Inside the “bad guys” heads
Enhanced due diligence, fraud investigation, and SAR filings all hinge on this: understanding your adversary

BY STEVE COCHEO, EXECUTIVE EDITOR

Dennis Lormel put up a PowerPoint featuring three characters: Bugs Bunny, Daffy Duck, and Lieutenant Columbo.

Every American kid who watched Saturday cartoons knows Bugs always had the upper hand, tweaking Daffy until he sputtered. “The bad guy wants to be Bugs Bunny, and he wants you to be Daffy Duck,” said Lormel to bankers at the ABA Regulatory Compliance Conference. He participated in a panel discussion with Holly Ford, senior vice-president, Bank of Marin, $1.2 billion-assets, Novato, Calif.

Lormel, now a mortgage fraud consultant, completed a 28-year career as an FBI special agent, including creation and direction of the Bureau’s terrorist financing initiative following the events of 9/11. He’s interviewed more than his share of what he casually calls “bad guys.”

While not cops or special agents, bankers frequently need to do their own investigating of prospects and clients. They do so in the course of executing enhanced due diligence prior to opening relationships; investigating suspected internal and external fraud; and following up on potential laundering and terrorist financing. Increasingly, panelists noted, fraud, money-laundering, and terrorist financing go hand in hand.

Play “Columbo” and use crooks’ conceit
To do this job right, bankers must get into the bad guys’ mindset, according to Lormel, president and CEO, DML Associates, LLC, Lansd-
owne, Va. A common trait among criminals is conceit and attitude.

"They all want to let you know how smart they are," says Lormel, and that can be exploited. "When they start to think you are dumber than dirt, play Columbo with them."

The famous fictional TV detective in his rumpled dirty raincoat always came across as befuddled, disorganized, and clueless. He'd ask so many questions that sometimes the crook would grow annoyed. But this technique always wore the bad guy down, and he'd slip up.

"When I was in law enforcement, I had more leverage than you do," Lormel admitted to listeners. But what a banker lacks in the badge department can be made up for by preparation, education, and "gut feel."

Blueprint for success
Bank investigators, just like FBI agents, need to plan. Lormel always insists on setting the parameters of an investigation so nothing is overlooked. This is critical should a bank file a SAR, and if it decides to take steps on its own, such as terminating an account or prosecuting internal fraud. Other suggestions:

1. Don't try to wing it. When you do that in an interview, you give the fraudster the upper hand. A fraud, being a good actor himself, will see right through an investigator faking it; unsure of his ground; who's nervous or unprepared—and use that.

2. Pay attention to location. Whenever practical, a banker looking into potential fraud or conducting enhanced due diligence "wants home court advantage," and have the customer or prospect at the bank, said Lormel. But sometimes the banker must be at the customer's place of business, to scope out if things are really as claimed. In such cases, be aware that you have conceded home-court advantage.

3. Communication skills are critical—especially listening. "If you get full of yourself and show off what you know, you miss things," Lormel warned. Listening also helps detect nuances. "If a fraudster starts giving you 'the spin,' you've got to read the spin," said Lormel. Corroboration helps separate spin from facts, too.

Knowing when to shut up helps.
"Silence is OK," added Holly Ford. She explained that people just naturally want to fill in a gap, and often reveal things in the process.

4. Document your work. Record what is learned, what is researched. This may be critical should law enforcement follow up on a SAR.

5. Don't be hesitant to retrace your steps. At the FBI, Lormel frequently sent teams back to interview in neighborhoods he'd already swept. People remembered things they didn't the first time. And instincts kicked in after time. "How could I have missed this? How could I have not asked that question?" were frequently on Lormel's own mind.

Diplomacy also helps. A banker never wants to alienate a customer who is, after investigation, squeaky clean. Ford suggested that a good way to break the ice is to couch things in terms of questions the bank wants to ask, nothing accusatory.

Seal the cracks, fill the holes
"The bad guys always look to exploit your bank's vulnerabilities," says Lormel. Too often, he said, banks don't use bad experiences to reshape systems and approaches and to improve AML/BSA risk assessment.

"Fraudsters adapt to identify and exploit weaknesses," says Lormel, and the bank's response "has to be a nonstatic process, because it's a nonstatic situation."

As an example, Ford spoke of a pattern her bank found that she suspects other institutions will see. Typically, banks have long had processes in place to make sure that fraudsters didn't file
changes of address, to hijack customer accounts. But the bad guys simply looked for other holes, and left street addresses alone. They instead went after alternative channels, such as email addresses.

Many red flags warn of potential fraud, and some can be found in the regulators’ AML/BSA manual. While these help, Lormel warned that not everything fits a checklist.

Trust the gut
When the right people hold investigative posts, their intuition can make the difference between bad guys winning and getting nailed.

“Sometimes you get whacked in the head by instinct, and you have to trust that,” says Lormel. “More often than not, your instincts are going to be right.”

Ford spoke of a customer in the real estate business who began to behave uncharacteristically. Her staff brought the account to her attention when cashier’s check purchases, not typical for him, were being made. “Something kept nagging at me,” said Ford, and she ultimately devoted staff time to running down leads. The bank found more than a dozen lawsuits accusing the customer of fraud and more.

“All of the sudden, it became a bigger deal,” said Ford.

More effective SAR filings

Lormel detailed the long road a SAR may travel between filing and usage. Keeping the report on point is critical. In his FBI days, he found, keeping a case simplified and direct could make the difference between a conviction and an acquittal. The same principle applies to SARs.

Narrative should open with a succinct but complete description of what the bank thinks is going on, said Ford. “They skim a lot,” warned Ford, referring to law enforcement. “You have to get their attention early and often.”

Lormel said institutions must understand their critical role in enforcement. “Bankers,” he said, “hold the keys to the kingdom.”

See www.ababj.com for an article on the makings of good investigators and how to best use staff.