals be charged and that we pursue the evidence as high as it can take us.").

maintaining the public's confidence in the justice system and to preventing future crime.[18]

Mens rea is a concept in criminal law that assigns the requisite mental state required for liability for a given offense.[19] For example, intentionally killing someone creates liability for murder which results in harsh punishment.[20] On the other hand, unintentionally killing someone results in less harsh criminal punishment.[21] In certain circumstances, someone could die as the result of negligence, which would only result in civil liability.[22] From the standpoint of retributive justice, the concept of *mens rea* ensures that punishment is congruent to the extent that an individual is culpable and furthers the societal expectation that liberty should not be denied to one who has acted without culpability for the offense.[23] *Mens rea* also furthers deterrence interests, as it aims to steer individuals away from intentionally engaging in crime.[24] Federal District Court Judge Jed S. Rakoff has written that in the context of holding corporate executives liable for fraud, "the fierce and fiery weapon called criminal prosecution is directed at intentional misconduct, and nothing less."[25]

The *mens rea* of "willful," while often considered synonymous with "intentional," is best understood in the context in which it is applied.[26] The BSA requires "willful" conduct for both civil and criminal liability, but courts have construed different *mens rea* requirements depending on the civil or criminal nature of the case.[27]

---

18. *Cf.* Yates, *supra* note 6, at 1 (stating that individual accountability for corporate crime "deters future illegal activity, it incentivizes changes in corporate behavior, it ensures that the proper parties are held responsible for their actions, and it promotes the public's confidence in our justice system.").

19. DRESSLER, *supra* note 14, at 119.

20. *Id.*

21. *Id.*

22. *See*, *e.g.*, *id.* at 132-33.

23. *See* DRESSLER, *supra* note 14, at 121 (stating that *mens rea* is "founded on the belief that it is morally unjust to punish those who innocently, rather than culpably, cause social injury.").

24. *Id.* at 120.

25. *See* Hon. Jed S. Rakoff, *The Financial Crisis: Why Have No High-Level Executives Been Prosecuted?*, N.Y. REV. OF BOOKS (Jan. 9, 2014), https://www.nybooks.com/articles/2014/01/09/financial-crisis-why-no-executive-prosecutions [https://perma.cc/PQ54-GCN3].

26. *See* DRESSLER, *supra* note 14, at 130.

27. *See infra* Part I.B.3.

B. THE PROHIBITION OF MONEY LAUNDERING UNDER FEDERAL LAW

Money laundering is the process by which money derived from illegal activity is filtered through some other source to appear legitimate.[28] By enabling criminal conduct, money laundering is directly or indirectly linked to the proliferation of narcotics, illegal weapons, terrorism, public corruption, reduced tax revenues, the destabilization of financial institutions, and increased costs to the government in law enforcement and healthcare.[29] Financial institutions are indispensable to the core process of money laundering in which illicit funds enter the legitimate economy.[30] Therefore, the devastating social and economic impact of money laundering can be exacerbated if individuals at banks are not motivated to prevent it through consistent enforcement of the statutory prohibitions currently in place.[31]

The federal government has passed a series of laws which, together, have formed a statutory framework that seeks to deter money laundering by financial institutions (the "AML-BSA statutory framework").[32] The AML-BSA statutory framework seeks to accomplish this by: (1) establishing that money laundering is punishable as an independent crime;[33] (2) requiring that certain procedures be in place at financial institutions to prevent money laundering;[34] and (3) establishing civil and/or criminal liability for individuals and financial institutions that fail to implement the requisite anti-money-laundering procedures.[35] An important feature of the provisions that allow for individual liability is the requirement of some form of "willful" or "intentional" conduct; as

28. Boles, *supra* note 4, at 368–69.

29. Boles, *supra* note 4, at 374–75.

30. *See* U.S. DEP'T OF TREASURY, NATIONAL MONEY LAUNDERING RISK ASSESSMENT 2 n.1 (2015) (discussing the phases of money laundering: placement, layering, and infiltration).

31. *See*, *e.g.*, Boles, *supra* note 4, at 374–76 (discussing the relevant statutes which address the harms of money laundering).

32. *Id.* at 374–81 (discussing the original enactment of the BSA in 1970 and subsequent legislation such as the Money Laundering Control Act (1986), the Annunzio-Wylie Anti-Money Laundering Act (1992), and the PATRIOT Act (2001) each of which created new AML obligations for financial institutions).

33. *See infra* Part I.B.1; *see also* 18 U.S.C. § 1956(a)(1)(B) (2012).

34. *See infra* Part I.B.2.

35. *See infra* Part I.B.3.

discussed below, "willful" means something different in the civil versus the criminal context.[36]

1. Money Laundering as an Independent Crime for Individuals

The Money Laundering Control Act of 1986 established money laundering as an independent crime.[37] An individual who knowingly takes part in a transaction to (a) "conceal or disguise" the nature of proceeds of unlawful activity, or (b) "avoid a transaction reporting requirement under State or Federal law," can face a fine of up to $500,000 and up to 20 years in prison.[38] In order to be criminally liable under 18 U.S.C. § 1956 for money laundering, an individual must have (1) specific knowledge that the funds were derived from unlawful activity,[39] and (2) taken part in concealing the nature of the proceeds or avoiding a transaction reporting requirement.[40] This places a heavy burden on the government to prove that an individual *intended* to engage in money laundering. Liability under section 1956 can be applied to individuals at financial institutions when their conduct reflects the statutory requirement of intentional conduct.[41]

2. The Obligations of Financial Institutions Under the BSA

The BSA serves as the primary statute defining financial institutions' obligations to maintain policies and procedures that combat money laundering and report suspicious activity to federal authorities.[42] The BSA has been amended several times since its enactment in 1970.[43] Today, the

36. *See infra* Part I.B.1; *see also infra* Part I.B.3.

37. Boles, *supra* note 4, at 377.

38. 18 U.S.C. § 1956(a)(1)(B).

39. U.S. DEP'T OF JUST., Justice Manual: Criminal Resource Manual § 2101, (last visited Nov. 17, 2018), https://www.justice.gov/jm/criminal-resource-manual-2101-money-laundering-overview [https://perma.cc/JY9K-FC2W] [hereinafter *Justice Manual*].

40. 18 U.S.C. § 1956(a)(1)(B).

41. Information at 21–22, United States v. Tim Leissner, Cr. No. 18-439 (MKB) (E.D.N.Y. 2018) [hereinafter *Leissner Information*].

42. Sharon C. Levin et al., *Anti-Money Laundering Enforcement: The Rise of Individual Liability for Compliance Professionals*, 49 REV. OF SEC. & COMMODITIES REG. 255, 256 (2016).

43. *See supra* note 32 and accompanying text.

BSA's "five pillars" require financial institutions to maintain a "risk-based" AML program,[44] which includes:

> (1) a system of internal controls to assure ongoing compliance; (2) independent testing for compliance to be conducted by bank personnel or by an outside party; (3) designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance; (4) training for appropriate personnel; and (5) appropriate risk-based procedures for conducting ongoing customer due diligence.[45]

The term "risk-based" is intended to convey that there is no "one-size-fits-all" solution and each financial institution must maintain a compliance program that adequately addresses the unique money laundering risks faced by the firm.[46] The fifth pillar is an important "know your customer" obligation, which requires banks to maintain records of clients' identities and compare them to lists of known terrorists.[47]

In addition to the maintenance of an adequate compliance program, financial institutions are required to report certain transaction activity to the government.[48] This obligation has two main features, financial institutions must report: (1) cash transactions over $10,000 through Currency Transaction Reports ("CTRs"),[49] and (2) activity they suspect may violate the BSA through Suspicious Activity Reports ("SARs") to alert the government of "odd or questionable financial activity."[50] The Financial Crimes Enforcement Network ("FinCEN") is a bureau of the Treasury Department which promulgates rules relating to compliance with the BSA, receives and stores SARs, and has authority to bring civil enforcement actions against financial institutions for violations of the BSA.[51] In addition to FinCEN, the DOJ, the Financial Industry Regulatory Authority (FINRA), and the U.S. Securities and Exchange Commission (SEC) frequently bring AML-BSA enforcement actions.[52]

---

44. Levin et al., *supra* note 42, at 256.
45. 31 C.F.R. § 1020.210 (2016).
46. Levin et al., *supra* note 42, at 256.
47. Boles, *supra* note 4, at 381.
48. *Id.* at 377.
49. *Id.*
50. *Id.* at 379–80.
51. Levin et al., *supra* note 42, at 256, n.4.
52. *Id.* at 257.

Financial institutions may have both criminal and civil liability in the event that they fail to meet their obligations under the BSA.[53] Penalties vary based on the type of entity, the specific conduct, and the level of intent to engage in the prohibited conduct.[54] Typically, this criminal and/or civil liability translates into a deferred prosecution agreement ("DPA"), wherein in exchange for suspension of prosecution, the financial institution agrees to a number of items which may include the payment of a fine, changes to its compliance program, the appointment of a monitor, or other conditions.[55] More recently, DPAs for BSA violations have frequently required financial institutions to acknowledge the conduct charged in an action filed against them[56] and typically require the payment of fines which are larger than in previous years.[57]

3. Criminal and Civil Liability for Individuals under the BSA

Individuals can also be civilly and criminally liable for "willful" violations of the BSA.[58] As discussed above, the concept of "willful" conduct requires context to understand the requisite *mens rea*.[59] Generally speaking, the line between intentional conduct and reckless conduct is what separates the potential for criminal and civil liability for individuals' violations of BSA requirements.[60]

---

53. *Id.* at 256–57.

54. JAY B. SYKES, CONG. RESEARCH SERV., R45076, TRENDS IN BANK SECRECY ACT/ANTI-MONEY LAUNDERING ENFORCEMENT 1 (2018).

55. Paola C. Henry, *Individual Accountability for Corporate Crimes after the Yates: Memo Deferred Prosecution Agreements & Criminal Justice Reform*, 6 AM. BUS. L. REV. 154, 155–57, 163 (2016).

56. SYKES, *supra* note 54, at 3 (discussing FinCEN Director Jennifer Shasky Calvery's statement that "acceptance of responsibility and acknowledgement of the facts is a critical component of corporate responsibility").

57. *Id.* at 2.

58. *See* 31 U.S.C. § 5321(a)(1) (2012) (stating that "a partner, director, officer, or employee of a domestic financial institution or nonfinancial trade or business, willfully violating this subchapter or a regulation prescribed or order issued under this subchapter."); *see also* 31 U.S.C. § 5322 (2012) (stating that "[a] person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter . . . shall be fined not more than $250,000, or imprisoned for not more than five years, or both.").

59. *See* DRESSLER, *supra* note 14, at 130.

60. *See* Norman v. United States, 138 Fed. Cl. 189, 192 (2018) (citing to Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 57 (2007)) (as of the time of this writing, Norman v. United States pending appeal before the Federal Circuit); *see also* United States v.

a. Civil Liability for Individuals under the BSA

In the civil context, under 31 U.S.C. § 5321, the government can hold individuals accountable for "willfully" violating the provisions of the BSA.[61] Courts have construed the statutory requirement of willful conduct to be consistent with its use in the civil context generally, which "cover[s] not only knowing violations of a standard, but reckless ones as well."[62] 31 U.S.C. § 5321 has also been interpreted to include behavior amounting to "willful blindness,"[63] which is where individuals purposefully avoid knowledge that could lead to liability for a given offense.[64] A compliance officer cannot avoid knowledge that the compliance program is deficient or that specific criminal activity is occurring in order to subvert his or her legal duty act on the basis of that knowledge under the BSA.[65] Such conduct would be considered reckless or willfully blind, and would be subject to civil sanctions under 31 U.S.C. § 5321.[66]

b. Criminal Liability for Individuals under the BSA

Individuals can be held criminally liable for violating the requirements of the BSA under 31 U.S.C. § 5324[67] and 31 U.S.C. §

Robins, 673 F. App'x 13, 18 (2d Cir. 2016) (stating that "to convict Robins under § 5322(a) here, the government had to prove beyond a reasonable doubt that (1) in the course of his business (2) he knowingly received "more than $10,000 in cash or currency in 1 transaction (or 2 or more related transactions)" and (3) he failed to report such transaction to FinCEN (4) with knowledge that it was unlawful to do so.") (citing 31 U.S.C. § 5322(a)); *see also* United States v. Caro, 454 F. App'x 817, 839 n.24 (11th Cir. 2012) (citing United States v. Zehrbach, 47 F.3d 1252, 1262 n.7 (3d Cir. 1995) (stating that "the only mental state that the Government must prove in prosecutions for structuring is the purpose of having a financial institution not file a required report.")).

61. *See* 31 U.S.C. § 5321(a)(1).

62. *Norman*, 138 Fed. Cl. at 192 (citing to Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 57 (2007)).

63. *See*, *e.g.*, Levin et al., *supra* note 42, at 259 (discussing FinCEN's civil enforcement action against MoneyGram's Chief Compliance Officer, Timothy Haider, for failing to report criminal activity of which he was aware).

64. *See* DRESSLER, *supra* note 14, at 130.

65. Levin et al., *supra* note 42, at 256–57.

66. *Id.*

67. *See* 31 U.S.C. § 5324(d) (2012) (stating that "[w]hoever violates this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the

5322.[68] Both provisions require the government to prove that the individual acted with some form of intent to evade the requirements of the BSA, but 31 U.S.C. § 5322 also requires that the government prove the individual knew his or her actions were unlawful.[69]

31 U.S.C. § 5324 specifically prohibits "structuring,"[70] which is when an individual takes a large amount of money and breaks it into smaller amounts in order to prevent a financial institution from filing a cash transaction report.[71] In order for an individual to be charged under 31 U.S.C. § 5324, "(1) the defendant must, in fact, have engaged in acts of structuring; (2) he must have done so with knowledge that the financial institutions involved were legally obligated to report currency transactions in excess of $10,000; and (3) he must have acted with the intent to evade this reporting requirement."[72] Therefore, criminal liability under 31 U.S.C. § 5324 requires prosecutors to demonstrate the individual's *intent* to evade the reporting requirements.[73] This does not require proving that the individual had knowledge of the illegality of his or her own actions.[74]

Criminal liability is provided under 31 U.S.C. § 5322 for those who act "willfully" to violate other provisions of the BSA and does not apply to the requirements for "structuring" under 31 U.S.C. § 5324.[75] The government must prove that an individual had knowledge that his or her

---

amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.").

68. *See* 31 U.S.C. § 5322.

69. *See infra* notes 70–77 and accompanying text.

70. *See* 31 U.S.C. § 5324 (2012).

71. Julia Kagan, *Structured Transaction*, INVESTOPEDIA (Feb. 28, 2018), https://www.investopedia.com/terms/s/structured-transaction.asp [https://perma.cc/Y5BX-ZYMZ].

72. *See* United States v. Taylor, 816 F.3d 12, 22 (2d Cir. 2016) (citing United States v. MacPherson, 424 F.3d 183, 189 (2d Cir. 2005)).

73. *See* United States v. Caro, 454 F. App'x 817, 839 n.24 (11th Cir. 2012) (citing United States v. Zehrbach, 47 F.3d 1252, 1262 n.7 (3d Cir. 1995) (stating that "the only mental state that the Government must prove in prosecutions for structuring is the purpose of having a financial institution not file a required report.")).

74. *See id.*

75. *See* 31 U.S.C. § 5322 (this statute explicitly carves out applicability to conduct governed by 31 U.S.C. § 5324).

conduct was unlawful in order for criminal liability to exist under 31 U.S.C. § 5322 for a non-structuring violation of the BSA.[76]

Taken together, 31 U.S.C. § 5324 and 31 U.S.C. § 5322 demonstrate that some form of intentional conduct is necessary for an individual to be found guilty of a criminal violation of the BSA.[77] This is distinguishable from "reckless" or "willfully blind" conduct which could be the subject of civil sanctions under 31 U.S.C. § 5321.[78]

II. THE EMERGENCE OF INDIVIDUAL ACCOUNTABILITY IN FEDERAL AML-BSA ENFORCEMENT

Historically, the BSA has been enforced solely through DPAs with financial institutions, and individuals within the firms have not been held accountable.[79] Recently, however, the government has increasingly sought to hold individuals at financial institutions accountable for violations of the BSA in certain circumstances.[80] This recent shift has followed a larger change in DOJ policy that occurred in September 2015 which called for an increased focus on individual accountability whenever the government is seeking to prosecute a corporation (the "Yates Memo").[81] Part II details (A) the historical enforcement of the BSA, (B) the policies set forth in Yates Memo, and (C) the AML-BSA enforcement actions that have been pursued by the Obama and Trump administrations in the years following the Yates Memo.

A. HISTORICAL AML-BSA ENFORCEMENT BETWEEN 2001–2014

In the past, financial institutions that were prosecuted for violations of the BSA typically entered into DPAs.[82] Prosecutors have authority to

76. *See* United States v. Robins, 673 F. App'x 13, 18 (2d Cir. 2016) (stating that "to convict Robins under § 5322(a) here, the government had to prove beyond a reasonable doubt that (1) in the course of his business (2) he knowingly received 'more than $10,000 in cash or currency in 1 transaction (or 2 or more related transactions)' and (3) he failed to report such transaction to FinCEN (4) with knowledge that it was unlawful to do so.") (citing 31 U.S.C. § 5322(a)).

77. *See supra* notes 72, 75.

78. *See* Levin et al., *supra* note 42, at 256.

79. *See* Henry, *supra* note 55, at 156.

80. *See* Levin et al., *supra* note 42, at 258.

81. *See* Yates, *supra* note 6, at 4.

82. *See* Henry, *supra* note 55, at 155.

enter into DPAs under the Speedy Trial Act.[83] DPAs were originally meant to rehabilitate lower-level or non-violent offenders; however, they have now come to be commonly used in cases involving not only money laundering, but also Foreign Corrupt Practices Act (FCPA) violations, product safety violations, environmental crimes, fraud, and other corporate crimes.[84] From 2001 to 2014, the government entered into a total of fourteen DPAs with financial institutions for violations of the BSA, none of which included individual liability for compliance personnel or bank officers.[85] Critics argue that the use of DPAs leads to a lack of individual accountability, which inhibits the deterrence of future misconduct by corporations.[86] To be clear, individuals at financial institutions have been charged criminally and civilly under the BSA on multiple occasions prior to 2014[87]—but not in conjunction with an investigation of the financial institution itself for violations of the BSA.[88] This Note is focused solely on individual accountability alongside AML-BSA enforcement actions against financial institutions that employ culpable individuals.

HSBC's 2012 DPA is instructive of how AML-BSA enforcement actions against financial institutions worked during this period of time.[89] HSBC's failure to maintain an adequate compliance program resulted in the laundering of $881 million, derived from narcotics trafficking by Mexico's Sinaloa cartel and Colombia's Norte del Valle cartel.[90] HSBC Mexico was repeatedly warned by Mexican law enforcement regarding their concern that the cash was being deposited into HSBC by drug cartels.[91] In fact, the CEO of HSBC Mexico was informed that a drug lord

---

83. *Id.* at 156.

84. *Id.* at 158.

85. *See* Garrett, *supra* note 3, at 1816.

86. *See* Henry, *supra* note 55, at 155.

87. *See*, *e.g.*, United States v. Aversa, 984 F.2d 493, 494 (1st Cir. 1993) (upholding the conviction of William Donovan, president and chief executive officer of Atlantic Trust Company, for criminal violations of the BSA under 31 U.S.C. § 5322(a)).

88. *See* Garrett, *supra* note 3, at 1816.

89. Aruna Viswanatha & Brett Wolf, *HSBC to pay $1.9 billion U.S. fine in money-laundering case*, REUTERS (Dec. 11, 2012, 12:45 AM), https://www.reuters.com/article/us-hsbc-probe/hsbc-to-pay-1-9-billion-u-s-fine-in-money-laundering-case-idUSBRE8BA05M20121211 [https://perma.cc/QJH8-F6C6].

90. United States v. HSBC Bank USA, N.A., No. 12-CR-763, 2013 U.S. Dist. WL 3306161, at *8 (E.D.N.Y. July 1, 2013); these facts are as alleged in the DPA, in which HSBC admitted to criminal wrongdoing. *See id.* at *11.

91. Viswanatha, *supra* note 89.

was recorded stating that "HSBC Mexico was the place to launder money."[92] Under the terms of the DPA, HSBC admitted criminal wrongdoing[93] and paid fines amounting to $1.92 billion.[94] HSBC also increased its spending on compliance by nine times from 2009 to 2011, committed to a global review of its "know your customer" files at an estimated cost of $700 million, and clawed back bonuses of several senior executives.[95] However, despite the egregious nature of the conduct, no individual at HSBC was held criminally or civilly liable for any of the conduct described above.[96]

The reasons for this historical lack of accountability are not exactly clear. Daniel Richman, a former federal prosecutor, suggests that the reasons for this lack of individual accountability are complicated and include, amongst other things, a lack of prosecutorial resources, heavy reliance by the government on internal investigations conducted by the institutions being prosecuted, unfamiliarity with financial markets,[97] and the difficulty of proving intent beyond a reasonable doubt.[98] Former U.S. Attorney General Eric Holder noted that "in some instances, it is simply not possible to establish knowledge of a particular scheme on the part of a high-ranking executive who is far removed from a firm's day-to-day operations."[99] In any event, the lack of individual accountability for financial institutions' violations of the BSA came under sharp criticism.[100] This criticism was somewhat amplified by the widely held perception that

92. *Id.*

93. *HSBC Bank*, 2013 WL 3306161, at *11.

94. Viswanatha, *supra* note 89.

95. *Id.*

96. Garrett, *supra* note 3, at 1818 (quoting Senator Charles Grassley saying, "The Department has not prosecuted a single employee of HSBC—no executives, no directors, no AML compliance staff members, no one. By allowing these individuals to walk away without any real punishment, the Department is declaring that crime actually does pay. Functionally, HSBC has quite literally purchased a get-out-of-jail-free card for its employees for the price of $1.92 billion dollars.").

97. Richman, *supra* note 16, at 273.

98. *Id.* at 269.

99. Eric Holder, Attorney General, DOJ, Attorney General Holder Remarks on Financial Fraud Prosecutions at NYU School of Law (Sept. 17, 2014), https://www.justice.gov/opa/speech/attorney-general-holder-remarks-financial-fraud-prosecutions-nyu-school-law.

100. Boles, *supra* note 4, at 404.

executives on Wall Street were not held accountable for the circumstances that led to the 2008 financial crisis.[101]

B. The Yates Memorandum and its Requirements

In 2015, then-Deputy Attorney General Sally Q. Yates issued a memorandum which called for increased accountability for individuals when the DOJ prosecutes corporations.[102] The Yates Memo was in many ways a pivotal recognition of the value of individual accountability as a means of deterrence and as essential to the public's perception of the justice system. The memo stated that individual accountability "deters future illegal activity; it incentivizes changes in corporate behavior; it ensures that the proper parties are held responsible for their actions; and it promotes the public's confidence in our justice system."[103] The contents of the Yates Memo have since been included in the U.S. Attorney's Manual section entitled "Principles of Federal Prosecution of Business Organizations."[104]

The Yates Memo requires corporations to provide all relevant facts regarding individuals responsible for misconduct in order to receive *any* cooperation credit[105] from the government.[106] The memo emphasizes that government attorneys should not simply receive the information and take it for what it is, but instead, attorneys should proactively investigate individuals at every step of the process.[107] Another key focus of the policy is that both criminal and civil attorneys should make individual responsibility a priority from the inception of the investigation and should

101. Richman, *supra* note 16, at 266.

102. *See* Yates, *supra* note 6, at 1.

103. *Id.*

104. Henry, *supra* note 55, at 159.

105. Cooperation credit is a term used to describe programs which reward the subjects of an investigation with reduced fines and more lenient punishment in exchange for cooperation with an investigation. *See* Jonathan C. Schwartz & David G. Buffa, *Cooperation Credit in Enforcement Proceedings: The Importance of Independence*, American Bar Association: Commercial & Business Litigation (Aug. 8, 2018), http://apps.americanbar.org/litigation/committees/commercial/articles/summer2016-0816-cooperation-credit-enforcement-proceedings-importance-of-independence.html [https://perma.cc/TH4N-KA3Y].

106. *See* Yates, *supra* note 6, at 3.

107. *Id.* at 4.

not resolve cases until they have actively considered the individual misconduct.[108]

By leveraging all cooperation credit on information about personal wrongdoing, the policies in the Yates Memo seek to mitigate any harmful effects of the DOJ's reliance on internal investigations carried out by corporations.[109] Further, by urging both criminal and civil DOJ attorneys to prioritize individual accountability from the beginning,[110] the Yates Memo makes clear that both criminal and civil liability should be actively considered.

C. BSA Enforcement Actions Following the Yates Memorandum

Following the issuance of the Yates Memo, the government has increasingly held individuals at financial institutions accountable for AML-BSA violations through: (1) civil sanctions under the BSA, (2) criminal charges under the BSA, and (3) criminal charges under 18 U.S.C. § 1956.

1. Emerging Individual Accountability Following the Yates Memo

FinCEN brought a civil enforcement action for violation of the BSA in 2014 against former MoneyGram Chief Compliance Officer (CCO) Thomas Haider in connection with a larger investigation into MoneyGram.[111] Two of FinCEN's allegations addressed the "willful" nature of Haider's conduct: (1) Haider was alleged to have had direct knowledge of frauds being perpetrated using MoneyGram's service and failed to take corrective action against anyone involved, and (2) Haider had knowledge of or had reason to suspect fraud, money laundering, and other criminal activity, and failed to submit SARs to FinCEN.[112] Haider initially challenged FinCEN's authority to bring an action against him as an individual under the BSA, but a federal court in Minnesota held that "the BSA expressly authorizes FinCEN to assess a civil penalty and then

108. *Id.* at 2.

109. *See* Richman, *supra* note 16, at 273 (discussing the tendency of prosecutors to rely on internal investigations).

110. *See* Yates, *supra* note 6, at 2.

111. Levin et al., *supra* note 42, at 259 n.17 (the case began in 2014 and was resolved after the issuance of the Yates Memo in 2016).

112. *Id.*

commence a civil action to recover that penalty."[113] Following this decision, Haider settled with FinCEN for a $250,000 fine and a three-year ban from working in financial compliance.[114] As part of this settlement, Haider acknowledged that he failed to take corrective action despite being presented with information that "strongly indicated" ongoing consumer fraud schemes.[115]

In 2014, FINRA brought a civil enforcement action against Harold Crawford, former CCO of Brown Brothers Harriman ("BBH"). FINRA alleged that Crawford was aware of anonymous securities transactions being conducted by foreign individuals through BBH accounts that were said to be related to insider trading.[116] Although Crawford eventually recommended that this activity be put to an end, his recommendations were never implemented.[117] Accordingly, Crawford did not cause any change in policy at BBH despite his knowledge of ongoing misconduct. Crawford paid a $25,000 fine and received a one-month ban—Crawford did not admit or deny any of the alleged wrongdoing in connection with this matter.[118]

In 2016, FINRA fined a compliance officer, Linda Busby from Raymond James & Associates, $25,000 and suspended her for three months for allegedly failing to "establish and implement adequate AML procedures"—Busby neither admitted or denied FINRA's charges.[119] Unlike Haider and Crawford, Busby did not have specific knowledge of wrongdoing.[120] However, Busby's failure to establish an adequate AML

---

113. United States v. Haider, U.S. Dist. LEXIS 2292, at *12 (D. Minn. Jan. 8, 2016).

114. Press Release, FinCEN, FinCEN and Manhattan U.S. Attorney Announce Settlement with Former MoneyGram Executive Thomas E. Haider (May 4, 2017), https://www.fincen.gov/news/news-releases/fincen-and-manhattan-us-attorney-announce-settlement-former-moneygram-executive [https://perma.cc/X3CL-6CJC] [hereinafter *Haider FinCEN Press Release*].

115. *Id.*

116. Levin et al., *supra* note 42, at 260.

117. *Id.*

118. *See* Suzanne Barlyn*, Brown Brothers to pay $8 million fine for money laundering violations*, REUTERS (Feb. 5, 2014), https://www.reuters.com/article/us-finra-brownbrothers/brown-brothers-to-pay-8-million-fine-for-money-laundering-violations-idUSBREA1415S20140205.

119. Levin et al., *supra* note 42, at 260; *see also See* Suzanne Barlyn*, FINRA fines Raymond James $17 million for violating anti-money laundering rules*, REUTERS (May 18, 2014), https://www.reuters.com/article/us-raymond-james-fi-finra-idUSKCN0Y91ZW.

120. Levin et al., *supra* note 42, at 260

protocol was seen as particularly concerning because Raymond James had been fined for similar violations in 2012. As a result, she was sanctioned for her failure to act despite notice of the specific failures of the compliance protocols at her firm.[121]

On January 19, 2017, Western Union was assessed a civil monetary penalty of $586 million in connection to a DPA with the DOJ.[122] The fine was levied as a result of Western Union's alleged failure to maintain a compliance program in accordance with the requirements of the BSA.[123] Western Union was aware that some of its "agents," which are essentially franchises, were actively facilitating gambling and scam activity.[124] In connection with this case, twenty-six of those agents were prosecuted and convicted for fraud-related charges and in some of the cases, for violations of the BSA.[125] No executives were held accountable despite indications in the DPA that Western Union had "long been aware of the problem."[126] However, compliance personnel recommended the suspension or termination of problematic agents at various points, and in some instances, such actions were carried out.[127]

2. Individual Accountability Under the Trump Administration

In September 2017, former U.S. Deputy Attorney General Rod Rosenstein indicated that the Yates Memo was "under review."[128] However, Rosenstein also noted that any changes to the Yates memo would reflect a continued resolve to hold individuals accountable for

---

121. *Id.*

122. Press Release, Dept. of Just., Western Union Admits Anti-Money Laundering and Consumer Fraud Violations, Forfeits $586 Million in Settlement with Justice Department and Federal Trade Commission (Jan. 19, 2017), https://www.justice.gov/opa/pr/western-union-admits-anti-money-laundering-and-consumer-fraud-violations-forfeits-586-million [https://perma.cc/R55A-BT4J] [hereinafter *Western Union DOJ Press Release*].

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *See* Deferred Prosecution Agreement Attachment A at 7, 13, United States v. The W. Union Co., 1:17-cv-00110-CCC (M.D.P.A. Jan. 19, 2018).

128. Cogan Schneier, *DAG Rosenstein: Changes Coming "in the Near Future" to Yates Memo*, LAW.COM (Sept. 14, 2017, 6:09 PM), https://www.law.com/sites/almstaff/2017/09/14/dag-rosenstein-changes-coming-in-the-near-future-to-yates-memo/ [https://perma.cc/JLK3-PKQX].

corporate crime and clarify the policy.[129] As proof of the DOJ's ongoing commitment, Rosenstein noted of the 132 organizations convicted of federal offenses in 2016, more than half involved the conviction of at least one related individual and 40 percent of those convicted individuals were board members or owners of businesses.[130] That statistic does not include DPAs or civil penalties.[131] AML-BSA enforcement actions under the Trump administration are detailed below.

In 2017, the SEC brought a civil enforcement action against Wells Fargo Advisors that was the result of senior compliance officers allegedly directing SARs to be filed in a manner at odds with guidance from regulators.[132] For example, compliance officers required SARs to be filed only when there was "proof" of criminal activity.[133] This is at odds with regulations, which only require "a reason to suspect" that transactions might involve criminal activity.[134] In this case, no individuals were held accountable.[135]

In November 2017, Mehmet H. Atilla, a Turkish banker, was convicted of charges that included conspiracy to commit money laundering in connection with a scheme designed to evade U.S. sanctions against Iran.[136] Atilla was caught on wiretaps explaining to other traders how to counterfeit documents to make transactions appear legitimate to

129. Rod J. Rosenstein, Deputy Attorney General, Department of Justice, NYU Program on Corporate Compliance & Enforcement Keynote Address (Oct. 6, 2017) (https://wp.nyu.edu/compliance_enforcement/2017/10/06/nyu-program-on-corporate-compliance-enforcement-keynote-address-october-6-2017/ [https://perma.cc/BJE7-XAGS].

130. *Id.*

131. *Id.*

132. *See* Robert M. Axelrod, COMMENTARY: Recent AML U.S. enforcements complicate personal liability calculus for compliance staff, REUTERS (Apr. 17, 2017, 11:05 AM), https://www.reuters.com/article/bc-finreg-aml-personal-liability/commentary-recent-aml-u-s-enforcements-complicate-personal-liability-calculus-for-compliance-staff-idUSKBN1HO28Z [https://perma.cc/3L9Q-AV56].

133. *Id.*

134. *Id.*

135. *Id.*

136. Christian Berthelsen, *U.S. Seeks at Least 15 Years for Banker in Sanctions Case*, BLOOMBERG (Apr. 4, 2018, 2:47 PM), https://www.bloomberg.com/news/articles/2018-04-04/u-s-seeks-more-than-15-year-sentence-for-turkish-banker-atilla [https://perma.cc/BN6T-Y7ZA].

regulators.[137] It remains to be seen whether Atilla's employer, Halkbank, will be fined as a result of his actions.[138]

U.S. Bank entered a DPA with the DOJ in February 2018 in which it admitted that the bank's CCO rejected requests for disclosure of certain transactions to regulators and misinformed others that the disclosures had been made.[139] The DPA noted that the CCO was an inexperienced hire.[140] Again, no one at the bank was held individually accountable.[141]

In February 2018, Rabobank plead guilty to a criminal information which specifically named several executives as wrongdoers.[142] George Martin, a compliance manager, was held individually accountable for overseeing a deficient compliance operation in connection with a Rabobank branch in Mexico.[143] Martin was criminally charged with aiding and abetting violations of the BSA, and plead guilty in a DPA with federal prosecutors.[144] The DPA states that Martin "acted *voluntarily* and with the *knowledge* and *intention* of helping" other's "willful" violations of 31 U.S.C. § 5322.[145] Specifically, Martin was informed of criminal activity, failed to submit SARs,[146] and actively suppressed investigations into suspicious activity.[147] As part of the DPA, Martin agreed to cooperate

---

137. *Id.*

138. *See*, *e.g.*, *Turkey Expects No Fine for Halkbank: Finance Minister*, REUTERS (Sept. 3, 2018), https://www.reuters.com/article/us-turkey-currency-albayrak-usa/turkey-expects-no-fine-for-halkbank-finance-minister-idUSKCN1LJ0L6 [https://perma.cc/UY2E-ESL8].

139. *See* Axelrod, *supra* note 132; *see also* Deferred Prosecution Agreement at 1, Re: U.S. Bancorp – Deferred Prosecution Agreement (S.D.N.Y., Feb. 12, 2018) (US Bancorp stipulated that the facts set forth in the DPA were true).

140. *See* Axelrod, *supra* note 132, at 6.

141. *Id.*

142. Tom Schoenberg & Jesse Hamilton, *Ex-CEO Whose Bank Hid Mexican Drug Cash Avoids U.S. Charges*, BLOOMBERG (Oct. 30, 2018), https://www.bloomberg.com/news/articles/2018-10-30/ex-ceo-whose-bank-hid-mexican-drug-cash-is-said-to-avoid-charges [https://perma.cc/JA4Z-9FDM].

143. *Id.*

144. *See* Deferred Prosecution Agreement at 6, U.S. v. George Martin, No. 17cr4232-JM (S.D.N.Y., Dec. 14, 2017) (the DPA indicates that Martin could face up to 5 years in prison in connection with his guilty plea for aiding and abetting willful violations of 31 U.S. Code § 5318 and 5322 and sections of the code of federal regulations which set forth the compliance and reporting requirements under the BSA, such as Title 31 C.F.R. § 1020.210, 1020.320(a)(2)(ii), and 1020.320(a)(2)(iii)) [hereinafter *George Martin DPA*].

145. *See id.* at 9.

146. *See id.* at 10.

147. *See id.* at 7.

against the bank's executives.[148] Martin admitted to aiding "a scheme by his superiors to mask possible money laundering."[149] The DOJ later declined to bring charges against those individuals.[150] Rabobank agreed to pay $368 million in conjunction with its guilty plea.[151]

More recently, the DOJ charged Tim Leissner, a Goldman Sachs executive, with felony violations of 18 U.S.C. § 1956.[152] Leissner plead guilty to conspiring to launder money and violate the FCPA in November of 2018.[153] These charges were in connection with the "1MDB" scandal in which billions of dollars were embezzled from a publicly-funded entity that was intended to fuel development in Malaysia.[154] Leissner bribed government officials and assisted in laundering hundreds of millions through a network of shell companies.[155] It has been reported that federal authorities are considering fines against Goldman Sachs in connection with Leissner's conduct.[156]

3. Criticism of Rising Individual Accountability

The rise of AML-BSA enforcement actions against compliance officers and bankers has been controversial in some circles. One common criticism is that rising individual accountability has been enforced in a

148. *See* Schoenberg & Hamilton, *supra* note 142.

149. *Id.*

150. *Id.*

151. *See* Karen Freifeld, *Rabobank Agrees to Pay $368 Million Over Processing Illicit Funds*, REUTERS (Feb. 7, 2018), https://www.reuters.com/article/us-rabobank-fraud-usa/rabobank-agrees-to-pay-368-million-over-processing-illicit-funds-idUSKBN1FR2U4 [https://perma.cc/937Z-GZP8].

152. *See Leissner Information*, *supra* note 41, at 21.

153. Press Release, U.S. Dep't of Just., Former Banker Tim Leissner Pleaded Guilty to Conspiring to Launder Money and to Violate the Foreign Corrupt Practices Act Related to 1MDB (Nov. 1, 2018), https://www.justice.gov/opa/pr/malaysian-financier-low-taek-jho-also-known-jho-low-and-former-banker-ng-chong-hwa-also-known [https://perma.cc/FQ65-SUVY].

154. *Id.*

155. *Id.*

156. Peter Eavis, *How Much Could the 1MDB Scandal Cost Goldman Sachs?*, N.Y. TIMES: DEAL BOOK (Dec. 9, 2018), https://www.nytimes.com/2018/12/09/business/dealbook/goldman-1mdb-penalties.html?login=email&auth=login-email [https://perma.cc/ZP8N-2DWE]; *see also id.* (a spokesman for Goldman Sachs said, "We are in the process of assessing the details of allegations and fully expect to contest the claim vigorously," in connection with another lawsuit which has stemmed from this matter).

manner which, if continued, will cause compliance personnel to flee the industry for fear of being unfairly "targeted."[157] Another related concern is that CCOs could be punished for the wrongdoing of subordinates of which they were wholly unaware.[158] There is anecdotal evidence that this sentiment is shared by many who work in the compliance industry.[159] A recent survey of compliance personnel found that "81 percent of respondents were at least somewhat concerned about their personal liability, with nearly a third describing personal liability as extremely concerning."[160]

It has also been argued that even civil punishment of compliance officers is "grossly out of proportion to the individuals' supposed wrongdoing" and leads to "'never-ending punishment' through stigmatization and banishment from the compliance industry as well as the permanent label of an untrustworthy criminal."[161]

As discussed below, these criticisms are overstated when considered in light of the cases that have actually been pursued in this area.

III. THE FOCUS ON INTENTIONAL CONDUCT ENSURES THAT THE EFFECTIVE DETERRENCE OF MONEY LAUNDERING DOES NOT COME AT THE EXPENSE OF NON-CULPABLE INDIVIDUALS

The foregoing discussion demonstrates that the policy directives set forth in the Yates Memo have led to an increased emphasis on individual accountability in AML-BSA enforcement actions of financial institutions, particularly when compared to the 2001-2014 period in which no individuals were held accountable in conjunction with these AML-BSA investigations.[162] However, it is clear from cases like Wells Fargo, U.S. Bank, and Western Union that individual accountability is not pursued in

157. Court E. Golumbic, *"The Big Chill": Personal Liability and the Targeting of Financial Sector Compliance Officers*, 69 HASTINGS L. J. 45, 81–82, 85 (2017).

158. India McGee, *Where Do We Go from Here? Prosecutorial Concerns of Chief Compliance Officers*, 6 AM. U. BUS. L. REV. 277, 298 (2017).

159. Golumbic, *supra* note 157, at 81.

160. *Id.* (quotation marks omitted).

161. *See*, *e.g.*, Boles, *supra* note 4, at 421–22 (discussing the potential for civil sanctions against compliance personnel to unfairly stigmatize them). It is important to note that this article was written *before* the Yates Memorandum was issued and the concerns were expressed in a forward-looking manner; in fact, the article discussed relying on direct liability theories as a means to avoid the potential for inequitable results. *Id.* at 429.

162. Garrett, *supra* note 3, at 1816.

all cases.[163] Further analysis is required to understand why, in some cases, individuals are still not held accountable in all AML-BSA enforcement actions.

Part A demonstrates that following the Yates Memo, the imposition of criminal or civil liability on compliance personnel or bank officers for AML-BSA violations is largely conditioned on the presence of demonstrable intentional or reckless conduct. Part B explains how the focus on intentional or reckless conduct mitigates concerns that have been raised over the increase of individual accountability in AML-BSA enforcement actions. Lastly, Part C suggests that the focus on intentional or reckless conduct has the potential to enhance deterrence objectives and to restore the public's faith in the justice system.

A. Prosecutions Following the Yates Memo Demonstrate that Civil and Criminal Liability for Individuals Depends on the Government's Ability to Prove the Requisite Intent

The Yates Memo's call to hold individuals accountable only applies where there is a law under which individuals can be found liable.[164] Generally speaking, under the BSA, individuals can be held criminally liable for intentional conduct and civilly liable for reckless conduct.[165] Further, civil liability can attach where compliance officers engage in "willful blindness."[166] Under 18 U.S.C. § 1956, individuals must demonstrate intent to engage in money laundering.[167] Therefore, the policies set forth in the Yates Memo are only at issue in the AML-BSA context where there is some form of reckless or intentional conduct. The constellation of cases discussed above demonstrates that the government is largely committed to pursuing the policies set forth in the Yates Memo where there is a viable path to hold individuals accountable under existing law.

---

163. *See infra* Part III.A.3.

164. *Cf.* Yates, *supra* note 6, at 1 (stating that "[o]ur nation's economy depends on effective enforcement of the civil and criminal laws that protect our financial system and, by extension, all our citizens.").

165. *See* United States v. Caro, 454 F. App'x 817, 839 n.24 (11th Cir. 2012) (citing United States v. Zehrbach, 47 F.3d 1252, 1262 n.7 (3d Cir. 1995); United States v. Robins, 673 F. App'x 13, 18 (2d Cir. 2016); Levin et al., *supra* note 42, at 256.

166. Levin et al., *supra* note 42, at 256.

167. *See Justice Manual*, *supra* note 39; 18 U.S.C. § 1956(a)(1)(B) (2012).

Broadly speaking, the cases above evidence that individuals at financial institutions who have been implicated in money laundering face three potential outcomes: (1) criminal punishment, (2) civil sanctions, or (3) no liability.[168] This Note will discuss further how these outcomes are determined largely by the government's ability to prove intentional or reckless misconduct by an individual.

1. Criminal Punishment and Intentional Conduct

The government is willing and able to criminally prosecute compliance officers and bank officials under the BSA and 18 U.S.C. § 1956 when individuals evince an intent to engage in or directly enable money laundering.[169] In doing so, the government has adhered to the policies set forth in the Yates Memo.

a. Criminal Liability Under the 18 U.S.C. § 1956

One of the major difficulties involved with prosecutions under 18 U.S.C. § 1956 is the government's ability to prove intent beyond a reasonable doubt.[170] The government is essentially tasked with proving that an individual engaged in the act of concealing the source of funds with specific knowledge of the funds' illegal origin.[171] Leissner and Atilla's individual actions, in connection with other crimes, fell within 18 U.S.C. § 1956's prohibition of concealing or disguising the nature of proceeds of an unlawful activity[172] with the requisite intent.[173] In these cases, the government was only able to show this high level of intent because the defendants' actions simultaneously ran afoul of economic sanctions, the FCPA, or prohibitions against embezzlement. Therefore, it was possible to show that they had knowledge of the nature of the proceeds for criminal liability under 18 U.S.C. § 1956. This demonstrates that where a bank official directly engages in the act of money laundering,

---

168. *See*, *e.g.*, *George Martin DPA*, *supra* note 144, at 6; Levin et al., *supra* note 42, at 259; *Western Union DOJ Press Release*, *supra* note 122 (each respectively discussing the cases involving Martin, Haider, and Western Union).

169. *See*, *e.g.*, *George Martin DPA*, *supra* note 144, at 6; *Leissner Information*, *supra* note 41, at 21 (each respectively discussing the cases involving Martin and Leissner).

170. Richman, *supra* note 16, at 269.

171. 18 U.S.C. § 1956(a)(1)(B) (2012); *see also Justice Manual*, *supra* note 39.

172. 18 U.S.C. § 1956(a)(1)(B).

173. *Cf. Justice Manual*, *supra* note 39.

they are likely to face criminal charges because it is possible to prove their knowledge and intent based on their concurrent illegal conduct. The government's commitment to prosecuting these individuals represents adherence to the policies set forth in the Yates Memo.[174]

b. Criminal Liability Under the BSA

It is also possible for individuals at financial institutions to face criminal punishment under the BSA.[175] George Martin's DPA stated that he "acted *voluntarily* and with the *knowledge* and *intention* of helping" others violate the BSA and thereby aided and abetted the others' violations.[176] The difference between Martin and Haider is that Haider merely knew about criminal activity and failed to act as required under the BSA,[177] whereas Martin was aware of criminal activity and actively suppressed investigations into it.[178] This demonstrates that although individuals can be held civilly or criminally liable for conduct described as "willful,"[179] the meaning of willful represents a higher form of intent in the criminal context.

The Martin prosecution represents an adherence to the Yates Memorandum. The Yates Memo requires prosecutors to focus on individuals from the inception of the case in order to "increase the likelihood that individuals with knowledge of corporate misconduct will cooperate in the investigation."[180] While charges were not ultimately brought against the senior executives at Rabobank, the government seemed to be following this directive through its DPA with George Martin by attempting to develop cooperating witnesses.[181]

174. *See* Yates, *supra* note 6, at 2.

175. *See George Martin DPA*, *supra* note 144, at 2, 7.

176. *See id.* at 6, 9.

177. Levin et al., *supra* note 42, at 259.

178. *See George Martin DPA*, *supra* note 144, at 7.

179. *See* Norman v. United States, 138 Fed. Cl. 189, 191–92 (2018) (citing to Safeco Ins. Co. of Am. V. Burr, 551 U.S. 47, 57 (2007)).

180. Yates, *supra* note 6, at 4.

181. *See* Schoenberg & Hamilton, *supra* note 142 (stating that Martin "agreed to cooperate in the government's investigation of higher-level executives.").

2. Civil Liability and Willful Conduct

The government has shown a commitment to pursue individual accountability, as mandated by the Yates Memo,[182] through civil sanctions where an individual "willfully" contravenes the goals of the BSA but their actions do not rise to criminal intent to engage in money laundering. Haider, Crawford, and Busby received civil sanctions in connection with conduct in their capacity as compliance officers but were not criminally prosecuted.[183] This was appropriate because their conduct amounted to total neglect of their obligations under the BSA despite specific knowledge of shortcomings. Their conduct, therefore, amounted to "willful blindness," which is sufficient for civil, but not criminal, liability under the BSA.[184]

It would be very difficult to criminally prosecute someone like Tim Haider because doing so would require a showing of intent to launder money beyond a reasonable doubt.[185] Haider's actions are distinguishable from Leissner, Atilla, and Martin in that (1) he did not stand to personally benefit from money laundering, (2) he did not actively seek to engage in money laundering, (3) his actions were not in connection with another crime such as embezzlement or bribery, and (4) he failed to act in the face of known criminal activity but did not overtly sabotage the compliance program.[186]

With respect to civil sanctions, the government's enforcement actions against Haider, Crawford, and Busby demonstrate that the government may seek civil sanctions under the BSA where a compliance officer *willfully* fails to maintain an adequate compliance program.[187] Haider and Crawford had knowledge of ongoing criminal activity and failed to take any meaningful corrective action to stop it.[188] Busby was on

---

182. *See* Yates, *supra* note 6, at 2.

183. Levin et al., *supra* note 42, at 259–61.

184. *Id.* at 256.

185. *Cf.* Richman, *supra* note 16, at 269 (discussing the difficulties of proving a case beyond a reasonable doubt).

186. *See* Levin et al., *supra* note 42, at 259–60.

187. *See id.* at 259.

188. *Haider FinCEN Press Release*, *supra* note 114 (stating that Haider "fail[ed] to terminate specific MoneyGram outlets after being presented with information that strongly indicated that the outlets were complicit in consumer fraud schemes"); *see also* Levin et al., *supra* note 42, at 260 (stating that Crawford was aware of strong evidence of criminal activity and failed take action to stop it; although he did eventually

notice of the bank's compliance failures due to a previous enforcement action but failed to remedy the deficiencies as required under the BSA. For example, there were no written procedures at all for AML procedures.[189]

These cases present situations in which a compliance officer was confronted with a duty to act under the BSA in response to known criminal activity or compliance failures. Their failure to act, despite this knowledge, constitutes "willful blindness" and is sufficient for civil liability under the BSA.[190] The government has not civilly sanctioned compliance officers for failures where their conduct does not have an "aggravating" factor, such as knowledge compliance failures, paired with a failure to act as required under the BSA.[191] These enforcement actions demonstrate that the government is committed to the policies set forth under the Yates Memo because they are pursuing individual accountability to the extent that existing law permits.

3. No Liability When There Is a Lack of Intent

There are circumstances in which a financial institution violates the BSA, but its employees do not intentionally seek to assist or passively enable money laundering.[192] In these cases, there is no avenue to pursue individual accountability under the law because the BSA and 18 U.S.C. § 1956 each require some form of intentional or reckless conduct.[193] The policies of the Yates Memo, therefore, are not at issue. In the years following the Yates Memo, under both the Obama and Trump administrations, the government has at times declined to hold individuals accountable when entering into DPAs with financial institutions for violations of the BSA.[194] A close look at each of these cases demonstrates

---

recommend that some of the activity be halted, that recommendation was never implemented).

189. *See* Levin et al., *supra* note 42, at 260–61 (noting that despite Raymond James & Associates, Inc. receiving an AML-related sanction in 2012, in her capacity as the main compliance officer, Busby failed to create a single written manual describing AML protocols and had no control or oversight over AML-related processes).

190. *See id.* at 256.

191. *See id.* at 259–61.

192. *See* Axelrod, *supra* note 132 (discussing the Wells Fargo and U.S. Bank cases).

193. *See supra* Part III.A.1, Part III.A.2.

194. *See Western Union DOJ Press Release*, *supra* note 122 (noting the DPA with Western Union during the Obama administration); *see also* Axelrod, *supra* note 132 (noting the DPAs with U.S. Bank and Wells Fargo during the Trump Administration).

that whether someone is held individually accountable largely turns on the individual's intent with respect to the prohibited conduct.

The DPAs for U.S. Bank and Wells Fargo indicate that though the compliance officers may have been aware of certain failings of their compliance programs, they did not completely disregard their responsibilities.[195] Unlike *Haider*, they did not fail to act despite knowledge of specific ongoing criminal activity; nor were these individuals made aware of these failings through previous enforcement actions compounded with a complete lack of established AML-protocol, as Busby was.[196] Therefore, in these cases there was no avenue to pursue individual accountability under the BSA, which requires willful conduct, or 18 U.S.C. § 1956, which requires intent.

With respect to Western Union,[197] the government's decision to not hold any compliance officers or bank personnel accountable may be explained by a lack of demonstrable intentional or reckless conduct. On its face, the Western Union case is arguably similar to that of Haider[198] because the Western Union DPA states that individuals at the bank were aware of the scam activity.[199] However, the Western Union case is distinguishable because Haider and Crawford had knowledge of illegal activity and each took almost no action to stop it.[200] In contrast, Western Union employees were aware of the problem and took some steps to remedy it, which were arguably insufficient.[201] For example, at various times, Western Union compliance personnel recommended terminating agents with reports of fraud, and agents were at times suspended or terminated, although not with great haste.[202] There is no avenue to pursue individual accountability here because Western Union employees did not completely disregard their responsibilities and their conduct does not represent a "willful" violation of their responsibilities under the BSA.[203]

---

195. *See* Axelrod, *supra* note 132.

196. *See* Levin et al., *supra* note 42, at 259–61.

197. *See Western Union DOJ Press Release*, *supra* note 122.

198. *See* Levin et al., *supra* note 42, at 259–60.

199. *See supra* note 127 and accompanying text.

200. Levin et al., *supra* note 42, at 259–60.

201. *See* Deferred Prosecution Agreement Between The Western Union Company and U.S. Attorney's Office for the M.D. Pa. at 11 (Jan. 19, 2018), https://www.justice.gov/opa/press-release/file/938371 [hereinafter *Western Union DPA*].

202. *Id.*

203. *See* Levin et al., *supra* note 42, at 256.

There can be no doubt that in making this distinction, the bar appears to be set fairly high with respect to conduct that is considered actionable under the BSA—even if only for civil sanctions. However, this is largely a function of the legislatively proscribed "willfulness" requirement in the BSA,[204] as opposed to a failure by the government to pursue individual accountability.

Under the BSA, compliance officers are tasked with carrying out a risk-based compliance program.[205] This role will invariably bring them into contact with criminal activity. Based on the cases available, only when employees of financial institutions completely ignore such activity is their conduct sufficiently intentional or reckless to create liability under the AML-BSA statutory framework.[206] The policies of the Yates Memo cannot be implicated with respect to conduct for which there is no avenue to pursue criminal or civil punishment under existing law.

B. The Focus on Intent Undermines the Criticisms of Individual Accountability

The three main criticisms with respect to individual accountability in AML-BSA enforcement actions against compliance personnel and bank officials are that: (1) enforcement is carried out in an unfair manner which could punish non-culpable individuals,[207] (2) compliance personnel will flee the industry for fear of an individualized enforcement action,[208] and (3) punishments in this area have the potential to unfairly stigmatize compliance personnel.[209] In light of the cases discussed above, it is clear that these criticisms are largely misguided.[210] The main reason these criticisms fall flat is that some form of intentional or reckless conduct is a necessary feature of AML-BSA enforcement actions against individuals.[211]

---

204. *See supra* note 60 and accompanying text.
205. *See* Levin et al., *supra* note 42, at 256.
206. *Id.* at 259–62 (discussing the cases involving Haider, Crawford, and Busby).
207. *See* McGee, *supra* note 158, at 298.
208. *See* Golumbic, *supra* note 157, at 81.
209. *See supra* note 4 and accompanying text.
210. *See supra* Part III.A (discussing how the requirement of willfulness ensures that only culpable individuals are held individually accountable).
211. *Id.*

1. The Focus on Intent Makes Individual Accountability Predictable and Non-Arbitrary

The statutory requirement of intentional or willful conduct for criminal and civil punishment of compliance personnel ensures a prosecutorial focus on culpable conduct.[212] Concerns that non-culpable individuals could be punished under the BSA[213] are therefore unfounded. In each of the civil BSA cases discussed above, compliance officers were only punished when they were on notice of existing deficiencies in their compliance protocol and failed to act entirely.[214] Western Union helpfully demonstrates that good faith compliance with the BSA will not result in enforcement actions, even when an employee's conduct with respect to suspicious transaction activity is possibly negligent.[215] This is a necessary feature of all civil sanctions under the BSA, as 31 U.S.C. § 5321 requires a showing of "willful" conduct in the civil context.[216] Further, the fact criminal sanctions under the BSA require a greater degree of intentional conduct—as compared to civil actions—ensures that punishment corresponds to an individual's intent with respect to the specific violation at issue.[217] Therefore, the criticism that punishment in this area is unfair has no merit because it is directly correlated to the conduct at issue.

---

212. *Id.*

213. *See* McGee, *supra* note 158, at 298.

214. *See supra* notes 188–89 and accompanying text (discussing how Crawford and Haider were both aware of compliance failures and failed to act entirely, and how Busby was aware of compliance failures from a previous investigation and subsequently failed to take any steps to fix the problems).

215. *See supra* notes 197–204 and accompanying text (discussing how the Crawford and Haider cases were distinguishable from the Western Union case, in which no individuals were prosecuted, because the compliance personnel at Western Union took at least some steps to fix the compliance failures whereas Crawford and Haider did virtually nothing).

216. *See supra* notes 61–62 and accompanying text (discussing how civil sanctions under 31 U.S.C § 5321 require "willful" conduct and how it has been interpreted to cover conduct which is reckless and/or willfully blind).

217. *See supra* notes 73, 76 and accompanying text (discussing how the criminal punishment under 31 U.S.C § 5324 or 31 U.S.C § 5322 requires prosecutors to demonstrate that the conduct at issue was intentional).

2. Compliance Officers Do Not Have a Legitimate Concern if Punishment Only Follows Intentional or Reckless Conduct

The concern amongst compliance officers that they will be unfairly targeted—demonstrated anecdotally in surveys[218]—is not warranted because liability only attaches to willful conduct.[219] As discussed above, all compliance officers who have received civil sanctions were on notice of serious compliance deficiencies and failed to do anything to meet their responsibilities under the BSA.[220]

To avoid civil or criminal sanctions, compliance officers should refrain from (1) engaging in a wholesale disregard for their responsibilities[221] and (2) directly engaging or assisting in money laundering themselves.[222] An individual can avoid receiving a DUI or a speeding ticket by (1) abstaining from driving under the influence and (2) driving within the speed limit—both being behaviors which are entirely within the individual's own control. Similarly, compliance officers concerned that they will be unfairly targeted need only ensure that they are carrying out their responsibilities under the BSA in good faith. Again, Western Union demonstrates the high bar that is set for compliance personnel[223] and shows that personal accountability does not attach to negligent conduct under the existing statutory framework that explicitly requires willfulness. To the extent compliance officers are concerned, that is evidence of the deterrent effect that the Yates Memo seeks to create through the pursuit of individual accountability in this context.[224]

---

218. *See* Golumbic, *supra* note 157, at 81 (stating that "[a] recent survey of CCOs conducted by the law firm DLA Piper also revealed that '81 percent of respondents were at least somewhat concerned' about their personal liability, with nearly a third describing personal liability as 'extremely concerning.'").

219. *See* Norman v. United States, 138 Fed. Cl. 189, 192 (2018) (citing to Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 57 (2007)).

220. *See supra* notes 188–89 and accompanying text (discussing how the civil sanctions cases all involved situations in which individuals were knowledgeable of specific compliance failures and did virtually nothing to remedy the violations).

221. *See id.*

222. *See George Martin DPA*, *supra* note 144, at 2 (stating "[Martin] acted voluntarily with the knowledge and intention of helping others commit an offense against the United States of American under Title 31, United States Code, Sections 5318 and 5322, and the statutes and regulations issued thereunder").

223. *See*, *e.g.*, *Western Union DPA*, *supra* note 201.

224. *See* Yates, *supra* note 6, at 1 (stating that individual accountability "deters future illegal activity; it incentivizes changes in corporate behavior; it ensures that the proper

3. The Focus on Intent Ensures Proportional Punishment

Concerns that individual accountability is overly-harsh and has the potential to unfairly stigmatize individuals[225] are similarly unfounded.

First, the statutory requirement of willfulness has different meanings in the civil and criminal contexts.[226] The cases discussed in Part II.C demonstrate that: (1) criminal liability follows direct intent to assist money laundering,[227] (2) civil liability follows a complete abdication of responsibility when coupled with notice of specific compliance failures,[228] and (3) and no liability attaches where conduct does not rise past negligence.[229] Any concern that punishment is not proportional is substantially mitigated by the fact that the severity or existence of any punishment is directly correlated to the individual's intent.[230]

Second, the stigma associated with individual accountability as a barrier to future employment is hardly a unique feature of AML-BSA enforcement actions.[231] In the AML-BSA context, even minimal civil sanctions such as Crawford's $25,000 fine and one-month ban from the industry[232] could diminish the prospects of future employment. However, it is important to note that compliance officers are charged with the serious task of ensuring that their financial institution does not become a money laundering vehicle for terrorism, human trafficking, narcotics

---

parties are held responsible for their actions; and it promotes the public's confidence in our justice system.").

225. *See supra* note 161 and accompanying text.

226. *See* Norman v. United States, 138 Fed. Cl. 189, 192 (2018); 31 U.S.C. § 5322.

227. *See supra* Part III.A.1 (discussing how Martin and Leissner each intended to engage in money laundering activity).

228. *See supra* Part III.A.2 (discussing how Crawford and Haider were both aware of compliance failures and failed to act entirely, and how Busby was aware of compliance failures from a previous investigation and subsequently failed to take any steps to fix the problems).

229. *See supra* Part III.A.3 (discussing how compliance personnel at Western Union received no civil or criminal sanctions because they took at least some steps to fix the compliance failures).

230. *See*, *e.g.*, Boles, *supra* note 4, at 429 (advocating for reliance on theories of direct liability to avoid the potential for arbitrary prosecution of compliance personnel).

231. *See* Understanding Policies that Impact Employment Opportunities for People Who Have Criminal Records, COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER, THE NATIONAL REENTRY RESOURCE CENTER, https://csgjusticecenter.org/nrrc/employment-opportunities-for-people-with-criminal-records/ [https://perma.cc/AP57-XL79] (last visited Mar. 18, 2019).

232. *See* Levin et al., *supra* note 42, at 260.

trafficking, or other serious crimes.[233] Failing in this task enables the proliferation of virtually all profit-oriented crimes.[234] The resulting stigma of punishment is a natural and necessary consequence of the imposition of sanctions against individuals who acted willfully if there is to be any deterrent effect for the individual and the market generally.

C. The Focus on Intentional Conduct Following the Yates Memo will Increase Deterrence and Restore Public Faith in the Justice System

The DOJ's focus on intentional and reckless conduct in AML-BSA enforcement actions will likely further the government's interest in deterrence of money laundering activity and the public's interest in holding individuals accountable for wrongdoing.

1. Individual Accountability and Deterrence

The government's interest in deterrence of money laundering is furthered by increased individual accountability in AML-BSA enforcement actions in two ways: it sends a message (1) to the individuals and financial institutions not to engage in such conduct, and (2) to the market that such conduct is strictly prohibited.[235] By pursuing criminal or civil liability against individuals for willful violations of the BSA, the government has made AML-BSA enforcement actions consistent with other areas of the law in which punishment is proportional to an individual's culpability.[236] This proportionality is essential to effective deterrence because market participants will understand that if they are aware of specific failures of their compliance programs and fail to act, they could be held personally accountable, as opposed to only their employer having liability.[237]

It is important to note that civil liability can effectively serve deterrence interests.[238] As the former Chair of the SEC, Mary Jo White, said, "When people fear for their own reputations, careers, or

233. *See* Boles, *supra* note 4, at 374−75.
234. *Id.*
235. *See* Richman, *supra* note 16, at 276
236. *See generally* Dressler, *supra* note 14, at 119.
237. *See* Levin et al., *supra* note 42, at 256.
238. *See* Boles, *supra* note 4, at 424.

pocketbooks, they tend to stay in line."[239] Surveys showing concern over individual liability amongst compliance personnel[240] are anecdotal evidence that the AML-BSA enforcement actions following the Yates Memo are having the desired deterrent effect on the market. This is in stark contrast to the government's approach in 2001–2014, in which it would enter into a DPA to resolve an AML-BSA enforcement-action with a financial institution and hold no individuals accountable,[241] a practice which has been criticized for its failure to deter individuals from engaging in the activity.[242]

The requirement of intentional or reckless conduct also imposes an important restraint on AML-BSA enforcement actions aimed at furthering the government's interest in the deterrence of money laundering.[243] As discussed in Part III.A.3, negligent conduct is not within the scope of the AML-BSA statutory framework by which individuals can be held individually accountable for compliance failures.[244] The intent requirements create obstacles to furthering the interests of deterrence in individual cases, but in the long term, serve to ensure that the government's interest in deterrence does not unfairly punish non-culpable individuals. Ultimately, the key to effective deterrence lies in the commitment of sustained prosecutorial resources to hold individuals accountable on a consistent basis.[245] The government seems poised to continue pursuing individual accountability in AML-BSA enforcement actions against financial institutions in the future.[246]

Successful deterrence of corporate misconduct requires a recognition that corporations are comprised of individuals must be deterred on an individual level.[247] The Yates Memo and the cases that followed it demonstrate that the government has made that recognition. To the extent that individual accountability can deter this conduct in the future, that is

239. Mary Jo White, Chair, SEC, Address at the Council of Institutional Investors Fall Conference (Sept. 26, 2013).

240. *See supra* note 218 and accompanying text.

241. Garrett, *supra* note 3, at 1816.

242. *See* Henry, *supra* note 55, at 155–56.

243. *Cf.* Richman, *supra* note 16, at 269 (discussing the practical difficulties of bringing cases against individuals in corporations).

244. *See supra* Part.III.A.3.

245. Richman, *supra* note 16, at 276.

246. *See supra* notes 155–56 and accompanying text; *see also* Rosenstein, *supra* note 128.

247. *See* White, *supra* note 5.

a positive development in light of the devastating social and economic harms of money laundering.[248]

2. Individual Accountability and Faith in the Justice System

One of the stated objectives of the Yates Memo was to increase the public's confidence in the justice system.[249] Increased individual accountability—both in AML-BSA enforcement actions and generally—has the potential to increase the public's faith in the justice system.[250] There is a deep-rooted expectation in society that individuals who engage in intentional misconduct will be punished.[251]

Following the economic crisis in 2008, the perceived failure of the government to prosecute individuals in connection with the underlying causes of the market crash fostered a sentiment amongst some members of the public that individuals at financial institutions were above the law.[252] A similar sentiment was expressed by Senators Elizabeth Warren and Charles Grassley following the HSBC DPA for BSA violations in 2014.[253] These concerns have weight in the BSA context. In light of these concerns, the trend towards holding individuals accountable for AML-BSA violations in recent years is a positive development. Over time, consistent adherence to the policies set forth in the Yates Memo could serve restore the public's faith that all people—regardless of wealth and power—are equal before the law.

CONCLUSION

The role of intent in criminal law cannot be understated. While intent has historically played a foundational role in criminal law generally, the role of intent in the AML-BSA context is only just being realized in light of the recent increase of enforcement actions against individuals. The *mens rea* requirements within the AML-BSA statutory framework are not

248. *See* Boles, *supra* note 4, at 374–75 (discussing the harms of money laundering).
249. *Id.*
250. *Cf. see* Yates, *supra* note 6, at 1 (stating that individual accountability "deters future illegal activity; it incentivizes changes in corporate behavior; it ensures that the proper parties are held responsible for their actions; and it promotes the public's confidence in our justice system.").
251. DRESSLER, *supra* note 14, at 121.
252. *See* Henry, *supra* note 55, at 155–56; *see also* Richman, *supra* note 16, at 266.
253. Garrett, *supra* note 3, at 1818.

necessarily intuitive. However, a focus on the role of *mens rea* in recent cases has demonstrated an unfolding a degree of clarity regarding the scope of individual accountability in AML-BSA enforcement actions.

These cases demonstrate how the statutory and prosecutorial focus on intentional or reckless—as opposed to negligent—conduct ensures that any sanction, criminal or civil, is: (1) proportional to an individual's conduct, and (2) aimed directly at the individuals culpable of misconduct proscribed within the AML-BSA statutory framework. In this way, the recent prosecutions of individuals at financial institutions have comported with societal expectations that intentional misconduct is a necessary feature of legitimate criminal punishment by the government. Further, by focusing on intentional or reckless conduct in AML-BSA enforcement actions, the government stands to deter money laundering conduct in the future. By holding individuals at financial institutions accountable, the government's actions in this area are a step in the right direction—that is, towards the restoration of the public's faith in the ability of the justice system to reach all forms of culpable conduct.