Two weeks ago, the U.S. Department of Justice shone an unwelcome spotlight on five law firms that were connected to transactions involving hundreds of millions of dollars of allegedly laundered foreign money, some of it tied to the funding of the film "The Wolf of Wall Street." Some of the firms served as conduits for the money, while others were more peripherally involved.

Thanks at least in part to lobbying by the American Bar Association, U.S. law firms—unlike those in the U.K. and the European Union—do not have to report suspicious money transfers. Would different reporting requirements have allowed the DOJ to step in earlier, and possibly saved the firms some public scrutiny in the process?

The government's civil asset forfeiture case alleges that more than $3.5 billion was looted from an investment company owned by the Malaysian government, with a good chunk of it used to bankroll lavish spending sprees for a 29-year-old Malaysian man named Low Taek Jho and his family and friends. Roughly $368 million went through client accounts held by Shearman & Sterling.
The government doesn’t accuse the firms—which also include Sullivan & Cromwell; DLA Piper; Greenberg Traurig; and Akin Gump Strauss Hauer & Feld—of wrongdoing. Still, this case raises anew the disturbing question of how often lawyers are being used, unwittingly or not, to help launder money.

The government's case, for example, outlines how from 2009 to 2010, a client trust account held by Shearman & Sterling received 11 wire transfers totaling roughly $368 million from the bank account of a company called Good Star Limited. Good Star's bank account was fraudulently set up under the name of a private Saudi oil company, when in fact it was controlled by Low, according to the complaint.

At least $85 million was wired out of that Shearman & Sterling client account to casinos and for other extravagant expenditures, the government claims: More than $12 million went to the Caesars Palace casino in Las Vegas; $13.4 million went to the owner of the Venetian Las Vegas casino; and $4 million was wired to a luxury jet rental service.

Shearman & Sterling said in a statement that it has "comprehensive 'know your customer' procedures, which it applies to all clients ... Shearman & Sterling had no knowledge of any improper source of funds, and we note that the Department of Justice complaint reflects that multiple other law firms and financial institutions did business with the same individuals, apparently unaware of any illegal conduct. The firm has cooperated fully with the government's investigation to date and intends to continue to do so, if our assistance is requested."

Greenberg Traurig said in a statement that it "did not represent any entity or person who allegedly misappropriated or misused money that the government is seeking to recover in this action.” The other firms identified in the complaint did not provide comments.

**Protecting client confidences**

Going back to 2002, when Congress floated new rules to identify money laundering in the wake of the September 11 attacks, the ABA has staunchly opposed any federal legislation that would require lawyers to help identify money laundering or terrorist financing. This year the ABA pushed back again when the congressional Task Force to Investigate Terrorism made another attempt to bring lawyers within the ambit of the Bank Secrecy Act to help identify suspicious transactions. In a May 24 letter ABA president Paulette Brown argued that such a move would undermine key principles of the profession.

"While such reporting may be appropriate for banks or other financial institutions, requiring lawyers to report such client information to the government is plainly inconsistent with their ethical duties and obligations established by the state supreme courts that possess the authority to license, regulate, and discipline lawyers," Brown wrote. "These mandates would also undermine the attorney-client privilege and the confidential lawyer-client relationship by discouraging the full and candid communications between clients and their lawyers that are essential to the lawyer being able to provide the client with effective representation."
Stefan Cassella, a former federal prosecutor who specialized in money laundering, said many law enforcement officials are frustrated with this stance.

"Law firms take the view it's not their business to report to the government suspicious activity," said Cassella, now a principal in Asset Forfeiture Law. "In the view of law enforcement, whether you are affirmatively complicit or allowing it to happen by not having anti-money laundering procedures is almost equally bad," he said.

He noted that banks and insurance companies also initially resisted law enforcement's request to help identify money launderers, but "now have caught on."

Cassella said he believes lawyers could do more to help staunch money laundering without jeopardizing client relationships. "There are ways to [protect client confidentiality] without giving carte blanche to bad guys to use law firms to launder money," he said. When banks report suspicious activities to the U.S. Department of the Treasury, that information cannot be publicly disclosed or used against the client, he said.

"I think that's going too far to ask lawyers to report suspicious activity," said professor William Simon, an ethics expert at Columbia Law School. But Simon said he believes that all lawyers are obligated to conduct due diligence on their clients if there is any indication that the client is involved in fraud or illegality. If the lawyer can't be satisfied that the client isn't engaged in that kind of wrongdoing, she shouldn't represent the client, he said.

New York University School of Law professor Stephen Gillers said lawyers can't ignore suspicious activity. "You can't intentionally avoid warning signs," he said. "You can't be an ostrich and bury your head in the sand and do what suspicious clients says."

**A voluntary approach**

As an alternative to legislation, the ABA in 2010 released a set of voluntary guidelines to help lawyers identify potentially suspicious transactions. Forty-six pages long, the guidelines are highly detailed and offer a number of pointers, some of which appear to apply to transactions similar to those described in the DOJ's complaint. For instance, they state that lawyers are exposed to a higher risk of being unknowingly involved in money laundering or terrorist financing if cash moves through a lawyer's client account. It advises: "The lawyer should be aware of not only the source of funds transferred to a trust but the use of the funds by the trustee."

Heather Lowe, legal counsel of the nonprofit Global Financial Integrity, calls these guidelines "very good," but said the problem is that they're voluntary. Furthermore, she believes they're not effective because so few lawyers know about them. "If you went out and asked lawyers, 'Have you ever heard of these voluntary guidelines?' 99 percent will say they have never heard of them."

When the ABA adopted these guidelines in 2010, it encouraged state and local bar associations to “embrace” them and to educate lawyers about them. Six years later, it doesn’t
appear that any state or local bar association has adopted them. The ABA said that its leaders “have engaged in extensive educational outreach to lawyers, judges and the public,” but did not provide specifics.

Ex-prosecutor Cassella said he can't quantify how often money launders are using lawyers as vehicles for their activities. But he noted that they've shifted their tactics now that banks are cooperating with law enforcement.

"The bad guys, now that they see that bankers have to disclose suspicious activities, have moved their operations elsewhere," he said. "It's like whack-a-mole. You need the cooperation of everyone to stop terrorist financing and money laundering."