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U.S. Department of Justice
Criminal Division
Asset Forfeiture and Money Laundering Section

Federal Money Laundering Cases

Cases Interpreting the Federal Money Laundering Statutes and Related Forfeiture Provisions
18 U.S.C. §§ 1956-57 and 18 U.S.C. §§ 981-82

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Preface

The Money Laundering Control Act of 1986 made it a federal criminal offense to conduct a financial transaction involving the proceeds of another crime. As amended in 1988 and in 1992, it also made it possible for federal law enforcement to forfeit all property "involved in" the money laundering offense or a conspiracy to commit one. The substantive and conspiracy offenses are codified at 18 U.S.C. §§ 1956 and 1957, and the corresponding civil and criminal forfeiture statutes are codified at 18 U.S.C. §§ 981-82.

In the ten years since those statutes were enacted, the federal courts have issued hundreds of decisions interpreting all significant aspects of the statutes themselves and related issues that arise in litigation. This book collects virtually all of the reported cases. It is intended to serve as a research tool and guide for federal prosecutors as well as a supplement to the *Money Laundering Manual* published by the Asset Forfeiture and Money Laundering Section (AFMLS) of the Department of Justice. The cases are organized topically, addressing first the elements of the respective statutes, and then, other issues that have arisen frequently in federal litigation. The parenthetical explanations accompanying each citation are intended only to assist the reader in using this book, and do not necessarily represent the policies or legal opinions of the Department of Justice.

The cases are divided into two major categories: substantive money laundering and money laundering forfeiture. Updates for both sections are available on the Asset Forfeiture Bulletin Board maintained by the AFMLS. The substantive money laundering cases are contained in a file called MLCASES; the forfeiture cases are in a file called MLFFT. Both outlines are updated regularly. For assistance in gaining access to the bulletin board, please contact AFMLS at (202) 514-1263. Access is restricted to law enforcement agencies only.

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February 3, 1997

Part I — Substantive Money Laundering

18 U.S.C. §§ 1956 and 1957

Table of Contents

1. Transaction **1**

2. Financial Transaction **2**

A. "Movement of Funds by Wire or Other Means" 2

B. "Monetary Instruments" 3

C. "Use of a Financial Institution" 3

D. Multiplicity 4

E. Duplicity 4

F. Sting and Attempt Cases 4

3. Financial Institution **4**

4. Interstate Commerce **5**

A. Minimal Impact Sufficient 5

B. Application of *Lopez* 6

C. Alleging Interstate Commerce Element in the Indictment 6

5. "Conducts" Financial Transaction **7**

A. In General 7

B. Wire Transfers 7

6. Knowledge Requirement **8**

A. May Relate to Offense Other than the SUA 8

B. Must be a Felony 8

C. Willful Blindness 8

D. Where Defendant was the Perpetrator 9

E. Where Defendant is Not the Perpetrator 9

F. Where Defendant is Not the Perpetrator 9

G. Third Parties Shown to have had Knowledge 11

1. Attorneys 11

2. Bankers 11

3. Real Estate Agents 11

4. Merchants 12

5. Others 12

H. Obsenity Cases 12

I. Sentencing Cases 12

7. Proceeds **13**

A. "Proceeds" Need Not Be Money 13

B. Government Need Not Trace Laundered Funds Back to Particular Offense 13

C. Inconsistent Verdicts 13

D. SUA Committed by Someone Else 14

E. Only Part of Money Involved in the Transaction Need Be Derived From SUA .. 14

F. Property Purchased with Proceeds of False Loan 15

G. Payment with Check Drawn on Account; *SUA Proceeds* 15

H. Circumstantial Evidence 15

I. "Net Worth" Analysis 16

J. No Proceeds if SUA Offense Not Proven 16

K. Congress Did Not Intend to Limit Application of Money Laundering Statutes .. 17

L. Cases Where SUA was Not a Federal Offense 17

M. Mail and Wire Fraud—SUA Need Not Affect Financial Institution 19

N. Food Stamp Fraud was SUA Before October, 1992 Amendment 20

O. Bank Fraud 20

P. Bankruptcy Fraud 20

Q. Theft 20

R. Jury Instruction 20
S. Definition of "Proceeds" is Not Unconstitutionally Vague 21

8. Merger Issue 21
A. Transactions Occuring After Completion of Underlying Criminal Activity 21
B. Property Defendant Intends to Use to Commit Offense 22
C. Where Fraud Scheme Occurs in Several Steps 22
D. Deposit of Check is Separate Transaction 23
E. Once Proceeds, Always Proceeds. 24

9. Intent to Promote 24
A. Reinvesting Proceeds in Illegal Enterprise "Promotes" SUA 24
B. Using Proceeds to Keep Scheme Going "Promotes" SUA 25
C. Using Proceeds to Commit Next Step in the Scheme 25
D. Using Proceeds to "Lull" Prospective Fraud Victims 25
E. Transaction Intended to Avoid Detection 26
F. Transaction May Promote Offense of which it is a Part 26
G. Intent to Promote May Lead Back to the Offense 27
H. Offense Being Promoted Need Not Be a Continuing Act 28
I. Offense Being Promoted Cannot Be a Foreign Tax Offense 28
J. Circumstantial Evidence 28
K. Concealment is not an Element of Section (a)(1)(A) Offenses 28

10. Intent to Conceal or Disguise 29
A. Defendant Need Not Intend to Conceal or Disguise 29
B. Concealment Need Not Be the Only Motive 29
C. Engaging in Unusual or Convoluted Transactions 29
D. Simple Transactions Imply Absence of Intent to Conceal or Disguise 31
E. Using Third Party's Name 31
F. Using False Name 32
G. Falsifying Nature of the Transaction 32
H. Evidence that Supports Underlying Fraud SUA 33
I. Evidence that Supports Knowledge Element 33
J. Converting Proceeds to Goods and Services 33

K. Converting Proceeds to Cash 34
L. Investing Proceeds 35
M. Commingling Funds 35
N. Simple Transportation or Transmission of Proceeds Does Not Satisfy Conceal or Disguise Requirement 35
O. Design to Conceal in a Particular Transaction 36
P. Government Need Not Prove Intent was to Conceal or Disguise *Identity* 36
Q. Government Need Not Prove Defendant Knew Purpose was to Conceal or Disguise *SUA Proceeds* 36

11. Intent to Evade Reporting Requirements 37
A. No Willfulness Requirement 37
B. Evidence Sufficient 37
C. Purchase of Cashiers Checks to Evade Form 8300 Requirement 37

12. Transportation Offenses Under Section 1956(a)(2) 38
A. Knowledge Requirements 38
B. Does Not Require Proof that Property was Proceeds of SUA 38
C. Transports, Transmits or Transfers 38
D. Intent to Promote 39
E. Conceal or Disguise 39
F. Conspiracy 39

13. Sting Cases — 18 U.S.C. § 1956(a)(3) 39
A. Financial Transaction 39
B. Intent to Promote 40
C. Intent to Conceal or Disguise 40
D. Representation 40
E. Entrapment 41
F. Outrageous Conduct 41
G. Buy/Bust Cases 42
H. Belief 42
I. Specific Intent 42
J. Repeating the Representation to Each Co-Defendant 43

14. Section 1957 ..... **43**
A. "Criminally Derived Property" 43
B. $10,000 Requirement 43
C. Interstate Commerce 44
D. Simply Spending Proceeds Violates Section 1957 44
E. Wire Transfer of Proceeds 44
F. Deposit of Proceeds 45
G. Sale of Proceeds 45
H. Use of Proceeds to Continue Scheme 45
I. Knowledge Requirement 45

15. Attempt **46**
A. Sting Cases 46
B. Insufficient Evidence 46
C. Section 1956(a)(2) Cases 47

16. Aiding and Abetting **47**
A. Transaction Conducted by Third Person 47
B. Defendant Intended to Aid Principals in Laundering 48
C. Aiding and Abetting Attempt 48

17. Conspiracy **48**
A. In General 48
B. Intent 49
C. *Pinkerton* Liability 49
D. Sufficiency of the Evidence 49
E. Sting Cases 50
F. Co-Conspirator Statements 50
G. Jury Instructions 51
H. Multiple Objects 51
I. Conspiracy Charged Under Section 1956(h) 51
J. Overt Act 51
K. Straddle Conspiracy 52

18. Form of Indictment **52**
A. Multiplicity/Duplicity 52
1. Alternative Mental States 52
2. Separate Financial Transactions 52
3. Money Laundering and the SUA 53
4. Sections 1956 and 1957 53
5. Conspiracies 53
B. Bill of Particulars 53
C. Alleging the Elements of the SUA Being Promoted 54
D. Alleging the Financial Transaction 54
E. Alleging the Knowledge Element 54
F. Alleging Willfulness 54
G. Alleging "Belief" in Sting Cases 54
H. Alleging Interstate Commerce Element in the Indictment 55
I. Alleging that Property is Proceeds of SUA 55
J. Alleging Aiding and Abetting 55
K. Conspiracy 56
L. Joinder and Severance 56

19. Guilty Plea **56**

20. Sentencing **57**
A. Conspiracy and RICO 57
B. Downward Departure Warranted 57
C. Downward Departure Rejected 58
D. Grouping Money Laundering Counts with SUA 59
E. Grouping Money Laundering Counts with Each Other 60
F. Grouping Money Laundering Counts with Other Offenses 60
G. Disparate Treatment 60
H. Amount of Money Involved in Scheme 60
I. Amount of Money Attributable to Defendant 61
J. Sentencing Manipulation 62
K. Consecutive Sentences 62
L. Effect of Guideline Amendments Generally 62

M. Retroactive Application of Three-Level Enhancement 62
N. Special Skill/Position of Trust 63
O. Role in the Offense 63
P. Relevant Conduct 64
Q. Application of "Drug" Enhancement 64
R. Application of Obstruction of Justice Enhancement 64
S. Application of Two-Level Enhancement in Section 1957 Cases 64
T. Restitution 65
U. Fines 65

21. Double Jeopardy 65

22. Ex Post Facto 66

23. Extradition 66

24. Extraterritorial Jurisdiction 67

25. Jury Instructions 67
A. Willfulness 67
B. Knowledge 67
C. Elements of the Money Laundering Offense 68
D. Interstate Commerce 68
E. Elements of the SUA Offense 68
F. Sting Cases 69
G. *Pinkerton* Instruction 69
H. Other Issues 69

26. Venue 69
A. The District where the SUA Occurred 69
B. The District where the Financial Transaction Occurred 70
C. Compound Transactions 70
D. Reporting Violations 70

E. Burden of Proof 70
F. Manufactured Venue 71

27. Constitutionality 71
A. Knowledge Requirement 71
B. Section 1956(a)(1), (2) and (3) 71
C. Section 1956(a)(1)(B)(i) and (ii) 71
D. Section 1956 Does Not Violate Substantive Due Process 71
E. Section 1956(a)(3) Not Unconstitutional 72
F. Section 1957 Not Unconstitutionally Vague 72
G. "Involves the Proceeds of" Not Unconstitutionally Vague 72

28. Department of Justice Guidelines 73

29. Authority to Investigate 73

30. Admissibility of Evidence 73
A. Other Transactions 73
B. Bank Records 73
C. Expert Testimony 74
D. Agent's Testimony 74
E. Dog Sniff 75

Part II — Money Laundering Forfeiture

18 U.S.C. §§ 981 and 982

Table of Contents

1. Scope of Money Laundering Forfeiture 1

A. Proof of a Substantive Offense 1

B. Property "Involved In" a Money Laundering Offense 1

1. CTR/CMIR Cases 1

2. 1956/1957 Cases 2

C. Theories of Forfeiture 3

1. The Proceeds of the SUA Offense 3

2. Commingled Money 3

3. Property Bought or Sold in the Transaction 4

4. Legitimate Property that Facilitates the *Concealing or Disguising* 4

a. Property that is External to the Offense 4

b. Property Used to Help Launderer Conceal or Disguise the SUA 5

1. Bank Accounts 5

2. Personal Property 5

3. Real Property 6

4. Businesses 6

5. Property that Facilitates the *SUA Offense* 7

D. "Clean" Money Involved in Structuring Cases 7

E. Property Held by Third Parties 8

F. Property "Traceable To" Forfeitable Property 8

G. Forfeiture of Laundered Funds Under RICO 9

H. CMIR Forfeitures 9

I. Forfeiture of Substitute Assets 10

2. Establishing Probable Cause For Forfeiture 10

A. Substantive Elements 10

B. Probable Cause Must Encompass Prohibited Conduct and Mental State 10

C. Government Need Only Show Property was Involved in Crime Committed by *Someone* 10

D. Probable Cause May Be Based on Expert Opinion 11

E. FIRREA Cases 11

F. Intangible Property 11

G. Probable Cause to Forfeit Entire Bank Account 11

1. Civil Cases 11

2. Forfeiture Applies to Funds, Not to Bank Accounts 12

3. Forfeiture of Entire Account Based on Circumstantial Evidence 12

4. If Probable Cause Cannot Be Established 13

H. Fungible Property 13

3. Innocent Owner Defense in Money Laundering Cases 14

A. Standing 14

B. Knowledge of the Illegal Activity 14

C. *Calero-Toledo* Standard in Section 981 Cases 15

D. *Calero-Toledo* Standard in Section 5317 Cases 15

E. Black Market Cases 15

F. Willful Blindness 16

4. Excessive Fines 16

Part I— Substantive Money Laundering

18 U.S.C. §§ 1956-57

Case Outline

by Stefan D. Cassella, Assistant Chief
Asset Forfeiture and Money Laundering Section

1. Transaction

- Government must demonstrate that the defendant effected a "disposition" of the property; transporting property from one place to another is not sufficient:

  — U*nited States v. Puig-Infante*, 19 F.3d 929 (5th Cir. 1994) (transporting drug proceeds from Fla. to Tex. *not* a "transaction" absent evidence of disposition once cash arrived at destination);

  — *United States v. Gonzalez-Rodriguez*, 966 F.2d 918 (5th Cir. 1992) (carrying cash through airport *not* a transaction);

  — *United States v. Bell*, 936 F.2d 337 (7th Cir. 1991) (depositing money in a safe deposit box was *not* a transaction before 1992 amendment to section 1956(c)(3));

  — *United States v. Ramirez*, 954 F.2d 1035 (5th Cir. 1992) (constructive possession of cash in a shoe box in brother's house is insufficient evidence of a transaction).

- Transfer of property from one person to another is a transaction:

  — *United States v. Reed*, 77 F.3d 139 (6th Cir. 1996) (delivery of drug proceeds to a courier is a transaction), overruling *United States v. Oleson*, 44 F.3d 381 (6th Cir. 1995), and *United States v. Samour*, 9 F.3d 531 (6th Cir. 1993);

  — *United States v. Gaytan*, 74 F.3d 545 (5th Cir. 1996) (delivery of cash to another person and storage of cash in third person's residence, are transactions involving a "disposition");

— *United States v. Flores*, 63 F.3d 1342 (5th Cir. 1995) (picking up cash from A and delivering car containing the cash to B is a transaction);

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (transporting cash to Europe for deposit into European bank is a "delivery or other disposition");

— *United States v. Gallo*, 927 F.2d 815, 822 (5th Cir. 1991) (transfer of cash from one car to another is a transaction);

— *United States v. Dimeck*, 24 F.3d 1239 (10th Cir. 1994) (delivering cash to another to transport across state lines is a transaction) (conviction reversed on other grounds, see p. 35);

— *United States v. Hamilton*, 931 F.2d 1046, 1051 (5th Cir. 1991) (sending cash through the mail to another person is a transaction).

2. Financial Transaction

- The financial transaction is the "core" of the money laundering offense, distinguishing one money laundering offense from another:

— *United States v. Smith*, 44 F.3d 1259, 1265 (4th Cir. 1995).

A. "Movement of Funds by Wire or Other Means":

— *United States v. Herron*, 97 F.3d 234, 237 (8th Cir. 1996) (wire transfer through Western Union is a financial transaction);

— *United States v. Werber*, 787 F. Supp. 353, 356 & n.4 (S.D.N.Y. 1992) (the sale of an automobile is a financial transaction because it involves the movement of funds from the buyer to the seller; the movement of funds need not be from the defendant);

— *United States v. Arditti*, 955 F.2d 231 (5th Cir. 1992) (transfer of cashiers checks may not involve "monetary instruments," but it involves the "movement of funds by wire or other means"; noting that section 1956(c)(5) defines "bank checks" but not "cashiers checks" as monetary instruments);

— *United States v. Reed*, 77 F.3d 139 (6th Cir. 1996) (giving drug proceeds to a courier involves the movement of funds by means of the courier);

— *United States v. Dimeck, supra* (transporting cash involves movement of funds *by other means)*; *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995); *United States v. Flores*, 63 F.3d 1342 (5th Cir. 1995).

B. "Monetary Instruments":

— *United States v. Reed*, 77 F.3d 139 (6th Cir. 1996) (giving drug proceeds to a courier "involves monetary instruments, namely the currency");

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (transporting cash to Europe for deposit into European bank is a financial transaction involving "monetary instruments");

— *United States v. Napoli*, 54 F.3d 63 (2d Cir. 1995) (negotiating fraudulent checks is a financial transaction);

— *United States v. Hamilton*, 931 F.2d 1046, 1051 (5th Cir. 1991) (sending cash through the mail is a financial transaction);

— *United States v. Isabel*, 945 F.2d 1193 (1st Cir. 1991) (giving a check in exchange for cash is a financial transaction);

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (sale of car for cash is a financial transaction).

C. "Use of a Financial Institution":

— Writing a check to a vendor "involves the use of a financial institution" (for example, the bank on which the check is drawn). *United States v. Jackson*, 935 F.2d 832 (7th Cir. 1991);

— Making a payment with a money order issued by a bank is a financial transaction; there is no requirement that the use of the financial institution be part of, contribute to, or facilitate the money laundering activity. *United States v. Koller*, 956 F.2d 1408, (7th Cir. 1992), *reh'g, en banc, den.*, 1992 U.S. App. LEXIS 7563 (1992);

— Processing credit card charges involves "payment, transfer, or delivery by, through, or to a financial institution." *United States v. Brown*, 31 F.3d 484, 489 n.4 (7th Cir. 1994).

D. Multiplicity:

— Each transaction is a separate offense, chargeable as a separate count in the indictment. *United States v. Martin*, 933 F.2d 609 (8th Cir. 1991) ("it is the individual acts of money laundering which are prohibited..., and not the course of action...");

— Each transfer of funds is a separate section 1957 offense even though they all flow from a single lump sum and all occur on the same day. *United States v. Smith*, 46 F.3d 1223 (1st Cir. 1995).

E. Duplicity:

— Charging multiple financial transactions as a continuing course of conduct in a single count is duplicitous. *United States v. Prescott*, 42 F.3d 1165 (8th Cir. 1994); *United States v. Conley*, 826 F. Supp. 1536 (W.D. Pa. 1993) (dismissing duplicitous charge with leave to refile);

— *cf. United States v. Kramer*, 73 F.3d 1067 (11th Cir. 1996) ("transfer" under section 1956(a)(2) is not a continuing offense; each transfer is a separate offense).

F. Sting and Attempt Cases:

— *United States v. Dimeck*, 815 F. Supp. 1425 (D. Kan. 1993) (defendant who picks up bag of plain paper thinking that it contains currency and intending to transport it to California is guilty of attempt to conduct financial transaction), rev'd on other grounds, 24 F.3d 1239 (10th Cir. 1994).

3. Financial Institution

— An individual can be a financial institution. *United States v. Tannenbaum*, 934 F.2d 8 (2d Cir. 1991); *United States v. Gollott*, 939 F.2d 255 (5th Cir. 1991) (group of individuals laundering cash for undercover agent were required to file CTR's); *United States v. Schmidt*, 947 F.2d 362 (9th Cir. 1991) (individual exchanging checks for cash required to file CTR's); *United States v. Levy*, 969 F.2d 136, 140 (5th Cir. 1992) (same; Secretary of the Treasury has authority to define "financial institution" broadly);

— Investment company that receives clients' funds and invests them is financial institution under, *inter alia*, 31 U.S.C. § 5312(a)(2)(I). *United States v. Clines*, 958 F.2d 578, 582 (4th Cir. 1992), *cert. denied*, 1992 U.S. LEXIS 3754 (U.S. 1992).

4. Interstate Commerce

A. Minimal Impact Sufficient:

— *United States v. Lucas*, 932 F.2d 1210 (8th Cir. 1991) (investment in construction of shopping mall inevitably implicates interstate commerce); *United States v. Lovett*, 964 F.2d 1029, 1039 (10th Cir. 1992) (intrastate transfer from one bank to another implicates interstate commerce if funds are later used to purchase goods in interstate commerce, e.g. jewelry, car, house where settlement handled by out-of-state title company);

— Transaction involving check drawn on a bank implicates interstate commerce. *United States v. Jackson*, 935 F.2d 832 (7th Cir. 1991);

— Transaction involving money order issued by bank implicates interstate commerce; that use of the bank was incidental to the offense doesn't matter. *United States v. Koller*, 956 F.2d 1408, (7th Cir. 1992), *reh'g, en banc*, den., 1992 U.S. App. LEXIS 7563 (1992);

— Transaction involving funds on deposit at a financial institution insured by FDIC affects interstate commerce. *United States v. Peay*, 972 F.2d 71 (4th Cir. 1992); *United States v. Kunzman*, 54 F.3d 1522 (10th Cir. 1995) (same);

— Drug money always implicates interstate commerce. *United States v. Gallo*, 927 F.2d 815 (5th Cir. 1991); *United States v. Farley*, 760 F. Supp. 461, 463 (E.D. Pa. 1991);

— Buying a house implicates interstate commerce. *United States v. Campbell*, 777 F. Supp. 1259 (W.D.N.C. 1991), rev'd on other grounds, 977 F.2d 854 (4th Cir. 1992); *United States v. Lowder*, 5 F.3d 467 (10th Cir. 1993);

— Buying a car implicates interstate commerce. *United States v. Kelley*, 929 F.2d 582 (10th Cir. 1991) (purchase of car from dealer who will use proceeds of sale to buy more inventory in interstate commerce); *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993);

— Simple payment of restitution obligation with cash would not have implicated interstate commerce. *United States v. Koller*, 956 F.2d 1408, (7th Cir. 1992), *reh'g, en banc, den.*, 1992 U.S. App. LEXIS 7563 (1992) (dicta);

— *But see United States v. Grey*, 56 F.3d 1219 (10th Cir. 1995) (simple transfer of cash does *not* affect interstate commerce; government must show source of the money or follow the cash after the transfer to show how interstate commerce was affected).

B. Application of *Lopez*:

— *United States v. Griffith*, 85 F.3d 284 (7th Cir. 1996) (while an isolated state prostitution SUA offense "might lack a federal dimension," the laundering of the SUA proceeds in this case involved interstate commerce; *Lopez* distinguished);

— *United States v. Jensen*, 69 F.3d 906 (8th Cir. 1995) (*Lopez* does not apply to money laundering because Congress based the exercise of federal authority not only on the Commerce Clause but also on its authority to collect taxes, duties, imposts and excises).

C. Alleging Interstate Commerce Element in the Indictment:

— *United States v. Aramony*, 88 F.3d 1369 (4th Cir. 1996) (interstate commerce nexus is an essential element of section 1957 offense which government must prove beyond a reasonable doubt);

— *United States v. Kunzman*, 54 F.3d 1522 (10th Cir. 1995) (interstate commerce nexus is essential to confer jurisdiction on a federal court);

— *United States v. Green*, 964 F.2d 365 (5th Cir. 1992) (where indictment alleges that defendant conducted financial transaction involving a bank, the failure of the indictment to allege that the bank engaged in interstate commerce did not render the indictment defective, since the reference to the bank's involvement adequately appraised the defendant that the government was alleging an affect on interstate commerce);

— *But see United States v. Lowder*, 5 F.3d 467 (10th Cir. 1993) (interstate commerce requirement is *not* an essential element of the crime charged).

- For discussion of jury's role in determining whether the transaction affects interstate commerce, *see Jury Instructions* at page 67.

5. "Conducts" Financial Transaction

A. In general, person who directs others to move money is guilty of "conducting" the financial transaction:

— *United States v. Baez*, 87 F.3d 805 (6th Cir. 1996) (sending a third party from New Jersey to Ohio to pick up drug proceeds and deliver them to another state constitutes "conducting" a financial transaction);

— *United States v. Sneed*, 63 F.3d 381 (5th Cir. 1995) (defendant conducted transaction where he asked associate to open bank account, and associate deposited checks from victims and wired proceeds to defendant's personal account);

— *United States v. Hager*, 1995 WL 529647 (10th Cir. Sept. 8, 1995) (unpublished) (defendant who set up business and hired employees is liable for "conducting" financial transactions when the employees write checks);

— *United States v. Jackson*, 1995 WL 434485 (9th Cir. Dec. 15, 1995) (defendant "conducts" transaction carried out by middle man even though he did not know identity of middle man);

— *General Cigar Co. v. CR Carriers*, ___ F. Supp. ___, 1996 WL 673761 (M.D. Ala. Nov. 18, 1996) (civil RICO with money laundering predicates) (person whose approval of invoices causes third party to issue checks "conducts" the financial transaction);

— *See "Attempt" and "Aiding and Abetting" cases* at pages 46 and 47, respectively.

B. Wire Transfers:

— *United States v. Smith*, 44 F.3d 1259, 1266 (4th Cir. 1995) (person conducts wire transfer when he is in constructive control of SUA proceeds and directs another to make the transfer);

— *United States v. Stein*, 1994 WL 285020 (E.D. La. 1994) (defendant conducts transaction, even though he is abroad, when he orders wire transfer from Louisiana to the U.K.);

— *United States v. Elder*, 90 F.3d 1110 (6th Cir. 1996) (receiver of wire transfer "conducts" the transaction).

6. Knowledge Requirement

A. Knowledge May Relate to Offense Other Than the SUA:

— *United States v. Montague*, 29 F.3d 317 (7th Cir. 1994) (defendant knows money is proceeds of state prostitution offense; SUA is Travel Act);

B. "Unlawful Activity" of which Defendant has Knowledge must be a Felony:

— *United States v. Hayes*, 800 F. Supp. 1575 (S.D. Ohio 1992) (defendant could not plead guilty to section 1956 offense where underlying SUA was a misdemeanor);

— *United States v. Stavroulakis*, 952 F.2d 686, 692 n.2 (2d Cir. 1992), *cert. denied*, 1992 U.S. LEXIS 2948 (U.S. 1992) (defendant need not know that the underlying activity is unlawful or that it constitutes a felony; it is sufficient for the government to show that the defendant knew that the property was the proceeds of an activity, such as gambling involving more than a certain amount of money, that is defined as a felony under state [or federal] law).

C. "Knowledge" may be Shown by Proof of Willful Blindness, Deliberate Ignorance or Conscious Avoidance:

— *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992) (real estate agent willfully blind to client's use of drug proceeds to purchase house); *United States v. Long*, 977 F.2d 1264, 1270-71 (8th Cir. 1992) (car dealer willfully blind to use of drug proceeds to purchase car); *United States v. Antzoulatos*, 962 F.2d 720, 724-25 (7th Cir. 1992) (same); *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (same; dicta);

— *United States v. Ortiz*, 738 F. Supp. 1394, 1400 n.3 (S.D. Fla. 1990); United States v. Gleave, 786 F. Supp. 258, 267 (W.D.N.Y. 1992) (government still must prove defendant was on notice of a high probability of the existence of a fact);

— *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992) (deliberate ignorance may satisfy knowledge requirement in "sting" cases);

— *United States v. Gonzalez*, 90 F.3d 1363 (8th Cir. 1996) (willful blindness instruction proper where defendants took no steps to learn source of the money sent and used incorrect names and addresses on wire transfer instructions);

— *United States v. Rockson*, 1996 WL 733945 (4th Cir. 1996) (unpublished) (money transmitter must have been deliberately ignorant of the source of the money that was delivered as large quantities of cash in paper bags at night by people who did not ask that it be counted);

— *United States v. Nesser*, 939 F. Supp. 417 (W.D. Pa. 1996) (willful blindness instruction was proper where jury was told that it had to find subjective knowledge or its equivalent, and not merely stupidity, negligence, or recklessness).

D. Knowledge of Source of the Money Generally is Obvious where Defendant was the Perpetrator of the Underlying Offense:

— *United States v. Jackson*, 935 F.2d 832 (7th Cir. 1991) (where defendant is drug dealer with access to lots of cash, and cash is being deposited into defendant's account, jury may conclude that defendant knew the cash was proceeds of his drug trafficking);

— *United States v. Beddow*, 957 F.2d 1330 (6th Cir. 1992), *reh'g, en banc*, den., 1992 U.S. App. LEXIS 5051 (1992) (knowledge established with drug dealer's recorded statements saying he invested drug proceeds in gems);

— *United States v. Lombardi*, 5 F.3d 568 (1st Cir. 1993) (since defendant committed the underlying mail frauds, it is unquestioned that he knew that the laundered funds were criminally derived); *United States v. Hare*, 49 F.3d 447 (8th Cir. 1995) (same for wire fraud);

— *United States v. Shorter*, 54 F.3d 1248 (7th Cir. 1995) (drug dealer knew that the money wired to him by the person to whom he sent cocaine was proceeds).

E. Cases where Defendant is the Perpetrator but He Argues that He Didn't Realize the SUA was Illegal:

— *United States v. Baker*, 63 F.3d 1478 (9th Cir. 1995) (circumstantial evidence shows defendant acted as if he believed SUA — trafficking in untaxed cigarettes — was illegal).

F. Circumstantial Evidence may be Sufficient to Establish the Defendant's Knowledge of the Illegal Source of the Money where Defendant is Not the Perpetrator of the Underlying Offense:

— *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (even underlings who never dealt with drug dealers knew that money they were laundering was drug proceeds

because no other cash-generating business would require the laundering of such huge quantities of cash);

— *United States v. Heaps*, 39 F.3d 479 (4th Cir. 1994) (statute requires actual, subjective knowledge, but knowledge may be shown by circumstantial evidence; drug dealer who fronts drugs to consignee "knows" that payments from consignee involve proceeds of unlawful activity);

— *United States v. Atterson*, 926 F.2d 649, 656 (7th Cir. 1991) (defendant is the girlfriend of a drug dealer and wires cash for him);

— *United States v. Jenkins*, 78 F.3d 1283 (8th Cir. 1996) (defendant receives thousand of dollars in cash from teenagers, keeps cash in garbage bags, and wires money for his brother who lives lavish lifestyle and has no visible means of support);

— *United States v. Smith*, 39 F.3d 119 (6th Cir. 1994) (defendant is girlfriend and personal assistant to mastermind of telemarketing scheme and is involved in all business transactions);

— *United States v. Gallo*, 927 F.2d 815 (5th Cir. 1991) (defendant meets drug dealer in a parking lot and receives box of cash and drives off);

— *United States v. Isabel*, 945 F.2d 1193 (1st Cir. 1991) (defendant receives cash from person who says he is a drug dealer and has no legitimate source of income);

— *United States v. Brown*, 944 F.2d 1377 (7th Cir. 1991) (elaborate, time-consuming transactions under $10,000);

— *United States v. Rodriguez*, 53 F.3d 1439 (7th Cir. 1995) (convoluted real estate transactions, from which intent to conceal or disguise may be inferred, also implies knowledge of illegal source);

— *United States v. Torres*, 53 F.3d 1129 (10th Cir. 1995) (knowledge inferred from defendant's lack of legitimate income and earlier statements to wife that income could be enhanced from drug sales);

— *United States v. Cota*, 953 F.2d 753 (2d Cir. 1992) (sister of drug dealer knows house she is selling was purchased by drug dealer with drug proceeds);

— *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (listing large number of factors establishing money courier's knowledge of unlawful source of money);

— *United States v. Saccoccia*, 58 F.3d 754 (1st Cir. 1995) (co-conspirator's statement that money was "drug money," and that he was dealing with "Colombians," probative of defendant's knowledge);

— *United States v. Brown*, 53 F.3d 312 (11th Cir 95) (defendant's testimony, denying knowledge, may establish, by itself, t nowledge element of the offense, if the jury, observing defendant's demeanor, d lieves the testimony and concludes the opposite is true);

— *United States v. Jensen*, 69 F.3d 906 (8th Cir. 5) (defendant who borrowed money, in cash, without any documentation, f person who said he "had a large return from a marijuana smuggling deal," kne e money was criminally derived);

— *But see United States v. McDougald*, 990 F.2d 9 (6th Cir. 1993) (where defendant agreed to purchase car for drug dea in his own name with drug dealer's cash and lied about what happened to ice and at trial, circumstantial evidence insufficient to prove defendant knew ney was proceeds of unlawful activity at the time the transaction occurred).

G. Third Parties Shown to have had Knowledge or to be illfully Blind:

1. Attorneys:

— *United States v. Anderskow*, 88 F.3d 245 (3rd Cir. 1996) (attorney who participated in investment scheme that returned nothing to investors and had many other suspicious elements was willfully blind to the fact that the scheme was a fraud and that he was therefore engaged in transferring fraud proceeds);

— *United States v. Nesser*, 939 F. Supp. 417 (W.D. Pa. 1996) (attorney who knew the defendant associated with drug traffickers, and was himself under investigation for drug trafficking, was willfully blind to the source of defendant's money).

2. Bankers:

— *United States v. Giraldi*, 86 F.3d 1368 (5th Cir. 1996) (circumstantial evidence that banker knew or was willfully blind to customer's source of money included false statements and failure to follow know-your-customer policy);

3. Real Estate Agents:

— *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992) (jury entitled to infer knowledge of nature of proceeds from defendant real estate agent's knowledge of client's flamboyant lifestyle) reversing *United States v. Campbell*, 777 F. Supp. 1259 (W.D.N.C. 1991) on this point.

4. Merchants:

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (evidence that merchant knew customer was a drug dealer included falsification of records, customer's appearance and use of beepers, and his use exclusive use of cash in large sums);

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (jury could infer that defendant who brokered airplane sale knew that the purchase money was illegally derived where money came in the form of multiple anonymous wire transfers and bundles of checks; defendant made statements about purchaser's involvement in drug trafficking; and defendant made threats of violence, indicating he knew he was not representing a legitimate businessman);

— *United States v. Long*, 977 F.2d 1264, 1269-70 (8th Cir. 1992) (car dealer knew buyer listed false employment on credit application, received payments under the table and lied to grand jury).

5. Others:

— *United States v. Jensen*, 69 F.3d 906 (8th Cir. 1995) (defendant remained deliberately ignorant of fact that person loaning him money was a drug dealer);

— *United States v. Rodriguez*, 53 F.3d 1439 (7th Cir. 1995) (jury could infer knowledge from combination of suspicion and indifference to the truth).

H. Obscenity Cases:

— *United States v. Krasner*, 841 F. Supp. 649 (M.D. Pa. 1993) (argument that defendant cannot be convicted of laundering proceeds of obscenity offense because he could not know that proceeds were derived from "unlawful activity" before judicial determination that material was obscene rejected).

I. Sentencing Cases:

— *United States v. Sanders*, 942 F.2d 894 (5th Cir. 1991) (circumstantial evidence of defendant's knowledge that money represented criminal proceeds found sufficient to justify sentencing enhancement for currency reporting violation);

— *United States v. Mitchell*, 31 F.3d 628 (8th Cir. 1994) (same).

— Knowledge requirement is not unconstitutionally vague or overbroad. *See* page 72.

7. Proceeds

A. "Proceeds" Need Not Be Money:

— *United States v. Estacio*, 64 F.3d 477 (9th Cir. 1995) (fraudulently obtained line of credit, which results in artificially inflated bank balance, constitutes proceeds);

— *United States v. Werber*, 787 F. Supp. 353, 357 (S.D.N.Y. 1992) (automobile purchased with counterfeit securities was proceeds of securities offense; subsequent resale of automobile was money laundering);

— *United States v. Griffith*, 17 F.3d 865 (6th Cir. 1994) (inventory acquired in fraud scheme is SUA proceeds).

B. Government Need Not Trace Laundered Funds Back to Particular Offense:

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (evidence that money is traceable to an account used by professional money launderers to launder drug proceeds is sufficient to establish the "proceeds" element);

— *United States v. Hardwell*, 80 F.3d 1471 (10th Cir. 1996) (evidence that the defendant was engaged in drug trafficking and had insufficient legitimate income to produce the money used in the financial transaction was sufficient); *United States v. Herron*, 97 F.3d 234, 237 (8th Cir. 1996) (same);

— *United States v. Blackman*, 904 F.2d 1250, 1257 (8th Cir. 1990) (government proved property involved in transaction was drug proceeds by showing defendant was engaged in drug business and was using wire services to move a lot of cash, and by calling expert witness to testify that these transactions were typical of what drug dealers do with drug money);

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993); *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994); *United States v. Bencs*, 28 F.3d 555 (6th Cir. 1994).

C. Inconsistent Verdicts; Acquittal on the SUA:

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (defendant acquitted of drug conspiracy but convicted of money laundering based on purchase of several cars; court upheld money laundering conviction because, while jury may not have believed that he was involved in conspiracy charged, they still found defendant purchased cars with drug proceeds);

— *United States v. Kennedy*, 64 F.3d 1465 (10th Cir. 1995) (in a mail fraud case, fact that defendant was acquitted of fraudulent mailing to victim did not require acquittal as to money laundering charge involving that victim).

D. Proceeds may be Derived from SUA Committed by Someone Else:

— *United States v. Smith*, 46 F.3d 1223, 1234 (1st Cir. 1995) (section 1957 has no requirement that the defendant committed the predicate crime);

— *United States v. Finn*, 919 F. Supp. 1305 (D. Minn. 1995) (government not required to show the defendant committed the underlying theft or fraud);

E. Only Part of Money Involved in the Transaction need be Derived from SUA:

— *United States v. Cancelliere*, 69 F.3d 1116 (11th Cir. 1995) (government met burden of showing check drawn on account involved SUA proceeds by showing that $80,000 in proceeds were deposited into the account and commingled with other funds; strict tracing not required);

— *United States v. Rodriguez*, 53 F.3d 1439 (7th Cir. 1995) (purchase of house involved SUA proceeds even though only $1,000 of $17,000 payment was drug money);

— *United States v. Garcia*, 37 F.3d 1359 (9th Cir. 1994) ("it is sufficient to prove that the funds in question came from an account in which tainted proceeds were commingled with other funds"); *United States v. English*, 92 F.3d 909 (9th Cir. 1996) (following *Garcia*);

— *United States v. Marbella*, 73 F.3d 1508 (9th Cir. 1996) (once SUA proceeds are commingled in an account, any withdrawal from that account involves proceeds, even if the balance in the account drops to zero between the time the proceeds are deposited and the time of the withdrawal);

— *United States v. Bencs*, 28 F.3d 555 (6th Cir. 1994) (money launderer may not escape liability by commingling drug proceeds with other assets);

— *United States v. Jackson*, 935 F.2d 832, 840 (7th Cir. 1991) (transactions drawn on account containing commingled funds "involve" proceeds of SUA);

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (jury instruction that "substantial portion" of laundered funds had to be SUA proceeds was unnecessarily favorable to defendant; only some of commingled funds need be proceeds);

— *United States v. $633,021.67 in U.S. Currency*, 842 F. Supp. 528 (N.D. Ga. 1993) (to forfeit funds involved in a money laundering transaction, government "need not trace the origin of all funds deposited into a bank account to determine exactly which funds were used for what transactions").

✍ ***Note:*** Different rule may apply to section 1957 cases. *See* page 43.

F. Property Purchased with Proceeds of False Loan Remain *SUA Proceeds* Even If Loan Repaid:

— *United States v. Moore*, 27 F.3d 969 (4th Cir. 1994) (where property purchased in part with proceeds of false loan and in part with legitimate assets is sold, net remaining to defendant after loan is repaid is SUA proceeds up to the amount of the false loan).

G. Payment with Check Drawn on Account into which *SUA Proceeds* were Deposited is Transaction Involving Proceeds:

— *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248 (E.D. Va. 1993).

H. Circumstantial Evidence Sufficient to Show Property was SUA Proceeds:

— *United States v. Misher*, 99 F.3d 664 (5th Cir. 1996) (when defendant, who is connected to drug trafficking, pays for car with suitcase full of cash, there is sufficient evidence that the money is SUA proceeds);

— *United States v. Heater*, 63 F.3d 311 (4th Cir. 1995) (where defendant had limited legitimate income, use of large amounts of cash to buy consumer goods and use of third-party names provides circumstantial evidence that the property was drug proceeds);

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (convoluted method of payment for car, including attempt to disguise purchaser's identity, implied that purchase money was drug proceeds);

— *United States v. Saccoccia*, 58 F.3d 1129 (1st Cir. 1995) (totality of circumstances entitling jury to find laundered money was drug proceeds included dog sniff, transfer of huge sums to Colombia ("the nerve center of the world's traffic in cocaine"), huge quantities of cash in small worn bills, and expert testimony likening defendant's *modus operandi* with typical drug money laundering operation);

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (where defendant makes statements indicating that purchaser of an airplane is a wealthy drug trafficker, and airplane is modified to accommodate drug smuggling, jury may infer that the purchase money was drug proceeds);

— *United States v. Munoz-Romo*, 947 F.2d 170 (5th Cir. 1991) (where defendant has limited legitimate income, engages in drug trafficking, and hides large amounts of unexplained cash in his house, jury may conclude that cash used in a given transaction was proceeds of SUA);

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (drug dealer with unexplained wealth buys cars with cash from his sock); *United States v. Whitaker*, No. 92-5138 (4th Cir. Aug. 11, 1993) (unpublished) (same; cash used to buy boat);

— *United States v. Webster*, 960 F.2d 1301 (5th Cir. 1992) (evidence of differential between drug dealer's legitimate income and cash outflow sufficient to establish that cash is drug proceeds); *United States v. Puig-Infante*, 19 F.3d 929 (5th Cir. 1994) (same);

— *United States v. Wilson*, 77 F.3d 105 (5th Cir. 1996) (defendant was principal in drug organization and property was cash bundled in the same way that the drug organization bundled its cash);

— *But see United States v. McDougald*, 990 F.2d 259 (6th Cir. 1993) (government may not assume any money from drug dealer is drug money; suspicious nature of automobile purchase insufficient to support inference that $10,000 cash was drug money), *distinguished* in *United States v. Bencs*, 28 F.3d 555, 562 n.8 (6th Cir. 1994).

I. Government May Use "Net Worth" Analysis to Establish Proceeds Element:

— *United States v. Cruz*, 993 F.2d 164 (8th Cir. 1993) (lack of sufficient legitimate income to support cash expenditures supports finding that cash used to buy vehicle was proceeds of marijuana trafficking).

J. No Proceeds if SUA Offense Not Proven:

— *United States v. Green*, 964 F.2d 365 (5th Cir. 1992) (where defendant challenges whether elements of state bribery offense were satisfied, appellate court will review governments proof and elements of offense under applicable state or federal law);

— *United States v. Ramming*, 915 F. Supp. 854 (S.D. Tex. 1996) (because defendant's motion for judgment of acquittal on underlying fraud offense is granted for lack of evidence, motion must be granted on money laundering counts as well).

K. Congress Did Not Intend to Limit Application of the Money Laundering Statutes to Drug Offenses:

— *United States v. Haun*, 90 F.3d 1096 (6th Cir. 1996).

L. Cases where SUA was Not a Federal Drug Offense:

— Proceeds of state drug offense: *United States v. Isabel*, 945 F.2d 1193 (1st Cir. 1991);

— Proceeds of state bribery offense: *United States v. Montoya*, 945 F.2d 1068 (9th Cir. 1991); *United States v. Green*, 964 F.2d 365 (5th Cir. 1992);

— Proceeds of state gambling offense: *United States v. Manarite*, 44 F.3d 1407 (9th Cir. 1995);

— Proceeds of food stamp fraud, 7 U.S.C. § 2024(b)(1): *United States v. Caba*, 911 F. Supp. 630 (E.D.N.Y. 1996);

— Proceeds of securities fraud under 15 U.S.C. § 77q(a) and mail fraud: *United States v. Cole*, 988 F.2d 681 (7th Cir. 1993);

— Assets concealed from bankruptcy trustee in violation of section 152: *United States v. West*, 22 F.3d 586 (5th Cir. 1994); *United States v. Chambron*, 1994 WL 645341 (4th Cir. 1994) (unpublished); *United States v. McIntosh*, 197 B.R. 688, 1996 WL 328002 (D. Kan. May 17, 1996); *United States v. Gleave*, 786 F. Supp. 258, 269 (W.D.N.Y. 1992);

— Proceeds of fraud against government agency in violation of sections 286-87: *United States v. Leahy*, 82 F.3d 624 (5th Cir. 1996) (defrauding Veterans Administration);

— Proceeds of uttering and passing counterfeit securities under section 513: *United States v. Werber*, 787 F. Supp. 353 (S.D.N.Y. 1992);

— Promotion of general smuggling offense under section 545: *United States v. Lee*, 937 F.2d 1388, 1396 (9th Cir. 1991);

— Theft of public money under section 641: *United States v. Chesney*, 10 F.3d 641 (9th Cir. 1993) (Social Security fraud); *United States v. Puello*, 814 F. Supp. 1155 (E.D.N.Y. 1993) (food stamp fraud); *United States v. Caba*, 1996 WL 685764 (2d Cir. 1996) (unpublished) (food stamp fraud);

— Proceeds of false loan application under section 656: *United States v. Allen*, 76 F.3d 1348 (5th Cir. 1996); *United States v. Marx*, 991 F.2d 1369 (8th Cir. 1993);

— Misapplied funds belonging to RTC under section 657: *United States v. Adams*, 74 F.3d 1093 (11th Cir. 1996);

— Proceeds of conversion of collateral under section 658: *United States v. Edgmon*, 952 F.2d 1206 (10th Cir. 1991);

— Property embezzled from pension fund under section 664: *United States v. Holmes*, 44 F.3d 1150 (2d Cir. 1995);

— Proceeds of theft from organization receiving government funds under section 666: *United States v. Pretty*, 98 F.3d 1213 (10th Cir. 1996); *United States v. Peery*, 977 F.2d 1230 (8th Cir. 1992); *United States v. Finn*, 919 F. Supp. 1305 (D. Minn. 1995);

— Funds unlawfully received by a credit union officer under § 1006: *United States v. Smith*, 46 F.3d 1223 (1st Cir. 1995);

— Proceeds of impeding the RTC under section 1032: *United States v. Adams*, 74 F.3d 1093 (11th Cir. 1996);

— Proceeds of transmission of gambling information under section 1084: *United States v. Miller*, 22 F.3d 1075 (11th Cir. 1994);

— Proceeds of fraud under section 1341: *United States v. Haun*, 90 F.3d 1096 (6th Cir. 1996) (fraud involving car sales); *United States v. Massey*, 48 F.3d 1560 (10th Cir. 1995); *United States v. Hollis*, 971 F.2d 1441 (10th Cir. 1992) (insurance fraud); *United States v. Cavalier*, 17 F.3d 90 (5th Cir. 1994) (same); *United States v. Paramo*, 998 F.2d 1212 (3rd Cir. 1993) (embezzlement of tax refund checks); *United States v. Lombardi*, 5 F.3d 568 (1st Cir. 1993) (insurance fraud); *United States v. Smith*, 13 F.3d 1421 (10th Cir. 1994); *United States v. Caruso*, ___ F. Supp. ___, 1996 WL 705223 (D.N.J. Nov. 17, 1996)(fraud involving refunds for charitable contributions);

— Proceeds of wire fraud under section 1343: *United States v. Hare*, 49 F.3d 447 (8th Cir. 1995); *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992); *United States v. Tansley*, 986 F.2d 880 (5th Cir. 1993); *United States v. Smith*, 44 F.3d 1259 (4th Cir. 1995);

— Proceeds of bank fraud under section 1344: *United States v. Moore*, 27 F.3d 969 (4th Cir. 1994); *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994); *United States v. Dillman*, 15 F.3d 384 (5th Cir. 1994) (using proceeds of false loan to recapitalize failing bank); *United States v. Restivo*, 8 F.3d 274 (5th Cir. 1993); *United States v. Harris*, 805 F. Supp. 166, 175 n.1 (S.D.N.Y. 1992); *United States v. Hilliard*, 818 F. Supp. 309 (D. Col. 1993); *United States v. Brown*, 31 F.3d 484 (7th Cir. 1994); *United States v. Estacio*, 64 F.3d 477 (9th Cir. 1995) (check kiting);

— Proceeds of Hobbs Act, section 1951: *United States v. Hairston*, 46 F.3d 361 (4th Cir. 1995); *United States v. Flynt*, 15 F.3d 1002 (11th Cir. 1994) (concealing extortion checks in wife's account); *United States v. Knight*, 822 F. Supp. 1071 (S.D.N.Y. 1993); *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248 (E.D. Va. 1993);

— Proceeds of Travel Act, section 1952: *United States v. Griffith*, 85 F.3d 284 (7th Cir. 1996) (interstate transportation of prostitution proceeds); *United States v. Montague*, 29 F.3d 317 (7th Cir. 1994) (same); *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248 (E.D. Va. 1993);

— Proceeds of ERISA violation, section 1954: *United States v. Li*, 1994 WL 118539 (N.D. Ill. 1994) (unreported);

— Proceeds of gambling under 1955: *United States v. Miller*, 22 F.3d 1075 (11th Cir. 1994); *United States v. Conley*, 37 F.3d 970 (3rd Cir. 1994);

— Funds involved in ITSP offense under section 2314: *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992) (funds stolen in Texas and transported to Okla.); *United States v. Pierro*, 32 F.3d 611 (1st Cir. 1994) (proceeds from sale of stolen property used as security for bank loan);

— Proceeds from contraband cigarettes: *United States v. Gord*, 77 F.3d 1192 (9th Cir. 1996).

M. Mail and Wire Fraud—SUA Need Not Affect Financial Institution:

— *United States v. Real Property (16899 S.W. Greenbrier)*, 774 F. Supp. 1267, 1273 (D. Or. 1991) (all mail and wire fraud offenses are included in section 1956(c)(7)(A) notwithstanding limitation in section (c)(7)(D); section (c)(7)(A) does not require proof of RICO violation); *United States v. One Tract of Real Property (3400 Swift Drive)*, No. 91-744-CIV-5-BO (E.D.N.C. Jul. 29, 1992) (same); *United States v. Lowder*, 5 F.3d 467 (10th Cir. 1993). *See* Amendment to section (c)(7)(D) eff. 10/28/92 striking limitation;

— *United States v. Taylor*, 984 F.2d 298 (9th Cir. 1993) (mail and wire fraud were SUA offenses before 1990 amendment to section 1956(c)(7)(D));

— *United States v. Hare*, 49 F.3d 447 (8th Cir. 1995) (wire fraud remains SUA under (c)(7)(A) despite 1992 amendment striking section 1343 from (c)(7)(D)).

N. Food Stamp Fraud was SUA Before October, 1992 Amendment:

— *United States v. Puello*, 814 F. Supp. 1155 (E.D.N.Y. 1993) (SUA alleged as violations of sections 641, 1341 and 1343).

O. Bank Fraud:

— *United States v. Piervinanzi*, 23 F.3d 670, 676 n.4 (2d Cir. 1994) (section 1344 has been SUA offense since 1986; 1992 amendment only removed redundant reference).

P. Bankruptcy Fraud:

— *United States v. Chambron*, 1994 WL 645341 (4th Cir. 1994) (unpublished) (transaction occurring before fraudulent bankruptcy petition was filed involved SUA proceeds, because it involved funds being concealed as part of a fraud that was underway even before the filing of the bankruptcy petition).

— *United States v. McIntosh*, 197 B.R. 688, 1996 WL 328002 (D. Kan. 1996) (money became bankruptcy proceeds when defendant received it, not when he filed the report that failed to disclose it, because scheme was already underway; thus money was SUA proceeds when defendant laundered it).

Q. Theft:

— *United States v. Napoli*, 54 F.3d 63 (2d Cir. 1995) (simple theft is not a SUA).

R. Jury Instruction:

— *United States v. Miller*, 22 F.3d 1075 (11th Cir. 1994) (instruction that SUA was state gambling instead of federal gambling as charged in the indictment was harmless where jury also convicted defendant of federal gambling offense).

S. Definition of "Proceeds" is Not Unconstitutionally Vague:

— *United States v. Gleave*, 786 F. Supp. 258, 270 (W.D.N.Y. 1992); *United States v. Werber*, 787 F. Supp. 353, 358 (S.D.N.Y. 1992);

— *United States v. Griffith*, 85 F.3d 284 (7th Cir. 1996) (making state prostitution offense a SUA through application of section 1961(1) and the Travel Act, while complicated, is not unconstitutionally vague).

8. Merger Issue

A. Money Laundering Statutes Apply to Tansactions Occurring After the Completion of the Underlying Criminal Activity:

— *United States v. Puig-Infante*, 19 F.3d 929 (5th Cir. 1994) (drug deal is not a transaction involving SUA proceeds because money exchanged for drugs is not proceeds at the time the exchange takes place); *United States v. Gaytan*, 74 F.3d 545 (5th Cir. 1996) (same);

— *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (where defendant fraudulently induces victim to wire transfer funds directly to defendant's account, such transfer *does not* constitute money laundering, because funds were not "criminally derived" at the time the transfer took place; but if transaction had occurred in two steps, with defendant first obtaining money from victim and then making deposit, second step would be a section 1957 violation);

— *United States v. Napoli*, 54 F.3d 63 (2d Cir. 1995) (because proceeds of bank fraud were realized only when fraudulent checks were successfully negotiated at the bank, negotiation of the checks could not be a money laundering offense);

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) (government concedes that wire transfer out of bank cannot constitute section 1957 violation where defendants were not yet in control of proceeds of SUA offense at the time the transfer was made);

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (wire transfer out of bank account constitutes section 1957 violation where defendant had control over the account at the time the transfer was made, even though it was not in his name; distinguishing *Johnson* where defendant did not have control over victim's money until the transfer was complete);

— *United States v. Edgmon*, 952 F.2d 1206 (10th Cir. 1991) (where defendant defrauds lender by selling collateral to third person without lender's knowledge, and then launders proceeds by buying land, the fraud and money laundering are separate offenses);

— *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992) (where defendant transports stolen funds across state border in violation of section 2314, subsequent deposit of same funds is section 1957 violation);

— *United States v. Hilliard*, 818 F. Supp. 309 (D. Col. 1993) (charging both section 1344 offense and section 1957 in same indictment is not multiplicitous because section 1957 requires that the bank fraud first occur before an offense under section 1957 can be committed).

B. Property Defendant Intends to Use to Commit Offense is Not "Proceeds":

— *United States v. LaBrunerie*, 914 F. Supp. 340 (W.D. 1995) (transaction involving clean money intended to be paid as a bribe does not involve proceeds, even though agreement to pay bribe constituted completed offense).

C. Where Fraud Scheme Occurs in Several Steps, Second Step may Constitute Laundering of Proceeds of First Step, Even if Overall Scheme was not yet Complete:

— *United States v. Pretty*, 98 F.3d 1213 (10th Cir. 1996) (act of concealing proceeds of the scheme is punishable as a money laundering offense even if the transaction simultaneously constitutes a new SUA offense);

— *United States v. Allen*, 76 F.3d 1348 (5th Cir. 1996) (money is proceeds of section 656 offense when it leaves the victim bank and goes to third party, transfer of kickback by third party to defendant is money laundering; *Johnson* distinguished);

— *United States v. Leahy*, 82 F.3d 624 (5th Cir. 1996) (money is "proceeds" when it is taken from victim and placed in escrow account that defendant controls; subsequent transfer from escrow to defendant's account is section 1957 violation);

— *United States v. Estacio*, 64 F.3d 477 (9th Cir. 1995) (no violation of merger rule where proceeds of earlier phase of check kiting scheme were used to continue the scheme);

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (because mail fraud offense was complete when defendant mailed promotional material to victims and received money in return, subsequent transfer of that money involved SUA proceeds);

— *United States v. Griffith*, 17 F.3d 865 (6th Cir. 1994) (sale of inventory derived from mail/wire fraud offenses to third party is section 1957 violation);

— *United States v. Conley*, 37 F.3d 970 (3rd Cir. 1994) (money collected from poker machines was proceeds of one step in gambling offense that was laundered with intent to promote subsequent step);

— *United States v. Massey*, 48 F.3d 1560 (10th Cir. 1995) (property was proceeds of mail fraud scheme at time section 1957 offense took place even though it was obtained from a victim who got a mailing in furtherance of the scheme *after* the section 1957 offense, because the property was the proceeds of an earlier phase of the scheme);

— *United States v. Smith*, 44 F.3d 1259, 1265 (4th Cir. 1995) (wire transfer as second step in scheme constitutes section 1957 offense, even though the transfer is part of the scheme);

— *United States v. Graffia*, 1995 WL 374127 (N.D. Ill. 1995) (unpublished) (movement of proceeds of wire fraud from one account to another was a section 1957 offense even though the fraud scheme was not complete at that time);

— *General Cigar Co. v. CR Carriers*, ___ F. Supp. ___, 1996 WL 673761 (M.D. Ala. Nov. 18, 1996) (civil RICO with money laundering predicates) (money laundering transactions do not merge with SUA just because money laundering was part of larger fraud scheme).

D. Deposit of Check is Separate Transaction:

— *United States v. Kennedy*, 64 F.3d 1465 (10th Cir. 1995) (deposit of checks received from victims was money laundering because the checks were the proceeds of earlier mailings that constituted completed mail fraud offenses);

— *United States v. Sutera*, 933 F.2d 641 (8th Cir. 1991) (defendant received gambling proceeds in the form of a check, subsequent deposit of check constituted money laundering);

— *United States v. Montoya*, 945 F.2d 1068 (9th Cir. 1991) (where defendant receives bribe in the form of a check, subsequent deposit of check is a financial transaction for money laundering purposes);

— *United States v. Cavalier*, 17 F.3d 90 (5th Cir. 1994) (check issued by insurance company is proceeds of insurance fraud; transfer of check by insurer to third party is transaction involving SUA proceeds);

— *United States v. Li*, 1994 WL 118539 (N.D. Ill. 1994) (unreported) (receipt of check is distinct from separate transaction of depositing check into a bank account).

E. Once Proceeds, Always Proceeds:

— *United States v. Moore*, 27 F.3d 969 (4th Cir. 1994) (real property was proceeds of drug offense, so sale of property long after statute of limitations had run on the drug offense could be prosecuted as money laundering).

9. Intent to Promote

A. Reinvesting Proceeds in Illegal Enterprise "Promotes" SUA:

— *United States v. Marbella*, 73 F.3d 1508 (9th Cir. 1996) (using fraud proceeds to pay commissions to persons who brought in more victims promoted SUA);

— *United States v. Olson*, 76 F.3d 393 (10th Cir. 1995) (using proceeds to pay the business expenses of the company used to promote the scheme, and to pay brokers who brought in new victims, promoted continuation of the scheme);

— *United States v. Baker*, 63 F.3d 1478 (9th Cir. 1995) (paying supplier for more product is transaction conducted with intent to promote);

— *United States v. Jackson*, 935 F.2d 832 (7th Cir. 1991) (buying beeper for use in drug business is transaction with intent to promote);

— *United States v. Munoz-Romo*, 947 F.2d 170 (5th Cir. 1991) (purchase of house in which cash from drug sales will be hidden, and purchase of cars used to drive to sites of drug sales, are transactions that promote SUA); *United States v. Clark*, 67 F.3d 1154 (5th Cir. 1995) (purchase of house from which defendant would run errands in furtherance of drug scheme);

— *United States v. Cruz*, 993 F.2d 164 (8th Cir. 1993) (buying vehicle used to transport marijuana promotes continuation of marijuana business);

— *United States v. Conley*, 37 F.3d 970 (3rd Cir. 1994) ("plowing" proceeds of gambling business back into business), rev'g 833 F. Supp. 1121 (W.D. Pa. 1993);

— *United States v. Torres*, 53 F.3d 1129 (10th Cir. 1995) (using drug money to buy more drugs promotes SUA, but using it to buy a car does not, unless government

shows intent in buying car was to promote SUA; evidence that buying car was intended to conceal or disguise is irrelevant where defendant is charged only with section 1956(a)(1)(A)(i), and not (B)(i).

B. Using Proceeds to Keep Scheme Going "Promotes" SUA:

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (money transfers provided defendant with resources to travel and continue contacting victims, thus promoting the fraud scheme);

— *United States v. Cole*, 988 F.2d 681 (7th Cir. 1993) (payment of "interest" to defrauded investors keeps scheme going);

— *United States v. Alford*, 999 F.2d 818 (5th Cir. 1993) (sending checks to a bank acct pursuant to agreement to split proceeds of fraud scheme, and using deposits to misrepresent company as successful business enterprise promotes continuation of the fraud scheme);

— *United States v. Restivo*, 8 F.3d 274 (5th Cir. 1993) (using proceeds of fraudulently obtained loan to pay off earlier loan to conceal financial condition of borrower promotes bank fraud);

— *United States v. Brown*, 31 F.3d 484, 487 n.3 (7th Cir. 1994) (recycling proceeds of credit card scheme).

C. Using Proceeds to Commit Next Step in the Scheme:

— *United States v. Estacio*, 64 F.3d 477 (9th Cir. 1995) (deposit of check drawn on insufficient funds promotes continuation of check kiting scheme);

— *United States v. Dillman*, 15 F.3d 384 (5th Cir. 1994) (using proceeds of false loan to inject lender's own money back into lender to improve lender's apparent financial position);

— *United States v. Morris*, 18 F.3d 562 (8th Cir. 1994) (moving fraudulently obtained loan proceeds to another account to conceal overdraft status promotes continuation of bank fraud scheme).

D. Using Proceeds to "Lull" Prospective Fraud Victims "Promotes" SUA Offense:

— *United States v. Ismoila*, 100 F.3d 380 (5th Cir. 1996) (defendant promoted scheme to defraud credit card issuers by depositing credit card receipts into business bank

account because it gave appearance that defendant was operating a legitimate business that accepted credit card payments for merchandise);

— *United States v. Hand*, 76 F.3d 393 (10th Cir. 1995) (using proceeds to create "aura of legitimacy" for benefit of victims promotes fraud scheme);

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (transferring money to Europe lent "aura of legitimacy" to defendant's fraudulent claim that he was investing victim's money in European investment business);

— *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (using proceeds to pay off mortgage on house and to buy expensive car, where house and car were used to impress prospective victims with defendant's business acumen).

E. Transaction Intended to Avoid Detection:

— *United States v. Allen*, 76 F.3d 1348 (5th Cir. 1996) (actions taken to avoid detection and to lull victims promote the fraud scheme);

— *United States v. Pretty*, 98 F.3d 1213 (10th Cir. 1996) (using proceeds of scheme to buy house from co-defendant as means of paying kickback promotes the scheme).

F. Transaction may Promote Offense of which it is a Part:

— *United States v. Allen*, 76 F.3d 1348 (5th Cir. 1996) (transaction that completes an essential portion of scheme is conducted with intent to promote, even though a prosecutable crime is already complete at that point);

— *United States v. Adams*, 74 F.3d 1093 (11th Cir. 1996) (transaction designed to conceal or disguise fraud proceeds promotes the fraud);

— *United States v. Estacio*, 64 F.3d 477 (9th Cir. 1995) (financial transaction conducted with intent to promote next step in fraud scheme may be charged as another fraud offense or as a money laundering offense under section 1956(a)(1)(A)(i));

— *United States v. Skinner*, 946 F.2d 176 (2d Cir. 1991) (paying for drugs received on consignment with proceeds of street sales from same consignment promotes the SUA offense of which the financial transaction is a part); *but see United States v. Heaps*, 39 F.3d 479 (4th Cir. 1994) (on same facts, holding that payment for consignment merges with the SUA, and therefore, does not constitute money laundering);

— *United States v. Thomas*, 12 F.3d 1350 (5th Cir. 1994) (paying for drugs with proceeds derived from drug sales);

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) (wiring money out of bank to an overseas account to commit bank fraud is an act intended to promote the bank fraud of which the wire transfer is a part);

— *United States v. Pierro*, 32 F.3d 611 (1st Cir. 1994) (proceeds from sale of stolen property used as security for bank loan);

— *United States v. Stein*, 1994 WL 285020 (E.D. La. 1994) (money laundering transaction may promote fraud scheme of which the transaction is a part).

G. Intent to Promote May Relate Back to the Offense that Generated the Proceeds Being Laundered:

— *United States v. Montoya*, 945 F.2d 1068 (9th Cir. 1991) (deposit of check that represents proceeds of state bribery offense "promotes" bribery in that it gives defendant use of the fruits of his criminal activity);

— *United States v. Manarite*, 44 F.3d 1407 (9th Cir. 1995) (intent to promote not limited to "plowing back;" cashing gambling chips promotes "skimming" offense from which chips were derived);

— *United States v. Paramo*, 998 F.2d 1212 (3rd Cir. 1993), *cert.* denied 114 S. Ct. 1076 (1994) (converting fraudulently obtained checks into cash promotes underlying fraud scheme by giving defendant access to funds; intent to "plow back" funds into the scheme not required);

— *United States v. Cavalier*, 17 F.3d 90 (5th Cir. 1994) (causing insurance company to send check to lienholder to extinguish lien promotes the insurance fraud-scheme which was the SUA generating the check);

— *United States v. West*, 22 F.3d 586, 587 n.13 (5th Cir. 1994) (money laundering transaction may promote a completed bankruptcy fraud offense);

— *United States v. Haun*, 90 F.3d 1096 (6th Cir. 1996) (cashing or depositing checks derived from fraud scheme promotes both future unlawful acts and "prior unlawful activity");

— *General Cigar Co. v. CR Carriers*, ___ F. Supp. ___, 1996 WL 673761 (M.D. Ala. Nov. 18, 1996) (civil RICO with money laundering predicates) (following *Paramo* and *Manarite*; defendant had to cash checks to receive compensation for his part of the scheme);

— *But see United States v. Heaps*, 39 F.3d 479 (4th Cir. 1994) (distinguishing *Cavalier* and expressly declining to follow *Montoya* and *Paramo*).

H. Offense Being Promoted Need Not Be a Continuing Act But May Relate to a Singular, Discreet Offense:

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) (wire transfer promotes singular bank fraud).

I. Offense Being Promoted Cannot Be a Foreign Tax Offense:

— *United States v. Trapilo*, 1996 WL 743837 (N.D.N.Y. 1996) (the "revenue rule" bars the prosecution of defendant for money laundering with the intent to promote wire fraud, where the scheme is a tax fraud against a foreign government).

J. Circumstantial Evidence of Intent to Promote:

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (intent to promote inferred where defendant arranged the purchase of the kind of airplane he knew was best suited for drug smuggling);

— *United States v. Atterson*, 926 F.2d 649, 656 (7th Cir. 1991) (where the defendant is the girlfriend of a drug dealer and wires cash for him, jury is entitled to conclude that she would have known that the purpose of the transaction was to buy more drugs);

— *United States v. Salazar*, 958 F.2d 1285, 1296 (5th Cir. 1992) (where money courier who is member of drug conspiracy carries $77,000 in cash into business providing wire transfer services to Colombia and attempts to hide money on a door ledge when approached by agents, there is circumstantial evidence of courier's intent to promote carrying on of SUA.);

— *United States v. Cruz*, 993 F.2d 164 (8th Cir. 1993) (jury entitled to infer intent to promote drug business at time vehicle was purchased from later one-time use of vehicle to transport drugs).

K. Concealment is Not an Element of Section (a)(1)(A) Offenses:

— *United States v. Haun*, 90 F.3d 1096 (6th Cir. 1996) (cashing and/or depositing checks promotes scheme without concealing or disguising anything);

— *United States v. Baker*, 63 F.3d 1478, 1495 (9th Cir. 1995); *United States v. Jackson*, 935 F.2d at 842; *United States v. Montoya*, 945 F.2d at 1068; *United States v. Skinner*, 946 F.2d at 176.

10. Intent to Conceal or Disguise

A. Where Defendant is *Not* Perpetrator of Underlying Offense, Defendant Need Not Intend to Conceal or Disguise, But Need Only Be Aware that Perpetrator's Intent is to Conceal or Disguise:

— *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992) (real estate agent aware that client's purpose is to conceal or disguise drug money);

— *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (money courier aware that principal's purpose is to conceal or disguise);

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (merchant aware that customer intended to conceal or disguise drug money by buying merchandise).

B. Concealment Need Not Be the Only Motive in Conducting the Transaction:

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (defendant who spends drug proceeds with intent to conceal or disguise may simultaneously intend to enjoy fruits of his illegal activity).

C. Engaging in Unusual or Convoluted Transactions Implies Knowledge that Purpose was to Conceal or Disguise:

— *United States v. Massac*, 867 F.2d 174 (3d Cir. 1989) (known drug dealer sends $22,000 in cash thru cash transmitting business to Haiti over five month period);

— *United States v. Isabel*, 945 F.2d 1193 (1st Cir. 1991) (receiving cash from drug dealer with no legitimate source of income and issuing false payroll check in return);

— *United States v. Cota*, 953 F.2d 753 (2d Cir. 1992) (unusual circumstances of real estate transaction — placing documents in safe deposit box in another bank, receiving $50,000 commission, paying proceeds of sale in two-step transaction — imply knowledge that purpose was to conceal or disguise);

— *United States v. Lovett*, 964 F.2d 1029, 1035-36 (10th Cir. 1992) (convoluted financial transactions leading up to purchase of house, combined with misleading statements regarding nature and source of purchase money, establish that when defendant made purchase, he intended to conceal or disguise nature or source of proceeds of ITSP offense);

— *United States v. Beddow*, 957 F.2d 1330, 1335 (6th Cir. 1992), *reh'g, en banc*, den., 1992 U.S. App. LEXIS 5051 (1992) (convoluted transactions and use of a "front man" for sale of emeralds imply intent to disguise ownership and evade transaction reporting requirements);

— *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992) (real estate agent's knowledge that client was drug dealer, coupled with client's insistence on putting $60,000 cash "under the table" at real estate closing, sufficient to show agent's knowledge of purpose of transaction);

— *United States v. Peery*, 977 F.2d 1230 (8th Cir. 1992) (three-step transaction involving proceeds of theft used to buy personal property evidenced intent to conceal or disguise);

— *United States v. Real Property (16899 S.W. Greenbrier)*, 774 F. Supp. 1267, 1274 (D. Or. 1991) (multi-step transaction implies intent to conceal or disguise);

— *United States v. McLamb*, 985 F.2d 1284 (4th Cir. 1993) (car dealer's advice to buy car with $9,000 cash and three sub-$10,000 cashiers checks indicated knowledged of intent to conceal or disguise in violation of section 1956(a)(3)(B));

— *Hollenback v. United States*, 987 F.2d 1277 (7th Cir. 1993) (irregularly structured transactions calculated to mislead observers as to size of transactions and actual nature of funds demonstrates intent to conceal or disguise nature, location or source of funds; irrelevant that defendant did not also conceal ownership or control);

— *United States v. Garcia-Emanuel*, 14 F.3d 1469 (10th Cir. 1994) (converting cash to CD, using CD as collateral for loan, and making structured deposits before drawing $20,000 check);

— *United States v. Dillman*, 15 F.3d 384 (5th Cir. 1994) (moving proceeds of loan through series of bank accounts to disguise original source of the money);

— *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (transactions involved "so many deposits and subdividings of funds that laundering was the only plausible explanation");

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (purchasing airplane with funds in the form of multiple anonymous wire transfers from banks in Panama and bundles of checks drawn on different accounts indicates intent to conceal or disguise source of funds);

D. Simple Transactions Imply Absence of Intent to Conceal or Disguise:

— *United States v. Ramming*, 915 F. Supp. 854 (S.D. Tex. 1996) (where defendants left a "clean paper trail so well defined that the regulators could follow it," and there were no unusual or convoluted transactions, there was insufficient evidence of intent to conceal or disguise).

E. Using Third Party's Name:

— *United States v. Ruiz-Castro*, 92 F.3d 1519 (10th Cir. 1996) (receiver of wire transfer would know intent was to conceal or disguise when he saw that sender used wife's name as originator of transfer);

— *United States v. Elder*, 90 F.3d 1110 (6th Cir. 1996) (by directing co-conspirators to send money in names other than his own, defendant disguised link between himself and the tainted funds);

— *United States v. Sutera*, 933 F.2d 641 (8th Cir. 1991) (when defendant deposits gambling proceeds into an account held in the name of a restaurant business, rather than a personal account, and pays personal expenses out of the business account, jury could infer that purpose of the deposit was to "hide" the gambling proceeds);

— *United States v. Martin*, 933 F.2d 609 (8th Cir. 1991) (purchase of stock with drug proceeds, with stock certificates put in name of third party instead of purchaser, evidences intent to conceal or disguise);

— *United States v. Edgmon*, 952 F.2d 1206 (10th Cir. 1991), *cert. denied*, 112 S. Ct. 3037(1992) (defendant has proceeds of fraud paid to father who uses proceeds to buy land in own name, borrow money against land, and return proceeds of new loan to defendant; distinguishing *Sanders*);

— *United States v. Beddow*, *supra* (use of "front man");

— *United States v. Garcia-Emanuel*, 14 F.3d 1469 (10th Cir. 1994) (buying land in name of restaurant to make it appear that business is source of wealth; buying truck in wife's name for state purpose of deceiving IRS);

— *United States v. Chesney*, 10 F.3d 641 (9th Cir. 1993) (depositing SUA proceeds in one bank account and then moving funds to other accounts in different names);

— *United States v. Santos*, 20 F.3d 280 (7th Cir. 1994) (third person allowed car to be titled in his name so that drug dealer would not have to show that he used drug proceeds to buy car);

— *United States v. Willey*, 57 F.3d 1374 (5th Cir. 1995) (transfer of funds between third parties moved money "further away from the defendant that it was before the transfer");

— *United States v. Brown*, 53 F.3d 312 (11th Cir. 1995) (buying cashiers check with third party listed as the remitter);

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (use of legitimate corporation as nominal purchaser of airplane conceals source of purchase money);

— *United States v. Fields*, 72 F.3d 1200 (5th Cir. 1996) (registering truck purchased with drug proceeds in brother's name indicates intent to conceal or disguise);

— *But see United States v. Baker*, 985 F.2d 1248 (4th Cir. 1993) (evidence insufficient to prove that defendant intended to conceal or disguise drug money by buying boat in third party's name where government failed to prove that boat held by third party was same boat that defendant had purchased);

— *United States v. Heaps*, 39 F.3d 479 (4th Cir. 1994) (giving instruction to wire money to wife did not evidence intent to conceal or disguise where there was an innocuous reason—convenience—for using wife's name).

F. Using False Name:

— *United States v. Koller*, 956 F.2d 1408, (7th Cir. 1992), *reh'g, en banc*, den., 1992 U.S. App. LEXIS 7563 (1992) (where defendant, in making payment with drug proceeds, gave false first name and incorrect spelling of his last name, jury could infer that his purpose was to conceal or disguise his identity as the owner of the funds).

G. Falsifying Nature of the Transaction:

— *United States v. Hand*, 76 F.3d 393 (10th Cir. 1995) (misrepresenting transaction as an investment conceals true nature as a transfer of fraud proceeds to the defendant);

— *United States v. Garcia*, 37 F.3d 1359 (9th Cir. 1994) (defendant creates false loan documents purporting to show money was borrowed from third party).

H. Evidence that Supports Underlying Fraud SUA May Also Establish Intent to Conceal or Disguise:

— *United States v. Ismoila*, 100 F.3d 380 (5th Cir. 1996) (transfers between bank accounts were part of overall scheme to defraud credit card issuers in that proceeds generated by one phony business were deposited in the account of another business);

— *United States v. Marx*, 991 F.2d 1369 (8th Cir. 1993) (obtaining loan in third party's name, which constitutes fraud offense under section 656, also evidences intent to disguise the control of the proceeds in violation of section 1956(a)(1)(B)(i));

— *United States v. Alford*, 999 F.2d 818 (5th Cir. 1993) (sending proceeds of earlier stage in fraud scheme to bank acct in support of false invoices conceals or disguises proceeds of scheme).

I. Evidence that Supports Knowledge Element May Also Establish Knowledge of Intent to Conceal or Disguise:

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (merchant's knowledge of customer's intent to conceal or disguise drug proceeds, and his knowledge that the funds were illegally derived, established by the same circumstantial evidence).

J. Converting Proceeds to Goods and Services:

— *United States v. Heater*, 63 F.3d 311 (4th Cir. 1995) (use of large quantities of cash to buy vehicles and real property, using third party names and addresses, showed intent to conceal or disguise drug proceeds by purchasing merchandise); *United States v. Misher*, 99 F.3d 664 (5th Cir. 1996) (same; buying car with cash);

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (drug dealer who spent hundreds of thousands of dollars on expensive clothes with cooperation of merchant who recorded sales in false names intended to conceal or disguise drug money buy converting it to goods);

— *United States v. Jackson*, 935 F.2d 832 (7th Cir. 1991) (spending drug proceeds to pay rent and buy consumer goods was designed to conceal or disguise source of

money where defendant commingled proceeds with legitimate funds in church account and made expenditures by drawing checks on church account);

— *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992) (purchase of truck for brother to keep brother quiet about theft from grandmother conceals source of proceeds; "the statute is aimed broadly at transactions designed in whole or in part to conceal or disguise *in any manner* the nature, location, source, ownership or control of the proceeds of unlawful activity"); *United States v. Garcia-Emanuel*, 14 F.3d 1469 (10th Cir. 1994);

— *United States v. Sanders*, 929 F.2d 1466 (10th Cir. 1991) (buying a car in own name or daughter's name with drug proceeds is *not* violation of (a)(1)(B)(i)); *United States v. Lovett*, *supra* (same; statements creating false impression that purchase money came from siding business not sufficient to show purpose to conceal or disguise where car purchased openly in own name); *but see United States v. Fields*, 72 F.3d 1200 (5th Cir. 1996) (truck purchased in brother's name with drug proceeds indicates intent to conceal or disguise);

— *United States v. Garcia-Emanuel*, 14 F.3d 1469 (10th Cir. 1994) (simply buying horse and watch with drug proceeds and using drug proceeds to make mortgage payments *insufficient* to show intent to conceal or disguise); *United States v. Dobbs*, 63 F.3d 391 (5th Cir. 1995) (where SUA proceeds were deposited in wife's bank account and used for family expenses, there was *insufficient* evidence of intent to conceal or disguise);

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (buying car in third party's name and other circumstantial evidence indicate intent to conceal or disguise; limiting *Sanders* to situation where there is a familial relationship and other actions that serve to identify the true owner);

— *United States v. Long*, 977 F.2d 1264, 1270 (8th Cir. 1992) (purchase of cars with false credit application was intended to make drug money appear to be earned through legitimate employment);

— *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248 (E.D. Va. 1993) (purchase of car with check drawn on account into which extortion proceeds had previously been deposited).

K. Converting Proceeds to Cash:

— *United States v. Hairston*, 46 F.3d 361 (4th Cir. 1995) (where defendant, in order to give his operation the semblance of legitimacy, insists that extortion proceeds be paid by check to a charitable entity, cashing the check constitutes concealing and disguising the nature of the proceeds).

L. Investing Proceeds:

— *United States v. Saget*, 991 F.2d 702 (11th Cir. 1993) (investing drug proceeds in night club, claiming that funds are gambling winnings, establishes intent to conceal or disguise).

M. Commingling Funds:

— *United States v. Griffith*, 85 F.3d 284 (7th Cir. 1996) (commingling funds from legitimate and illegal businesses and funneling proceeds of illegal activities through legitimate financial channels shows intent to conceal);

— *United States v. Posters N Things Ltd.*, 969 F.2d 652, 661 (8th Cir. 1992) aff'd on other grounds, 114 S. Ct. 1747 (1994) (jury entitled to find intent to conceal or disguise where defendant commingled receipts from sale of drug paraphernalia with receipts from legitimate business in common account); *United States v. Termini*, 992 F.2d 879 (8th Cir. 1993) (same; gambling receipts);

— *United States v. Flynt*, 15 F.3d 1002 (11th Cir. 1994) (concealing extortion checks in wife's business account).

N. Simple Transportation or Transmission of Proceeds Does Not Satisfy Conceal or Disguise Requirement:

— *United States v. Herron*, 97 F.3d 234, 237 (8th Cir. 1996) (defendant's use of Western Union to transfer funds cannot by itself satisfy the concealment element of the offense);

— *United States v. Gonzalez-Rodriguez*, 966 F.2d 918, 926 (5th Cir. 1992) (drug courier arrested in airport carrying $8,000 in drug proceeds cannot be convicted under section 1956(a)(1)(B)(i) where courier did not try to hide money when confronted by agents);

— *United States v. Garcia-Emanuel*, 14 F.3d 1469 (10th Cir. 1994) (simple wire transfer of proceeds to Colombia evidences no intent to conceal or disguise absent expert testimony regarding practices of drug dealers);

— *United States v. Dimeck*, 24 F.3d 1239 (10th Cir. 1994) (covert nature of transportation of funds from one state to another not sufficient to imply intent to conceal or disguise, reversing 815 F. Supp. 1425 on this point).

O. Design to Conceal in Particular Transaction may be Imputed to Subsequent Transaction:

— *United States v. Willey*, 57 F.3d 1374 (5th Cir. 1995) (transaction between two third parties, that ostensibly concealed nothing, violated section 1956(a)(1)(B)(i) if it was part of a larger scheme to conceal defendant's connection to SUA proceeds).

P. Government Need Not Prove Intent was to Conceal or Disguise *Identity*; Concealing Nature or Source is Sufficient:

— *United States v. Wilson*, 77 F.3d 105 (5th Cir. 1996) (defendant did not conceal identity but gave false statement as to source of funds used to buy house and boat; distinguishing *Sanders*);

— *United States v. Manarite*, 44 F.3d 1407 (9th Cir. 1995) (defendant did not conceal his identity, but attempted to conceal fact that gambling chips had been skimmed from blackjack tables);

— *United States v. Starke*, 62 F.3d 1374 (11th Cir. 1995); *United States v. Sax*, 39 F.3d 1380, 1389 n.6 (7th Cir. 1994); *United States v. Lovett*, 964 F.2d 1029, 1034 (10th Cir.), cert. denied, 113 S. Ct. 169 (1992).

Q. Government Need Not Prove Defendant Knew Purpose was to Conceal or Disguise *SUA Proceeds*:

— *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992) (despite language in statute requiring proof that purpose was to conceal or disguise proceeds of *specified* unlawful activity, "government need only show knowledge that the funds represented 'the proceeds of *some form* of unlawful activity.'") reversing *United States v. Campbell*, 777 F. Supp. 1259 (W.D.N.C. 1991) on this point. *But see United States v. Long*, 977 F.2d 1264, 1270 (8th Cir. 1992) (assuming without deciding that government must prove knowledge of intent to conceal *drug* proceeds);

— *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (following *Campbell*; statute requires only that defendant knew his act was designed to conceal or disguise); *but see id.* (Becker, J., dissenting).

11. Intent to Evade Reporting Requirements

A. No Willfulness Requirement:

— *United States v. Santos*, 20 F.3d 280 (7th Cir. 1994) (defendant need not know that structuring is illegal; *Ratzlaf* inapplicable); *United States v. Nelson*, 66 F.3d 1036 (9th Cir. 1995) (same);

— *United States v. Palacios*, 1995 WL 328390 (5th Cir. 1995) (unpublished) (same).

B. Evidence Sufficient to Sustain Section 1956(a)(1)(B)(ii) Conviction:

— *United States v. Griffin*, 84 F.3d 912 (7th Cir. 1996) (converting $99,810 in drug proceeds to cashiers checks in amounts under $10,000 is a violation of subparagraph (B)(ii));

— *United States v. Walcott*, 61 F.3d 635 (8th Cir. 1995) (splitting Western Union wire transfers to same person, under different aliases, on consecutive days shows intent to evade);

— *United States v. Nelson*, 66 F.3d 1036 (9th Cir. 1995) (car dealer's suggestion that customer buy another car to trade in to avoid paying more than $10,000 cash for new car shows intent to evade Form 8300);

— *United States v. Gilliam*, 975 F.2d 1050 (4th Cir. 1992);

C. Purchase of Cashiers Checks to Evade Form 8300 Requirement is Violation of Section 1956(a)(1)(B)(ii):

— *United States v. Patino-Rojas*, 974 F.2d 94 (8th Cir. 1992) (defendant buys two cashiers checks in amounts under $10,000, evading CTR requirement, and uses checks to buy boat, evading Form 8300);

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (defendant buys car with $8,000 cash and five cashiers checks all purchased on same day).

12. Transportation Offenses Under Section 1956(a)(2)

A. Knowledge Requirements:

— *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (definition of "knowledge" in section 1956(c)(1) is applicable to section 1956(a)(2) offenses; defendant need not know what form of unlawful activity produced proceeds being laundered);

— Defendant had requisite knowledge if he *believed* sting money was proceeds of unlawful activity. *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (transaction occurred before 1990 amendment adding sting provision to section 1956(a)(2)).

B. Section 1956(a)(2)(A) Does Not Require Proof that Property was Proceeds of SUA:

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) (because (a)(2)(A) contains no proceeds requirement, there is no "merger" problem when the defendant wires money out of the United States to promote fraud against bank, and the wire transfer constitutes both the money laundering offense and the bank fraud);

— *United States v. Hamilton*, 931 F.2d 1046, 1052 (5th Cir. 1991) (dicta) (foreign drug cartel could violate (a)(2)(A) by sending proceeds of legitimate business into the United States for purpose of providing necessary capital for expansion of drug business in the United States).

C. Transports, Transmits or Transfers:

1. "Transportation" Included Wire Transfers of Funds Even Before 1988 Amendment.

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994); *United States v. Monroe*, 943 F.2d 1007 (9th Cir. 1991); *United States v. Stein*, 1994 WL 285020 (E.D. La. 1994).

2. Each Transfer is a Separate Offense; a Series of Transfers Does Not Constitute a Continuing Offense:

— *United States v. Kramer*, 73 F.3d 1067 (11th Cir. 1996) (to be convicted of an offense under (a)(2), defendant must be involved in a transfer that begins or ends in the United States; conviction reversed where jury found defendant had moved funds from Switzerland to Luxembourg but was not involved in earlier movement of the same funds from the United States to Switzerland).

3. Transfer May Occur in Multiple Steps:

— *United States v. Harris*, 79 F.3d 223 (2d Cir. 1996) (movement of funds from New York to Conneticut and then from Conneticut to Switzerland was all one transfer; that the intent to conceal or disguise applied only to the domestic portion of the transfer does not preclude conviction under section 1956(a)(2)(B)(i)).

D. Intent to Promote:

— *United States v. Lee*, 937 F.2d 1388, 1396-97 (9th Cir. 1991) (transfer of monetary instruments from U.S. to China promotes smuggling of fish in violation of section 545 and Lacey Act); *United States v. Monroe*, 943 F.2d 1007 (9th Cir. 1991) (wire transfer to Hong Kong to pay for marijuana shipment).

E. Conceal or Disguise:

— *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (circumstantial evidence that defendant knew purpose of transportation was to conceal or disguise included possession of undisclosed cash and lies told to the Customs officer);

— *United States v. Harris*, 805 F. Supp. 166, 175 n.1 (S.D.N.Y. 1992) (sending proceeds of section 1344 bank fraud abroad).

F. Conspiracy:

— *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (large amount of money wired to Colombia by defendant with limited income demonstrates defendant's participation in conspiracy to commit section 1956(a)(2) offense).

13. Sting Cases — 18 U.S.C. § 1956(a)(3)

A. Financial Transaction:

— *United States v. Dimeck*, 815 F. Supp. 1425 (D. Kan. 1993) (defendant may be convicted of sting offense even though government agent substituted plain paper in bag represented to contain currency), rev'd on other grounds 24 F.3d 1239 (10th Cir. 1994).

B. Intent to Promote:

— *United States v. Santos*, 20 F.3d 280 (7th Cir. 1994) (wiring money for undercover to supposed "drug runner").

C. Intent to Conceal or Disguise:

— *United States v. Phipps*, 81 F.3d 1056 (11th Cir. 1996) (structuring is a violation of section 1956(a)(3)(B); no discussion).

D. Representation:

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (there is sufficient evidence of representation if law enforcement officer makes defendant "aware of circumstances from which a reasonable person would infer that the property was drug proceeds"); *United States v. Castaneda-Cantu*, 20 F.3d 1325 (5th Cir. 1994); *United States v. Starke*, 62 F.3d 1374 (11th Cir. 1995);

— *United States v. McLamb*, 985 F.2d 1284 (4th Cir. 1993) (representation made to car dealer sufficient where "any person of ordinary intelligence would have recognized it");

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (statement that funds to be laundered came from sale of arms smuggled into the country was sufficient to represent that property was the proceeds of a violation of the Arms Export Control Act);

— *United States v. Arditti*, 955 F.2d 231 (5th Cir. 1992) (agent need not repeat representation with respect to each transaction); *United States v. Castaneda-Cantu*, 20 F.3d 1325 (5th Cir. 1994) (same);

— *United States v. Breque*, 964 F.2d 381 (5th Cir. 1992) (agent's ambiguous statements are sufficient if defendant's responses reveal understanding that the currency came from drug trafficking activity); *United States v. Nelson*, 66 F.3d 1036 (9th Cir. 1995) (same);

— *United States v. Jensen*, 69 F.3d 906 (8th Cir. 1995) (representation may be implied);

— *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992) (recorded conversation in which agent describes consequences from "Colombians" if money is lost sufficient to establish necessary representation; deliberate ignorance may satisfy knowledge requirement).

— Agent must describe the circumstances from which the proceeds were allegedly derived with sufficient detail to convey that all elements of the underlying offense were satisfied. *United States v. Manarite*, 44 F.3d 1407 (9th Cir. 1995) (representation that gambling chips were skimmed was sufficient to describes elements of state gambling offense of taking something of value from a game in progress).

E. Entrapment:

— *United States v. Spriggs*, ___ F.3d ___, 1996 WL 720115 (D.C. Cir. Dec. 17, 1996) (no entrapment where government persuaded jury that car salesmen were predisposed to sell cars to drug dealers);

— *United States v. Twersky*, 1994 WL 319367 at *6 n.2 (S.D.N.Y. 1994) (sting statute does not constitute entrapment *per se*);

— *United States v. Arditti*, 955 F.2d 231 (5th Cir. 1992) (predisposition may be established circumstantially by evidence of defendant's conduct after he is involved with the undercover agent; defendant quickly became "an eager and active participant" who, when opportunity was presented, "jumped in with both feet");

— *United States v. Hollingsworth*, 27 F.3d 1196 (7th Cir. 1994) (en banc) (government must not only prove defendant was willing to commit the crime, but also that he had the means to commit it and lacked only the opportunity; where government provides the means to commit money laundering to a person who otherwise was incapable of committing the offense notwithstanding his willingness, entrapment is a valid defense).

F. Outrageous Conduct:

— *United States v. Jensen*, 69 F.3d 906 (8th Cir. 1995) (pursuing sting case even after there is sufficient evidence to convict the defendant on other charges is not outrageous and does not violate due process; an agent does not violate the law when he makes false statements to the target of a sting);

— *United States v. Payne*, 962 F.2d 1228 (6th Cir. 1992) (undercover sting does not "shock the conscience"); *United States v. Foster*, 835 F. Supp. 360 (E.D. Mich. 1993) (same);

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (defendant may raise entrapment defense if he thinks sting statute was applied unfairly, but there is no basis for contention that section 1956(a)(3) does not apply to first offenders).

G. Buy/Bust Cases:

— *United States v. Calva*, 979 F.2d 119 (8th Cir. 1992) (ordinary buy/bust case may be converted into money laundering offense under section 1956(a)(3) if undercover agent represents purchase money as proceeds of earlier drug offense).

H. Belief:

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (in section 1956(a)(3)(B) case, government must prove that defendant believed agent's representation to be true); *United States v. Castaneda-Cantu*, 20 F.3d 1325 (5th Cir. 1994);

— *Castaneda-Cantu*, *supra* (defendant's inquiries about guns and drugs, and peculiar circumstances of the transactions (the same circumstances that evidence an intent to conceal or disguise), support jury's determination that defendant believed the representation);

— *United States v. Starke*, 62 F.3d 1374 (11th Cir. 1995) (defendant's behavior and interaction with agents supports jury's finding on the "belief" element);

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (jury's determination that defendant believed representation, when supported by circumstantial evidence, should be given great weight and not disturbed on appeal);

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (belief may not be shown by willful blindness; contrasting "belief" with "knowledge");

— *United States v. Palazzolo*, 1995 WL 764416 (6th Cir. 1995) (unpublished) (defendant must "believe" that property is proceeds of a specific SUA offense; it is not sufficient that he believe it is the proceeds of criminal activity generally);

— *United States v. Manarite*, 44 F.3d 1407, 1415 n.10 (9th Cir. 1995) (dicta) (belief not required in 1956(a)(3)(A) case);

— *See cases discussing jury instructions* at page 67.

I. Specific Intent:

— Defendant may be convicted of failing to file CTR under title 31 *and* laundering of sting money with intent to violate CTR requirement under section 1956(a)(3)(C). *United States v. Breque*, 964 F.2d 381 (5th Cir. 1992);

— *United States v. Santos*, 20 F.3d 280 (7th Cir. 1994) (there is no willfulness requirement in section 1956(a)(3); *Ratzlaf* distinguished).

J. Repeating the Representation to Each Co-Defendant:

— Legislative history suggests that the representation need not be repeated to each co-defendant who joins the scheme:

> "The defendant would not have to know or believe that the property involved in the financial transaction was drug money. It would be sufficient that a law enforcement officer had represented it as such. While this would mean that everyone involved in the financial transaction would be guilty of this offense whether he was aware of the law enforcement officer's representation or not, the strengthened specific intent requirement would guard against innocent persons being prosecuted." *Congressional Record* (daily ed.), Nov. 10, 1988 at S17366 (statement of Sen. Biden).

14. Section 1957

A. "Criminally Derived Property":

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) ("criminally derived property" means same thing as "proceeds" under section 1956).

B. $10,000 Requirement:

— *United States v. Adams*, 74 F.3d 1093 (11th Cir. 1996) (at least $10,000 of the property involved in the monetary transaction must be traceable to SUA proceeds);

— *United States v. Mills*, 1996 WL 634207 (S.D. Ga. 1996) (transaction must include at least $10,000 of dirty money (following *Adams*); government may not presume that transaction involves $10,000, even if more than $10,000 in dirty money was deposited into an account, if the ratio of clean to dirty money in the account is 800:1);

— *But see United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (in the context of a withdrawal, government not required to prove that no untainted funds were commingled with the unlawful proceeds for section 1957 purposes);

— *United States v. Sokolow*, 81 F.3d 397 (3rd Cir. 1996) (where $20,000 in dirty money was commingled, government was not required to trace to prove that all money involved in the transaction was dirty; following *Johnson*).

C. Interstate Commerce:

— *United States v. Aramony*, 88 F.3d 1369 (4th Cir. 1996) (reversing section 1957 conviction because jury instruction allowed jury to convict without finding that transaction actually affected interstate commerce).

D. Simply Spending Proceeds Violates Section 1957:

— *United States v. Kelley*, 929 F.2d 582, 585 (10th Cir. 1991) (defendant uses proceeds of fraudulently obtained loan to buy car); *United States v. Taylor*, 984 F.2d 298 (9th Cir. 1993) (defendant pleads guilty to spending proceeds of wire fraud);

— *United States v. Cole*, 988 F.2d 681 (7th Cir. 1993) (withdrawals from account containing proceeds of investment fraud scheme for personal expenses exceeding $10,000);

— *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248 (E.D. Va. 1993) (purchase of car with check drawn on account into which extortion proceeds had previously been deposited);

— *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (section 1957 offense is easier to prove than section 1956 because it lacks specific intent element);

— *United States v. Ferrouillet*, 1996 WL 684461 (E.D. La. 1996) (section 1957 is a money spending statute; distinguishing section 1956 cases where government failed to prove intent to conceal or disguise).

E. Wire Transfer of Proceeds:.

— *United States v. O'Brien*, 836 F. Supp. 438 (S.D. Ohio 1993) (transfer of proceeds of fraudulently obtained bank loan).

F. Deposit of Proceeds:

— *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992) (where fraud proceeds used as collateral for loan and loan proceeds issued in form of six checks, deposit of each check is a section 1957 violation);

— *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (if defendant had obtained fraud proceeds and deposited them in two-step transaction, second step would have been section 1957 violation);

— *United States v. Hollis*, 971 F.2d 1441 (10th Cir. 1992) (deposit of checks representing proceeds of insurance fraud scheme is section 1957 violation);

— *United States v. Lombardi*, 5 F.3d 568 (1st Cir. 1993) (imposition of separate punishment for simply depositing proceeds in receipt-and-deposit case reflects "deliberate policy choice by Congress").

G. Sale of Proceeds:

— *United States v. Griffith*, 17 F.3d 865 (6th Cir. 1994) (sale of inventory derived from mail/wire fraud offenses to third party is section 1957 violation).

H. Use of Proceeds to Continue Scheme:

— *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (sending portion of proceeds of fraud back to victims as false "profits" constitutes section 1957 violation);

— *United States v. Smith*, 44 F.3d 1259 (4th Cir. 1995) (wire transfer as second step in multi-step fraud scheme is section 1957 offense);

— *See "Merger Issue" cases* at page 21.

I. Knowledge Requirement:

— *United States v. Sokolow*, 81 F.3d 397 (3rd Cir. 1996) (defendant does not need to know that the monetary transaction constitutes a criminal offense; *Ratzlaff* distinguished);

— *United States v. Smith*, 44 F.3d 1259 (4th Cir. 1995) (knowledge that the property is criminally derived is all that is required; defendant need not know that the transaction was part of a larger scheme to conceal or disguise anything);

— *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992) (merchant doing business with drug dealer can be convicted under section 1957 if he/she knows of, or is willfully blind to, customer's source of funds); *United States v. Wynn*, 61 F.3d 921 (D.C. Cir. 1995) (same for merchant selling clothes to drug dealer);

— *See cases on constitutionality of knowledge requirement* at page 71.

15. Attempt

A. Sting Cases:

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (defendant who receives sting money and is arrested as he proceeds to count it is guilty of attempt);

— *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992) (where defendant arranges plan to launder money, accepts cash, and is on his way to deliver money when arrested, there is "substantial step" toward completion of section 1956(a)(3) offense);

— *United States v. Loehr*, 966 F.2d 201 (6th Cir. 1992) (where car salesman accepts cash, prepares paperwork in name of fictitious buyer, and says Form 8300 will not be filed, government has shown attempt to commit section 1956(a)(3) violation); *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (same, involving false Form 8300); *United States v. McLamb*, 985 F.2d 1284 (4th Cir. 1993) (same);

— *United States v. Dimeck*, 815 F. Supp. 1425 (D. Kan. 1993) (attempts are not limited to incomplete transactions; in sting case, defendant guilty of attempt if he had requisite intent and transaction he undertook would have constituted an offense but for substitution of plain paper for currency by undercover agent; impossibility not a defense), rev'd on other grounds 24 F.3d 1239 (10th Cir. 1994);

— *United States v. Knecht*, 55 F.3d 54 (2d Cir. 1995) (attempt to commit sting violation where defendant agrees to launder money, gives undercover agent a check, and is arrested when the agent is about to deliver the cash in return).

B. Insufficient Evidence:

— *United States v. Nelson*, 66 F.3d 1036 (9th Cir. 1995) (car dealer's suggestion of multiple ways of avoiding Form 8300 shows intent to violate section 1956(a)(3)(C), but did not go beyond mere preparation).

— Defendant has burden of proving withdrawal from conspiracy. *United States v. Payne*, 962 F.2d 1228 (6th Cir. 1992);

— Knowledge that funds are proceeds of unlawful activity is "the essential aspect of the conspiracy charge." *United States v. Awan*, 966 F.2d 1415 (11th Cir. 1992) (conspiracy conviction reversed where knowledge not proved);

— In conspiracy case, government need not prove that property involved in transaction was in fact SUA "proceeds." *United States v. Murphy*, No. 91-5416 (4th Cir. 1993) (unpublished), slip op. at 19 n.22.

B. Intent:

— *United States v. Trapilo*, 1996 WL 743837 (N.D.N.Y. 1996) (defendant must have specific intent to violate a substantive provision of 1956 or 1957);

C. *Pinkerton* Liability:

— Conviction of substantive money laundering offense may be predicated on *Pinkerton* liability. *United States v. Tokars*, 95 F.3d 1520 (11th Cir. 1996); *United States v. Gollott*, 939 F.2d 255, 257 n.2 (5th Cir. 1991) (BSA violations); *United States v. Awan*, 966 F.2d 1415 (11th Cir. 1992) (conspiracy not established, therefore conviction for substantive violation predicated on *Pinkerton* must be reversed);

— *United States v. Sax*, 39 F.3d 1380 (7th Cir. 1994) (defendant guilty of participating in a drug conspiracy is liable for money laundering acts that were part of the conspiracy);

— *United States v. Torres*, 53 F.3d 1129 (10th Cir. 1995) (person charged in drug conspiracy, but not conspiracy to money launder, *not* liable under *Pinkerton* for substantive money laundering offense).

D. Sufficiency of the Evidence:

— *United States v. Rockson*, 1996 WL 733945 (4th Cir. 1996) (unpublished) (section 1956(h) conspiracy requires proof that defendant knew money to be laundered was proceeds of some form of unlawful activity);

— *United States v. Nelson*, 66 F.3d 1036 (9th Cir. 1995) (even though car dealer's suggestion of ways to avoid Form 8300 were insufficient to show "substantial step"

— *cf. United States v. Kramer*, 73 F.3d 1067 (11th Cir. 1996) (when jury finds defendant not guilty of conducting transfer, it necessarily finds him not guilty of aiding and abetting transfer because an aider and abetter is guilty as a principal).

B. Evidence Sufficient to Show Defendant Intended to Aid Principals in Laundering Funds:

— *United States v. Santos*, 20 F.3d 280 (7th Cir. 1994) (person who allowed car to be titled in his name so that drug dealer would not have to show that he used drug proceeds to buy car is guilty of money laundering);

— *United States v. Williams*, 87 F.3d 249 (8th Cir. 1996) (person who opens bank account at defendant's request and has frequent communication with defendant at time defendant transfers SUA proceeds to the account is an aider and abetter);

— *But see United States v. Termini*, 992 F.2d 879 (8th Cir. 1993) (person who collects coins from video gambling machines not liable for subsequent commingling of gambling proceeds with other funds in violation of money laundering statute).

C. Aiding and Abetting Attempt:

— *United States v. Salazar*, 958 F.2d 1285, 1293 (5th Cir. 1992) (where drug dealer sends female associate with bundle of cash to wire transfer office with intent that she wire drug proceeds; associate enters business with bag containing cash and is arrested, drug dealer is guilty of aiding and abetting attempt to conduct financial transaction; and associate, having taken a substantial step toward completion of the transaction, is guilty of attempt).

17. Conspiracy

A. In General:

— Co-conspirators need not share same belief as to illegal source property being laundered. *United States v. Stavroulakis*, 952 F.2d 686 (2d Cir. 1992) (in case involving conspiracy to violate "sting" statute, 18 U.S.C. § 1956(a)(3), did not matter that agent told one conspirator that money was drug proceeds and another that money was gambling proceeds, as long as each conspirator was told it was SUA proceeds);

advice on how to conceal money laundering from grand jury was admissible as made in furtherance).

G. Jury Instructions:

— *United States v. Arditti*, 955 F.2d 231 (5th Cir. 1992) (willfulness is not an element of conspiracy to violate section 1956);

— *United States v. Winfield*, 997 F.2d 1076 (4th Cir. 1993) (even though section 371 count alleged conspiracy to violate sections 1956 and 5324, because court instructed only on CTR violation, conspiracy to violation section 1956 was not properly submitted to the jury).

H. Multiple Objects:

— *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (where indictment alleges conspiracy with multiple objects, jury need only find that defendant knowingly and intentionally committed acts furthering *any one* of them).

I. Conspiracy Charged Under Section 1956(h):

— Effective Oct. 28, 1992, conspiracies to violate sections 1956 and 1957 are charged as violations of section 1956(h). That section is modeled on 21 U.S.C. § 846, which does not require proof of an overt act. *United States v. Shabani*, 513 U.S. 10 (1994). But the case law regarding proof of an overt act under section 1956(h) is mixed.

J. Overt Act:

— *United States v. Pacella*, 1996 WL 288479 (E.D.N.Y. 1996) (under section 1956(h) there is no requirement of an overt act);

— *But see United States v. Hand*, 76 F.3d 393, 1995 WL 743841 (10th Cir. 1995) (Table Case) (dicta) (section 1956(h) requires proof of an overt act); *United States v. Olson*, 76 F.3d 393, 1995 WL 743845 (10th Cir. 1995) (Table Case) (same).

to convict for attempt, they were sufficient to show agreement and overt act for conspiracy);

— *United States v. Fierro*, 38 F.3d 761 (5th Cir. 1994) (finding evidences sufficient to establish conspiracy, but suggesting, in *dicta*, that the overt act committed by one conspirator must be a substantive money laundering offense);

— *United States v. Vargas*, 986 F.2d 35 (2d Cir. 1993) (three defendants who represent to undercover agent that they regularly convert small bills to large and send money out of the country, and express willingness to do so for drug dealer, convicted of conspiracy to violate section 1956(a)(1)(B)(i));

— *United States v. Isabel*, 945 F.2d 1193 (1st Cir. 1991) (drug dealer and money launderer convicted of conspiring with each other);

— *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (large quantities of cash in defendant's residence, positive dog sniffs, and drug packaging equipment among factors providing circumstantial evidence of defendant's link to money laundering conspiracy).

E. Sting Cases:

— *United States v. Breque*, 964 F.2d 381 (5th Cir. 1992) (two money launderers may be convicted of conspiring with each other to launder sting money for an undercover agent in violation of section 1956(a)(3)(C)); *United States v. Payne*, 962 F.2d 1228 (6th Cir. 1992); *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992);

— *United States v. Payne*, 962 F.2d 1228 (6th Cir. 1992) (once sting operation begins, new conspirators previously unknown to the government may be discovered; government agents not excessively involved in the conspiracy where agents provided the money but defendants devised the scheme to launder it).

— Under section 2, defendant may be convicted of causing undercover agent to launder money. *United States v. Levy*, 969 F.2d 136, 141 (5th Cir. 1992) (causing agent to violate Travel Act with intent to violate title 31).

F. Co-Conspirator Statements Admissible as Statements Made During and in Furtherance of Conspiracy:

— *United States v. Esacove*, 943 F.2d 3 (5th Cir. 1991) (statement describing past money laundering activity made to undercover agent for purpose of soliciting

3. Money Laundering and the SUA:

— *United States v. Holmes*, 44 F.3d 1150 (2d Cir. 1995) (not multiplicitous to charge both money laundering and underlying SUA in same indictment); *United States v. Rude*, 88 F.3d 1538 (9th Cir. 1996) (money laundering and wire fraud may be charged in separate counts); *United States v. Finn*, 919 F. Supp. 1305 (D. Minn. 1995); *United States v. Hilliard*, 818 F. Supp. 309 (D. Col. 1993);

— *United States v. Smith*, 46 F.3d 1223 (1st Cir. 1995) (not multiplicitous to charge section 1957 and SUA in same indictment);

— *United States v. Abuhouran*, 1996 WL 451368 (E.D. Pa. 1996) (not multiplicitous to charge bank fraud, ITSP and money laundering in separate counts, even though all three violations were based on the same conduct);

4. Sections 1956 and 1957:

— *United States v. Ferrouillet*, 1996 WL 684461 (E.D. La. 1996) (not multiplicitous to charge same offense as violation of sections 1956 and 1957 in separate counts because each statute requires proof of an element that the other does not);

— *United States v. Caruso*, ___ F. Supp. ___, 1996 WL 705223 (D.N.J. Nov. 17, 1996) (section 1956 and 1957 are separate offenses under *Blockburger*, so charging same conduct in separate counts is not multiplicitous).

5. Conspiracies:

— *United States v. Pacella*, 1996 WL 288479 (E.D.N.Y. 1996) (sections 371 and 1956(h) constitute separate offenses under *Blockburger*; not multiplicitous to charge both in the same indictment).

B. Bill of Particulars:

— *United States v. Parlavecchio*, 903 F. Supp. 788 (D.N.J. 1995) (defendant's request for bill of particulars regarding underlying SUA offense that generated proceeds laundered in each instance denied; schedule of check numbers, dates and amounts included in indictment is sufficient detail);

K. Straddle Conspiracy:

— *United States v. Tokars*, 95 F.3d 1520 (11th Cir. 1996) (rejecting, without discussion, argument that section 1956[h] applies only to conspiracies that begin after Oct. 28, 1992).

18. Form of Indictment

A. Multiplicity/Duplicity:

1. Alternative Mental States:

— *United States v. Holmes*, 44 F.3d 1150 (2d Cir. 1995) (it is multiplicitous to charge defendant in multiple counts with violations of different subsections of section 1956(a)(1) based on same financial transaction);

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (no error in charging intent to promote and intent to conceal or disguise in same count where jury instruction was worded conjunctively, requiring jury to find both intents to convict);

— *But see United States v. Brown*, 944 F.2d 1377 (7th Cir. 1991) (government should be cautious about alleging intent to promote and purpose to conceal or disguise in conjunctive in same count); *United States v. Winfield*, 997 F.2d 1076 (4th Cir. 1993) (no discussion, but multiple convictions based on same transaction affirmed);

— *See Schad v. Arizona*, 501 U.S. 624 (1991), *reh'g denied*, 112 S. Ct. 28 (1991) (in murder case, alternative mental states — premeditation and felony murder — may be alleged in the conjunctive in the same count); *Griffin v. United States*, 502 U.S. 46 (1991) (when multiple objects of conspiracy are alleged in the conjunctive, general guilty verdict will be sustained).

2. Separate Financial Transactions:

— *United States v. Martin*, *supra* page 3 (it is not multiplicitous to charge each transaction as a separate offense.

— *Combining multiple financial transactions into a single count* is duplicitous. *See* cases at page 4.

H. Alleging Interstate Commerce Element in the Indictment:

— *United States v. Green*, 964 F.2d 365 (5th Cir. 1992) (where indictment alleges that defendant conducted financial transaction involving a bank, the failure of the indictment to allege that the bank engaged in interstate commerce did not render the indictment defective, since the reference to the bank's involvement adequately appraised the defendant that the government was alleging an affect on interstate commerce);

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (assuming *arguendo* that interstate commerce element must be alleged in the indictment, allegation that property was the proceeds of illegal international arms sales gave adequate notice);

— *United States v. Kunzman*, 54 F.3d 1522 (10th Cir. 1995) (statement that defendant conducted financial transaction affecting interstate commerce is sufficient to allege interstate commerce nexus; no need to allege manner in which commerce was affected).

I. Alleging that Property is Proceeds of SUA:

— *United States v. Smith*, 44 F.3d 1259 (4th Cir. 1995) (because the SUA element is not the "core of the offense," it is not necessary to allege the details of the SUA in the indictment; it is sufficient to allege that the property was the proceeds of wire fraud in violation of section 1343);

— *United States v. Alford*, 999 F.2d 818 (5th Cir. 1993) (indictment alleging that defendant knew property was proceeds of mail fraud and knew that purpose of transaction was to conceal or disguise proceeds of SUA fairly alleged that property was in fact SUA proceeds where defendant did not object to form of indictment at trial);

— *United States v. Sierra-Garcia*, 760 F. Supp. 252, 258 (E.D.N.Y. 1991) (not necessary to plead SUA offenses in terms of discreet acts or indictable offenses; sufficient to allege money was proceeds of "narcotics distribution").

J. Alleging Aiding and Abetting:

— *United States v. Espy*, 1996 WL 607020 (E.D. La. 1996) (indictment need not specify whether defendant is charged as a principal or as an aider and abettor);

— *United States v. Finn*, 919 F. Supp. 1305 (D. Minn. 1995) (no bill of particulars needed where indictment gives date, amount and location of financial transaction).

C. Alleging the Elements of the SUA Being Promoted:

— *United States v. Bitzur*, 1996 WL 665621 (S.D.N.Y. 1996) (because the elements of the section 2314 offense being promoted are "ancillary to" and not the "core" of the criminality in a money laundering offense, it is sufficient to allege that the defendant intended to promote a violation of section 2314 without alleging the elements of that offense).

D. Alleging the Financial Transaction:

— *United States v. Flores*, 63 F.3d 1342 (5th Cir. 1995) (not necessary to describe financial transactions in the indictment; tracking the language of the statute is sufficient).

E. Alleging the Knowledge Element:

— *United States v. Carr*, 25 F.3d 1194, 1205 n.5 (3rd Cir. 1994) (indictment need not allege what form of unlawful activity defendant believed to be the source of the proceeds being laundered).

F. Alleging Willfulness:

— *United States v. Cancelliere*, 69 F.3d 1116 (11th Cir. 1995) (willfulness is not an element of the offense and need not be alleged in the indictment, but if the government does allege willfulness, and the defendant relies on that in putting on a defense, he is entitled to a willfulness instruction).

G. Alleging "Belief" in Sting Cases:

— *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (failure to allege that defendant charged with section 1956(a)(3)(B) violation believed property was the proceeds of SUA did not require reversal of conviction; but tracking statutory language is preferred).

20. Sentencing

A. Conspiracy and RICO:

— *United States v. Monem*, ___ F.3d ___, 1997 WL 9252 (7th Cir. Jan. 13, 1997) (defendant convicted of section 1956(h) conspiracy to violate section 1956(a)(1)(A) is subject to section 2S1.1(a)(1), the guideline provision for the substantive offense, not section 2S1.1(a)(2), the provision applicable to "other" subsections of section 1956);

— *United States v. Acanda*, 19 F.3d 616 (11th Cir. 1994) (same for section 371 conspiracy); *United States v. Restrepo*, 936 F.2d 661 (2d Cir. 1991) (same);

— *United States v. Castaneda*, 16 F.3d 1504 (9th Cir. 1994) (where defendant convicted of section 371 consspiracy to launder and to structure, court must determine which guidelines to apply);

— *United States v. Conley*, 92 F.3d 157 (3rd Cir. 1996) (where section 371 conspiracy consists of multiple objects and jury returns only a general verdict, court may determine, as part of the sentencing process, whether money laundering was one of the objects so that the sentence may be based on the offense level for money laundering);

— *United States v. Miller*, 22 F.3d 1075 (11th Cir. 1994) (where conspiracy consists of multiple objects, court may not base sentence on a given object unless it instructed jury as to all elements of that object);

— *United States v. Griffith*, 85 F.3d 284 (7th Cir. 1996) (RICO sentence was appropriately based on the money laundering guideline even though defendant's money laundering conviction was for section 371 conspiracy which carries maximum of five years).

B. Downward Departure Warranted:

— *United States v. Skinner*, 946 F.2d at 176, 179 (offense level for "intent to promote" offense was aimed at conduct promoting a new offense, not at conduct that simply concludes previous offense);

— *United States v. Caba*, 911 F. Supp. 680 (E.D.N.Y. 1996) (downward departure warranted because food stamp fraud is not a "heartland" offense for money laundering; following *Skinner*), aff'd 1996 WL 685764 (2d Cir. 1996) (some food

K. Conspiracy:

— *United States v. Conley*, 37 F.3d 970, 981 n.15 (3rd Cir. 1994) (section 371 conspiracy to commit money laundering need not allege every element of the substantive offense); *United States v. Wydermyer*, 51 F.3d 319 (2d Cir. 1995) (same);

— It is sufficient to allege that defendants "conspired to launder money in violation of section 1956(a)(3)(B)." *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992). *See United States v. Sierra-Garcia*, 760 F. Supp. 252, 258 (E.D.N.Y. 1991);

— *But see United States v. Akpi*, No. 92-5481 (4th Cir. 1993) (unpublished) (in section 1029 case, essential elements of the substantive offense, including affect on interstate commerce, must be alleged in conspiracy count and included in jury instructions).

L. Joinder and Severance:

— *United States v. Misher*, 99 F.3d 664 (5th Cir. 1996) (no error is denying severance of drug conspiracy count from substantive money laundering);

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (money laundering charges against X were properly joined with charges against Y where all transactions occurred within a short time period and involved common cast of characters; uncharged conduct is relevant to propriety of joinder);

— Refusal to grant severance motion affirmed. *United States v. Long*, 977 F.2d 1264, 1274 (8th Cir. 1992) (car dealers joined in same conspiracy but accused of selling different cars to different customers could be tried together);

— *United States v. Ferrera*, ___ F. Supp. ___, 1995 WL 355695 (N.D. Ill. Jun. 12, 1995) (denying severance to co-defendant not charged with money laundering, but charged with same SUA).

19. Guilty Plea

— *United States v. Young*, 45 F.3d 1405 (10th Cir. 1995) (court may reject plea if defendant admits only a suspicion, not knowledge, that the property was proceeds of illegal activity).

— *United States v. Willey*, 57 F.3d 1374 (5th Cir. 1995) (offense is not outside the heartland just because the money laundering was a relatively minor part of defendant's overall criminal conduct);

— *United States v. Jackson*, Civil No. 95-402-MA, Cr.No. 90-374-MA (D. Or. Nov. 1, 1995) (forfeiture in related civil case is not basis for downward departure);

— *See also United States v. Miller*, 78 F.3d 507 (11th Cir. 1996) (case remanded for district court to give explicit reasons for downward departure; ruling on whether the Sentencing Commission, in light of section 1957(f)(1), adequately considered role of the defense attorney in accepting fees from drug defendant reserved).

D. Grouping Money Laundering Counts with SUA:

— *United States v. Porter*, 909 F.2d 789 (9th Cir. 1990) (money laundering and underlying SUA offenses not so closely related that they must be combined under section 3D1.2); *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (same);

— *United States v. Kunzman*, 54 F.3d 1522 (10th Cir. 1995) (money laundering and securities fraud don't involve same victims under section 3D1.2(b));

— *United States v. Harper*, 972 F.2d 321 (11th Cir. 1992) (money laundering and drug offenses should not be grouped under section 3D1.2(d); money laundering and drug trafficking "are not crimes of the same general type'"); *United States v. Gallo*, 927 F.2d 815, 824 (5th Cir. 1991) (same); *see also United States v. Lopez*, ___ F.3d ___, 1997 WL 10255 (9th Cir. Jan. 14, 1997) (Fernandez, J., dissenting);

— *United States v. Taylor*, 984 F.2d 298 (9th Cir. 1993) (money laundering and underlying wire fraud offenses do not group under section 3D because harm is measured differently; therefore amount involved in dismissed wire fraud count is not relevant conduct for computing money laundering sentence);

— *United States v. Lombardi*, 5 F.3d 568 (1st Cir. 1993) (money laundering and underlying mail fraud offenses do not group under section 3D1.2(a) or (b) because they do not involve the same transaction and do not involve the same victim); *United States v. Smith*, 13 F.3d 1421, 1428-29 (10th Cir. 1994) (same for section 1957; that knowledge of mail fraud is specific offense characteristic section 1957 sentence is irrelevant);

— *But see United States v. Mullens*, 65 F.3d 1560 (11th Cir. 1995) (money laundering and underlying fraud properly grouped under 3D1.2(d)); *United States v. Adams*, 74 F.3d 1093 (11th Cir. 1996) (same); *United States v. Wilson*, 98 F.3d 281 (7th Cir. 1996) (same);

stamp fraud may be a heartland offense, but this case involved only a violation of a regulation);

— *United States v. Restrepo*, 936 F.2d 661 (2d Cir. 1991) (minor participants entitled to downward departure if role in offense adjustment inadequate to offset enhancement due to amount of money laundered);

— *United States v. Giles*, 768 F. Supp. 101 (S.D.N.Y. 1991) (in section 1956(a)(3) sting case, disturbing conduct of government informant entitles defendant to downward departure).

C. Downward Departure Rejected:

— *United States v. Morris*, 18 F.3d 562 (8th Cir. 1994) (court may not depart downward to offense level for underlying SUA); *United States v. Adams*, 74 F.3d 1093 (11th Cir. 1996) (same; "departure that completely negates the effect of [the] money laundering convictions is clearly erroneous");

— *United States v. Rose*, 20 F.3d 367 (9th Cir. 1994) (no error in refusing to depart down to offense level for SUA);

— *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) (appellate court will not review district court's determination that section 1956(a)(2)(A) offense was a "heartland" offense and that no downward departure was warranted);

— *United States v. Goff*, 20 F.3d 918 (8th Cir. 1994) (no downward departure for "relatively minor" offense if offense is not technical but is precisely the conduct the statute proscribes; distinguishing *Skinner*);

— *United States v. Hager*, 1995 WL 529647 (10th Cir. Sept. 8, 1995) (unpublished) (Congress requires that money laundering and the SUA be punished separately; court is required to use the money laundering guidelines, not the guideline for the SUA, where the offense level for money laundering is higher);

— *United States v. LeBlanc*, 24 F.3d 340 (1st Cir. 1994) (negotiation of checks representing proceeds of gambling is an offense separate from gambling falling in heartland of money laundering), *rev'g* 825 F. Supp. 422 (D. Mass. 1993) and *United States v. Weinstein*, 828 F. Supp. 3 (D. Mass. 1993);

— *United States v. Pierro*, 32 F.3d 611 (1st Cir. 1994) (laundering proceeds of ITSP offense with intent to promote underlying crime is "heartland" offense separate and distinct from the underlying crime for sentencing purposes);

— *United States v. Mullens*, 65 F.3d 1560 (11th Cir. 1995) (where money laundering and SUA offenses were properly grouped under 3D1.2(d), total amount involved in the USA may be used as the amount intended to be laundered);

— *United States v. Barrios*, 993 F.2d 1522 (11th Cir. 1993) (where SUA proceeds laundered by defendant earn interest during laundering process, total sum including interest is the proper measure for calculating the sentencing enhancement under section 2S1.1(b)(2);

— *United States v. Rose*, 20 F.3d 367 (9th Cir. 1994) (amount involved includes uncharged money laundering offenses; where defendant obtained $2 million in fraud proceeds, laundered all of it, but was charged only with laundering $275,000, all $2 million properly considered in computing offense level); *United States v. Kunzman*, 54 F.3d 1522 (10th Cir. 1995) (same); *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (same);

— *United States v. Sokolow*, 81 F.3d 397 (3rd Cir. 1996) (amount involved in the money laundering offense includes the amount derived from the entire fraud scheme, not just the amount charged in the money laundering counts);

— *United States v. Barton*, 32 F.3d 61 (4th Cir. 1994) (in sting case, amount involved is the amount the defendant believes to be involved, not the amount of "flash" money actually present);

— *United States v. Lowder*, 5 F.3d 467 (10th Cir. 1993) (sentence is based on total amount involved in laundering transaction, not net loss); *United States v. Thompson*, 40 F.3d 48 (3rd Cir. 1994) (same).

I. Amount of Money Attributable to Defendant:

— *United States v. Maggi*, 44 F.3d 478 (7th Cir. 1995) (in conspiracy case, amount attributable to defendant is amount co-conspirators intended to launder and which was reasonably foreseeable to the defendant);

— *United States v. Johnson*, 971 F.2d 562, 576 & n.10 (10th Cir. 1992) (if money laundering and SUA offenses do not group for section 3D1.2 purposes, money involved in SUA offense does not combine with money involved in money laundering offense for purpose of calculating offense level; but money involved in *uncharged* money laundering offenses may be included);

— *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992) (in sting case, sentencing enhancement may be based on what court concludes defendant was "reasonably capable" of laundering; enhancement applicable to amounts in excess of $2 million appropriate even though agents gave defendant only $97,000).

— *United States v. Lopez*, ___ F.3d ___, 1997 WL 10255 (9th Cir. Jan. 14, 1997) (money laundering and underlying drug offense must be grouped under 3D1.2(b) because they involve the same victim and same criminal objective).

E. Grouping Money Laundering Counts with Each Other:

— *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) (when defendant is convicted on count alleging multiple intents under (A)(i) and (B)(i), higher offense level for (A)(i) controls; when defendant is convicted of sections 1956 and 1957 counts, offenses are grouped and higher level applies).

F. Grouping Money Laundering Counts with Other Offenses:

— *United States v. Maggi*, 44 F.3d 478 (7th Cir. 1995) (money laundering properly grouped with obstruction of justice count because money laundering with intent to conceal or disguise embodies elements of obstruction).

G. Disparate Treatment of Co-Defendants:

— *United States v. Pierro*, 32 F.3d 611 (1st Cir. 1994) (fact that co-defendants who committed SUA but not the money laundering offense received lighter sentences is not a ground for downward departure).

H. Amount of Money Involved in Scheme:

— *United States v. Cole*, 988 F.2d 681 (7th Cir. 1993) (where there are multiple sections 1956 and 1957 convictions, amount involved in both sets of counts is aggregated, and guideline that produces higher offense level applies);

— *United States v. Tansley*, 986 F.2d 880 (5th Cir. 1993) (where money derived from a telemarketing scheme is put into a bank account with intent that it be laundered, but only a fraction is actually withdrawn, the larger amount that was intended to be laundered is used for sentencing purposes; "Funds under negotiation in a laundering transaction are properly considered in the calculation of a sentence.")

— *United States v. Leahy*, 82 F.3d 624 (5th Cir. 1996) (where defendant launders proceeds of fraud, amount for sentencing purposes is the gross proceeds of the fraud, not the net profit; following *Tansley*);

— *United States v. Castaneda-Cantu*, 20 F.3d 1325 (5th Cir. 1994) (where conduct straddles the 1991 guideline amendment, the new guideline applies as long as at least one offense of conviction occurred after the effective date);

— *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (there is no ex post facto problem when the "knew or believed" guideline is applied to a section 1956(a)(1) case because if the money truly was drug proceeds, the defendant's accurate belief equates with knowledge);

— *But see United States v. Breque*, 964 F.2d 381 (5th Cir. 1992) ("sting" defendant not subject to retroactive enhancement; one cannot "know" sting money is drug proceeds); *United States v. Barton*, 32 F.3d 61 (4th Cir. 1994) (same); *United States v. McLamb*, 1996 WL 79438 (4th Cir. 1996) (unpublished) (same, following *Barton*).

N. Special Skill/Position of Trust:

— *United States v. Sokolow*, 81 F.3d 397 (3rd Cir. 1996) (CEO and president of insurance company abused position of trust when he committed money laundering offense);

— *United States v. Connell*, 960 F.2d 191, 198 (1st Cir. 1992) (stockbroker convicted of structuring offense subject to sentencing enhancement for abuse of special skill);

— *United States v. Morris*, 18 F.3d 562 (8th Cir. 1994) (chief financial officer of bank is in position of trust).

O. Role in the Offense:

— *United States v. Spriggs*, ___ F.3d ___, 1996 WL 720115 (D.C. Cir. Dec. 17, 1996) (general manager of car dealership who arranged cash sales of cars in sting case was "manager or supervisor" for purposes of sentencing enhancement under section 3B1.1(b));

— *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (no role in the offense enhancement where defendant acted alone in committing the money laundering offense, even if he supervised others in committing the underlying SUA);

— *United States v. Morris*, 18 F.3d 562 (8th Cir. 1994) (person who directs subordinate bank employees to conduct transactions to conceal fraudulent activities should receive two-level increase);

J. Sentencing Manipulation/Entrapment:

— *United States v. Connell*, 960 F.2d 191, 194 (1st Cir. 1992) (agent in section 5324 sting case, who gratuitously told defendant that money being structured was drug money, did not improperly manipulate defendant into sentencing enhancement; defendant had ample opportunity to consider the new information and bow out of the scheme)

— *United States v. Knecht*, 55 F.3d 54 (2d Cir. 1995) (no sentencing entrapment where government agent says sting money is drug proceeds and sentencing enhancement results).

K. Consecutive Sentences:

— *United States v. Maggi*, 44 F.3d 478 (7th Cir. 1995) (where guideline sentence for money laundering conspiracy exceeds the statutory maximum, sentences for money laundering and other offenses in indictment may be made consecutive under 5G1.2(d)).

L. Effect of Guideline Amendments Generally:

— *United States v. Connell*, 960 F.2d 191, 196, (1st Cir. 1992) (where guideline has been amended to provide for lower sentencing enhancement, defendant entitled to be resentenced by sentencing court; 2S1.3(b)(1));

— *United States v. Vasquez*, 53 F.3d 1216 (11th Cir. Jun. 7, 1995) (remanding to district court to determine whether to apply guideline amendment retroactively);

M. Retroactive Application of Three-Level Enhancement:

✍ ***Note:*** In 1991, section 2S1.1(b)(1) was amended to apply the three-level enhancement to sting cases if the defendant "knew *or believed*" the property was drug proceeds.

— *United States v. Perez*, 992 F.2d 295 (5th Cir. 1993) (in pre-1991 amendment case, "sting" defendant is subject to the three-level enhancement under section 2S1.1(b)(1) for "knowing" money is drug proceeds; no distinction between "knowing" and "believing");

— *United States v. Payne*, 962 F.2d 1228 (6th Cir. 1992) (1991 amendment applied retroactively to 1989 offense so that enhancement applies); *United States v. Loehr*, 966 F.2d 201 (6th Cir. 1992) (three-level enhancement applied to pre-amendment conduct);

enhancement of section 1957 sentence for knowing that property was proceeds of mail fraud);

— *United States v. Lombardi*, 5 F.3d 568 (1st Cir. 1993) (two-level enhancement is virtually automatic where defendant committed the underlying SUA because he obviously knows the property is the proceeds of SUA; two-level enhancement *does not* require grouping of section 1957 offense with underlying offense under section 3D1.2(c) because knowledge of source of funds is not the same as committing the underlying act);

— *United States v. Hare*, 49 F.3d 447 (8th Cir. 1995) (since knowledge that property is SUA proceeds is *not* an element of a section 1957 offense, two-level enhancement when defendant has such knowledge is not double counting).

T. Restitution:

— *United States v. Neal*, 36 F.3d 1190 (1st Cir. 1994) (defendant could not be ordered to pay restitution for losses resulting from entire scheme because, notwithstanding 1990 amendment to VWPA, money laundering is not an offense that involves a scheme, conspiracy or pattern as an element);

— *United States v. Snider*, 957 F.2d 703, 707 (D.C. Cir. 1992) (no restitution in structuring case where offense committed before 1990 VWPA amendment).

U. Fines:

— *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (court need not waive minimum fine if it determines defendant has *future* ability to pay).

21. Double Jeopardy

- Multiple Punishments:

— *United States v. Edgmon*, 952 F.2d 1206 (10th Cir. 1991) (separate punishment for SUA and money laundering analogous to separate punishment for CCE offense and underlying drug predicate), *cert. denied*, 112 S. Ct. 3037 (1992);

— *United States v. Lovett*, 964 F.2d 1029, 1041-43 (10th Cir. 1992) (no double jeopardy violation where defendant punished separately for section 1957 violation

— *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (no reduction for minor or minimal role for money courier where particular transaction might not have taken place but for defendant's participation);

P. Relevant Conduct:

— *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (relevant conduct for sentencing enhancements limited to the money laundering offense of conviction; court may not consider defendant's role in other aspects of the scheme);

Q. Application of "Drug" Enhancement:

— *United States v. Long*, 977 F.2d 1264, 1277 (8th Cir. 1992) (three-point enhancement under section 2S1.1(b) for defendant who knew money was drug proceeds is not improper double counting);

— *United States v. Carr*, 25 F.3d 1194 (3rd Cir. 1994) (three-level enhancement based on circumstantial evidence of defendant's knowledge)

— *United States v. Berrio*, 77 F.3d 206 (7th Cir. 1996) (rejecting argument that three-level enhancement based on defendant's "belief" applies only to sting cases; enhancement may be applied in (a)(1) cases if court finds defendant believed property was drug proceeds);

R. Application of Obstruction of Justice Enhancement:

— *United States v. Nesbitt*, 90 F.3d 164 (6th Cir. 1996) (impeding civil forfeiture of car may be considered obstruction of the underlying money laundering investigation for purposes of the sentencing enhancement);

— *United States v. Maggi*, 44 F.3d 478 (7th Cir. 1995) (two-point enhancement for obstruction does not involve double counting even though defendant also convicted of obstruction, because obstruction and money laundering counts were grouped under 3D1.2(c), and therefore obstruction, which had lower offense level, did not contribute to the sentence).

S. Application of Two-Level Enhancement in Section 1957 Cases:

— *United States v. Lowder*, 5 F.3d 467 (10th Cir. 1993) (no double counting violation when defendant is both convicted of mail fraud and subjected to two-level

original indictment that was basis for extradition where additional counts allege violations of same statute committed in same manner as part of same scheme as counts in original indictment);

— *United States v. Saccoccia*, 58 F.3d 754 (1st Cir. 1995) (evidence of CTR offenses may be admitted to prove money laundering even if defendant was extradited only on the money laundering, and not on the CTR, offenses);

— *United States v. Jurado-Rodriguez*, 907 F. Supp. 568 (E.D.N.Y. 1995) (government may not prosecute defendant for money laundering offense for which he has already been prosecuted under foreign law where extradition treaty precludes second prosecution based on same material facts).

24. Extraterritorial Jurisdiction

— *United States v. Stein*, 1994 WL 285020 (E.D. La. 1994) (United States has jurisdiction over foreign persons who remain abroad but order initiation of wire transfer from the United States).

25. Jury Instructions

A. Willfulness:

— *United States v. Brown*, 31 F.3d 484, 490 n.3 (7th Cir. 1994) (willfulness is not an element of a section 1956 offense, government not required to prove defendants knew that their conduct was illegal; *Ratzlaf* distinguished); *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (same);

— *United States v. Arditti*, 955 F.2d 231 (5th Cir. 1992) (willfulness not an element of conspiracy to violate section 1956, and specific intent instruction not required for substantive violation of section 1956(a)(3) as long as court tracks language of (a)(3)(A) and (B) regarding intent to promote and to conceal or disguise).

B. Knowledge:

— Defendant must know that the underlying SUA is unlawful. *United States v. Stein*, 37 F.3d 1407 (9th Cir. 1994) (conviction reversed because instruction regarding knowledge that SUA was unlawful was negated by instruction, with respect to

and underlying SUA); *United States v. Hollis*, 971 F.2d 1441 (10th Cir. 1992) (same; deposit of checks did not constitute any element of underlying SUA offense); *United States v. Farr*, 1995 WL 638249 (9th Cir. 1995) (unpublished) (defendant may be convicted of bank fraud and money laundering is same indictment);

— *United States v. Jackson*, 983 F.2d 757, 769 (7th Cir. 1993) (no double jeopardy problem where defendant receives consecutive sentences for structuring and for violation of section 1956(a)(1)(B)(i) and (ii) for buying car with structured checks);

— *United States v. Brown*, 31 F.3d 484, 496 n.20 (7th Cir. 1994) (separate prosecutions for money laundering and SUA do not violate double jeopardy even though *Blockburger* test not satisfied because Congress clearly contemplated different types of offense conduct in enacting the two provisions);

— *United States v. Conley*, 37 F.3d 970, 975 n.15 (3rd Cir. 1994) (money laundering and SUA are not the same offense under *Blockburger*).

- Subsequent Prosecution:

— *United States v. Saccoccia*, 18 F.3d 795 (9th Cir. 1994) (no double jeopardy violation where defendant is convicted of overarching money laundering conspiracy and subsequently tried for substantive offenses; no double jeopardy violation where defendant is convicted of money laundering acts occurring at one time and place and subsequently prosecuted for other money laundering acts occurring at another time and place even though all acts were part of the same scheme).

22. Ex Post Facto

— *United States v. Moore*, 27 F.3d 969 (4th Cir. 1994) (no *ex post facto* violation where defendant prosecuted under 1957 for conducting a transaction involving proceeds of SUA offense that occurred before 1986, as long as 1957 monetary transaction occurred after effective date of the statute).

23. Extradition

— *United States v. Andonian*, 29 F.3d 1432 (9th Cir. 1994) (defendant may be tried on superseding indictment containing money laundering offenses not contained in

F. Sting Cases:

— *United States v. Starke*, 62 F.3d 1374 (11th Cir. 1995) (jury instruction on the "belief" element of section 1956(a)(3)(B) should include a reference to the SUA).

G. *Pinkerton* Instruction:

— *United States v. Sax*, 39 F.3d 1380 (7th Cir. 1994) (government may get *Pinkerton* instruction relating to liability for money laundering offenses where indictment alleges money laundering acts as overt acts of a drug conspiracy).

H. Other Issues:

— *United States v. Alford*, 999 F.2d 818 (5th Cir. 1993) (unanimity instruction not required where section 1956 offense is charged with multiple intents in the alternative if defendant does not request such instruction);

— Variance from language in the indictment was harmless error. *United States v. Restivo*, 8 F.3d 274 (5th Cir. 1993) (where indictment alleged intent to promote SUA of bank fraud, court's failure to limit definition of SUA to bank fraud was not a constructive amendment to the indictment);

— *United States v. Marbella*, 73 F.3d 1508 (9th Cir. 1996) (where government alleges intent to promote and intent to conceal or disguise in the same count, proof of either is sufficient because the statute is worded in the disjunctive).

26. Venue

A. Venue is Proper in the District where the SUA Occurred:

— *United States v. Beddow*, 957 F.2d 1330 (6th Cir. 1992), *reh'g, en banc*, den., 1992 U.S. App. LEXIS 5051 (1992) (because SUA is an essential element of money laundering, venue is proper in district where SUA occurred, even if all other events occurred elsewhere);

— *United States v. Heaps*, 39 F.3d 479 (4th Cir. 1994); *United States v. Sax*, 39 F.3d 1380 (7th Cir. 1994);

substantive mail fraud count, that defendant need not know conduct constituting mail fraud was unlawful);

— *United States v. Pettigrew*, 77 F.3d 1500 (5th Cir. 1996) (section 1957 conviction reversed because instruction did not make it clear that "knowingly" applied not only to "engaged in a money transaction" but also to the requirement that the transaction involved criminally derived property).

C. Elements of the Money Laundering Offense:

— *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992) (failure to define "monetary transaction" in section 1957 case not plain error where there was overwhelming evidence that defendant's conduct was a monetary transaction).

— *United States v. Bell*, No. 92-5656 (4th Cir. Aug. 16, 1993) (unpublished) (court's giving instructions that included elements of subsections of section 1956 not charged is not error absent showing that irrelevant instructions caused prejudice);

— *United States v. Rockson*, 1996 WL 733945 (4th Cir. 1996) (unpublished) (court should instruct jury that it must find that money transmitter was a "financial institution"; it may not take the issue away from the jury by telling them the transmitter is in fact a financial institution, even if it is obvious);

— *United States v. Aramony*, 88 F.3d 1369 (4th Cir. 1996) (section 1957 conviction reversed because instruction did not require jury to find that the monetary transaction affected interstate commerce).

D. Interstate Commerce:

— *United States v. Spriggs*, ___ F.3d ___, 1996 WL 720115 (D.C. Cir. Dec. 17, 1996) (dicta) (Supreme Court decision in *United States v. Gaudin*, 115 S. Ct. 2310 (1995), suggests that interstate commerce element may be jury question; in the future, a court should not take the issue away from the jury by instructing them that purchase of automobile from dealer affects interstate commerce).

E. Elements of the SUA Offense:

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (where defendant is only a money launderer, and did not commit the SUA, court need not instruct the jury on the elements of the SUA offense; it is sufficient in drug cases to tell the jury that the manufacture, importation and distribution of drugs is an SUA offense).

F. Manufactured Venue:

— *United States v. Spriggs*, ___ F.3d ___, 1996 WL 720115 (D.C. Cir. Dec. 17, 1996) (government did not improperly manufacture venue in D.C. when undercover agent in sting case asked Maryland car dealer to pick up "drug proceeds" in D.C.).

27. Constitutionality

A. Knowledge Requirement Not Unconstitutionally Vague or Overbroad:

— *United States v. Long*, 977 F.2d 1264, 1274 (8th Cir. 1992); *United States v. Antzoulatos*, 962 F.2d 720, 727 (7th Cir. 1992); *United States v. Gleave*, 786 F. Supp. 258, 267-70 (W.D.N.Y. 1992);

— *United States v. Finn*, 919 F. Supp. 1305 (D. Minn. 1995) (knowledge requirement in section 1957 is not vague).

B. Section 1956(a)(1), (2) and (3) Not Unconstitutionally Vague; Proof of Scienter Plainly Required:

— *United States v. Cavalier*, 17 F.3d 90, 93 n.5 (5th Cir. 1994); *United States v. Awan*, 966 F.2d 1415 (11th Cir. 1992); *United States v. Sierra-Garcia*, 760 F. Supp. 252, 259 (E.D.N.Y. 1991); *United States v. Ortiz*, 738 F. Supp. 1394, 1401 (S.D. Fla. 1990). *See "Sting" cases infra* at page 4.

C. Section 1956(a)(1)(B)(i) and (ii) Not Unconstitutionally Vague Because Government has to Prove Specific Intent to Conceal or Disguise or to Evade Reporting Requirements:

— *United States v. Gilliam*, 975 F.2d 1050 (4th Cir. 1992) (defendant is perpetrator of underlying offense);

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (noting presence of knowledge and intent elements).

D. Section 1956 Does Not Violate Substantive Due Process Right To Do Business with Whomever One Pleases:

— *United States v. Antzoulatos*, 962 F.2d 720, 725 (7th Cir. 1992) (car dealer convicted of selling cars to drug dealers);

— *United States v. Abuhouran*, 1996 WL 451368 (E.D. Pa. 1996) (venue is proper where SUA occurred because that is where defendant obtained the money involved in the money laundering transaction);

— *But see United States v. Knight*, 822 F. Supp. 1071 (S.D.N.Y. 1993) (where section 1957 offense occurs entirely in W.D. Mo., venue is proper only in that district, not in S.D.N.Y. where SUA occurred);

— *United States v. Coleman*, 940 F. Supp. 15 (D.D.C. 1996) (venue is proper where any part of the money laundering scheme occurred, including the district where the scheme was "conceived and commenced").

B. Venue is Proper in the District where the Financial Transaction Occurred:

— *United States v. Golb*, 69 F.3d 1417 (9th Cir. 1995) (because the financial transaction includes "initiating, concluding, and participating in initiating or concluding" a transaction, venue was proper in district in which defendant travelled or made phone calls to arrange financial transaction);

— *United States v. Gilliam*, 975 F.2d 1050 (4th Cir. 1992) (purchase of land in Virginia puts venue in that state even though SUA occurred in Oregon and proceeds were put in bank in Tennessee).

C. Compound Transactions:

— *cf. United States v. Kramer*, 73 F.3d 1067 (11th Cir. 1996) (where defendant transferred funds between two foreign countries, government could not establish that transfer occurred in part in the U.S. by showing that funds originated in the U.S. because each transfer is a separate offense).

D. Reporting Violations:

— *United States v. Clines*, 958 F.2d 578, 582 (4th Cir. 1992), *cert. denied*, 1992 U.S. LEXIS 3754 (U.S. 1992) (venue for failure to file FBAR is in *any* district, since form says report may be filed with any local IRS office).

E. Burden of Proof:

— *United States v. Sax*, 39 F.3d 1380 (7th Cir. 1994) (venue is not an essential element; government required to establish venue by preponderance of the evidence).

28. Department of Justice Guidelines

- Guidelines in the *U.S. Attorneys Manual* convey no substantive rights on defendants:

  — *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir. 1994) ("blue sheet" requiring consultation on cases containing "merger" issue does not preclude prosecution).

29. Authority to Investigate

- Section 1957(e), authorizing investigations by Department of Justice, Department of the Treasury, and U.S. Postal Service, does not limit grand jury's right to return an indictment based on investigation conducted by another agency:

  — *United States v. Finn*, 919 F. Supp. 1305 (D. Minn. 1995) (investigation by the Department of Interior).

30. Admissibility of Evidence

A. Other Transactions:

  — *United States v. Dillman*, 15 F.3d 384 (5th Cir. 1994) (evidence of transactions other than those charged as money laundering offenses admissible to allow jury to see the entire scheme and its results).

B. Bank Records:

  — *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (records of wire transfers into customers' accounts admitted through customers' testimonies; not necessary to call bank records custodian to authenticate records);

  — *United States v. Gonzalez*, 90 F.3d 1363 (8th Cir. 1996) (information provided by customer on money transfer application admissible as admission of party opponent if applications were linked to defendant or co-conspirators);

— *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (car dealer convicted under section 1956(a)(3) of attempting to sell car to undercover agents).

E. Section 1956(a)(3) Not Unconstitutional:

— *United States v. Jensen*, 69 F.3d 906 (8th Cir. 1995) ("fact that a crime can only be committed with the cooperation of a government actor is not constitutionally damning;" following *McLamb*);

— *United States v. McLamb*, 985 F.2d 1284 (4th Cir. 1993) (no vagueness violation; Congress' attempt to define "represented," while inartfully phrased, is meant merely to identify the persons authorized to make the representation);

— *United States v. McLamb*, 985 F.2d 1284 (4th Cir. 1993) (no due process violation; criminalization of car dealer's conduct has rational basis and legitimate law enforcement purpose of "eliminating money laundering activity by making it easier to ferret out");

— *United States v. Loehr*, 966 F.2d 201 (6th Cir. 1992) (because of specific intent requirement, sting statute not unconstitutionally vague as applied to someone not actively engaged in money laundering or drug dealing before the initiation of the sting operation); *United States v. Kaufmann*, 985 F.2d 884 (7th Cir. 1993) (same);

— *United States v. Twersky*, 1994 WL 319367 (S.D.N.Y. 1994) (no equal protection violation).

F. Section 1957 Not Unconstitutionally Vague:

— *United States v. Baker*, 19 F.3d 605 (11th Cir. 1994) (defendant convicted of depositing funds derived from own fraud activity).

G. Phrase "Involves the Proceeds of" Not Unconstitutionally Vague:

— *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) ("involves" plainly means something less than "all");

— *United States v. Haun*, 90 F.3d 1096 (6th Cir. 1996) ("proceeds" has a commonly understood meaning; it includes "what is produced or derived from something by way of total revenue").

— *United States v. Fuller*, 974 F.2d 1474 (5th Cir. 1992) (agent can explain meaning and significance of terms used in recorded conversation relating to money laundering).

E. Dog Sniff:

— *United States v. Oreira*, 29 F.3d 185 (5th Cir. 1994) (dog sniff not admissible to show *knowledge* that money was SUA proceeds, distinguishing cases where dog sniff admitted to show money was proceeds).

— *United States v. Cestnik*, 36 F.3d 904 (10th Cir. 1994) (information provided by customer to money transmitter is hearsay not admissible under business record exception unless business verified the information);

— *id.* (customer-supplied information, *i.e.* name of sender, was non-hearsay where it was admitted not to establish the truth of the information, but to show that the defendant had sent the money using aliases).

C. Expert Testimony:

— *United States v. Barber*, 80 F.3d 964 (4th Cir. 1996) (en banc) (IRS agent testifies how depositing cash and then withdrawing cash serves to conceal or disguise drug money);

— *United States v. Saccoccia*, 58 F.3d 754 (1st Cir. 1995) (expert testimony established how typical Colombian drug cartel launders money);

— *United States v. Posters N Things Ltd.*, 969 F.2d 652, 661 n.6 (8th Cir. 1992) (expert witness allowed to testify that transaction affected interstate commerce, that bank was a financial institution, and that acts constituted "concealment" under section 1956(a)(1)(B)(i)), aff'd 114 S. Ct. 1747 (1994);

— *United States v. Oreira*, 29 F.3d 185 (5th Cir. 1994) (expert permitted to testify as to how a "giro house" operates);

— *United States v. Willey*, 57 F.3d 1374 (5th Cir. 1995) (expert can testify that effect of transaction was to conceal, but he cannot testify that defendant's intent was to conceal);

— *United States v. Gonzalez*, 90 F.3d 1363 (8th Cir. 1996) (expert testifies as to how use of Western Union to transmit money is fits in with money laundering scheme);

— *United States v. Spriggs*, ___ F.3d ___, 1996 WL 720115 (D.C. Cir. Dec. 17, 1996) (in sting case, expert permitted to testify regarding conduct of drug business to aid jury in understanding jargon used on audio tapes).

D. Agent's Testimony:

— *United States v. Awan*, 966 F.2d 1415 (11th Cir. 1992) (agent allowed to explain ambiguous references made by defendant in undercover recorded conversation where agent was present during conversation and explanation is necessary to make intricacies of money laundering scheme understandable to jury);

Part II— Money Laundering Forfeiture

18 U.S.C. §§ 981-82

Case Outline

by Stefan D. Cassella, Assistant Chief
Asset Forfeiture and Money Laundering Section

1. Scope of Money Laundering Forfeiture

A. Proof of a Substantive Offense:

- There can be no money laundering forfeiture without proof that the underlying money laundering offense occurred.

  — *United States v. Aramony*, 88 F.3d 1369 (4th Cir. 1996) (when substantive money laundering convictions are vacated, forfeitures related to those counts must be vacated as well);

  — *United States v. Ramming*, 915 F. Supp. 854 (S.D. Tex. 1996) (same where defendant's motion for judgment of acquittal on underlying fraud offense is granted for lack of evidence);

B. Property "Involved In" a Money Laundering Offense:

1. CTR/CMIR Cases:

- Structured funds are "involved in" the offense:

  — *United States v. Real Property 874 Gartel Drive*, 79 F.3d 918 (9th Cir. 1996) (forfeiture of real property purchased with ten cashiers checks in amounts under $10,000);

  — *United States v. 5709 Hillingdon Road*, 919 F. Supp. 863 (W.D.N.C. 1996) (forfeiture of property traceable to 33 structured deposits);

United States v. Sellers, 848 F. Supp. 73, 75 (E.D. La. 1994) (same);

— *But see United States v. Voight*, 89 F.3d 1050 (3rd Cir. 1996) (rationale for applying the "preponderance" standard to money laundering forfeitures and not the "reasonable doubt" standard that applies to RICO is that RICO forfeitures can apply to wide range of property while money laundering forfeitures are limited to the amount of the transaction identified in the indictment) (dicta).

C. Theories of Forfeiture:

1. The Proceeds of the SUA Offense:

— *United States v. Saccoccia*, 823 F. Supp. 994 (D.R.I. 1993) (sum equal to the SUA proceeds laundered, or the amount involved in CTR violations, is forfeitable under section 982), aff'd 58 F.3d 754 (1st Cir. 1995); *United States v. Sellers*, 848 F. Supp. 73 (E.D. La. 1994);

— *United States v. Voight*, 89 F.3d 1050, 1084-85 (3rd Cir. 1996) (cash that defendant receives in money laundering transaction is forfeitable);

— *United States v. $814,254.76* in U.S. Currency, 51 F.3d 207 (9th Cir. 1995) (bank that permits its employees to launder drug money through its accounts risks forfeiture from those accounts of sum equal to amount of money laundered).

2. Commingled Money:

— *See* cases in sections 1956 and 1957 outline holding that a financial transaction constitutes a money laundering offense even if only a portion of the money is SUA proceeds;

— *See e.g. United States v. Rodriguez*, 53 F.3d 1439 (7th Cir. 1995) (purchase of house involved SUA proceeds even though only $1,000 of $17,000 payment was drug money);

— *See generally United States v. One Single Family Residence Located at 15603 85th Ave.*, 933 F.2d 976 (11th Cir. 1991) (once property owner knowingly commingles legitimate property with tainted property, he loses all right to assert that a portion of the property subject to forfeiture had a legitimate source).

— *United States v. 1988 Oldsmobile Cutlass Supreme*, 983 F.2d 670 (5th Cir. 1993) (cars purchased with cashiers checks acquired in structured transaction forfeited); *United States v. Rogers*, (N.D.N.Y. 1996) (same);

✍ ***Note:*** This and all other money laundering forfeitures are subject to the Excessive Fines Clause. *See* page 16, *infra.*

— *See also CMIR Forfeitures under section 5317* at page 9, *infra.*

2. 1956/1957 Cases:

- Before 1988, sections 981-82 provided only for the forfeiture of "gross receipts" which meant the commission paid to the launderer.

  — *But see United States v. Sokolow*, 91 F.3d 396 (3rd Cir. 1996) ("gross receipts" included proceeds of underlying SUA being laundered, notwithstanding legislative history stating that it was limited to the commissions paid to the money launderer).

- The legislative history of the 1988 amendment expanding sections 981 and 982 to all "property involved" says the term includes the actual money laundered, commissions or fees paid to the launderer, and property used to facilitate the laundering offense.

  — *United States v. All Monies*, 754 F. Supp. 1467, 1473 (D. Haw. 1991); *United States v. Certain Accounts*, 795 F. Supp. 391, 396 (S.D. Fla. 1992); *United States v. All of the Inventories of the Businesses Known as Khalife Brothers Jewelry*, 806 F. Supp. 648, 650 (E.D. Mich 1992); *United States v. Real Property in Mecklenburg County*, 814 F. Supp. 468, 479 n. 37 (W.D.N.C. 1993); *United States v. Eleven Vehicles*, 836 F. Supp. 1147, 1153 (E.D. Pa. 1993); *United States v. Krasner*, 841 F. Supp. 649 (M.D. Pa. 1993).

- Thus, it is clear that sections 981 and 982 now apply to more than the proceeds being laundered.

  — *United States v. Saccoccia*, 823 F. Supp. 994 (D.R.I. 1993) (property is "involved" whether it was the subject of the offense or the proceeds generated by it), aff'd 58 F.3d 754 (1st Cir. 1995);

  — *United States v. Thompson*, 837 F. Supp. 585, 586 (S.D.N.Y. 1993) (section 982 is not limited to forfeiture of proceeds), aff'd 29 F.3d 62 (2d Cir. 1994);

— *But see United States v. One Parcel . . . 613 Warwick Road*, 1995 WL 214451 (E.D. Pa. 1995) (denying motion to dismiss section 981 forfeiture of building where defendants met to plan to cash checks in violation of section 1957);

— *United States v. One 1986 Ford Pickup*, 56 F.3d 1181 (9th Cir. 1995) (drug case: vehicle used to distribute drug proceeds is substantially connected to drug sale that was completed before vehicle was involved);

b. But property used to help the launderer conceal or disguise the SUA proceeds, in violation of section 1956(a)(1)(B)(i), is involved in the offense:

1. Bank Accounts:

— *United States v. All Monies*, 754 F. Supp. 1467, 1475-76 (D. Haw. 1991) (untainted money in account provided "cover" for laundering operation); *United States v. Certain Funds on Deposit in Account No. 01-0-71417*, 769 F. Supp. 80, 84-85 (E.D.N.Y. 1991)(same); *United States v. Certain Accounts*, 795 F. Supp. 391, 397 (S.D. Fla. 1992);

— *United States v. Contents of Account Numbers 208-06070*, 847 F. Supp. 329, 334-35 (S.D.N.Y. 1994) (legitimate funds used to conceal or disguise laundering forfeitured; cases involving structuring offenses distinguished);

— *United States v. South Side Finance, Inc.*, 755 F. Supp. 791, 797-98 (N.D. Ill. 1991) (bank accounts into which laundered money is deposited, and a business through which such money moved, forfeitable under section 981 as property "involved" in the money laundering offense);

— *United States v. Tencer*, 1993 WL 310527 (E.D. La. 1993) (entire bank account balance is forfeitable even though only a small amount of criminal proceeds was deposited into the account if the purpose of the deposit was to conceal or disguise proceeds among legitimate funds).

2. Personal Property:

— *United States v. All of the Inventories of the Businesses Known as Khalife Brothers Jewelry*, 806 F. Supp. 648, 650 (E.D. Mich 1992)

3. Property Bought or Sold in the Transaction:

- The property bought or sold in the course of the financial transaction is "involved in" the offense.

  — *United States v. Basler Turbo-67*, 906 F. Supp. 1332, 1340 (D. Ariz. 1995) (aircraft purchased with drug money is forfeitable under sections 981 and 1956-57);

  — *United States v. Premises Known as 3 Jade Lane*, 1995 WL 580072 (E.D. Pa. Sept. 28, 1995) (unpublished) (real property purchased in a transaction that violates section 1957 is forfeitable as property involved in the offense);

- Such property is forfeitable in its entirety, even if legitimate funds were also invested in the property.

  — *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248, 252 (E.D. Va. 1993) (where sections 1956 and 1957 financial transaction is car payment, car is "involved in" the money laundering offense and is forfeitable in its entirety even if legitimate funds are used to make other payments).

  — *United States v. Hendrickson*, 22 F.3d 170 (7th Cir. 1994) (dealer who sells gold for $742,555 in drug proceeds in violation of section 1957 required to forfeit that sum, not just profit on sale).

4. Legitimate Property that Facilitates the *Concealing or Disguising* of SUA Proceeds:

   a. Property that is "external" to the offense is not forfeitable; to be "involved in" the offense, the property must be substantially connected or "integral" to the offense.

      — *United States v. Swank Corp.*, 797 F. Supp. 497, 500 (E.D. Va. 1992) ("facilitation" requires "substantial connection" between criminal act and forfeited property); *United States v. Certain Accounts*, 795 F. Supp. 391, 395 (S.D. Fla. 1992); *United States v. All of the Inventories of the Businesses Known as Khalife Brothers Jewelry*, 806 F. Supp. 648, 650 (E.D. Mich. 1992);

      — *United States v. One 1989 Jaguar XJ6*, 1993 WL 157630 (N.D. Ill. 1993) (automobile used to drive to/from site of money laundering offense is not substantially connected);

— *United States v. Any and All Assets of Shane Co.*, 816 F. Supp. 389, 397 (M.D.N.C. 1991) (drug proceeds laundered through trucking business);

— *United States v. 155 Bemis Road*, 760 F. Supp. 245, 251 (D.N.H. 1991) (business forfeitable under section 981 because corporate checks were used to make drug trafficker's purchase and improvement of real property with drug money appear to be legitimate business activity);

— *United States v. South Side Finance, Inc.*, *supra*, 755 F. Supp. at 797-98;

— *United States v. Shirk*, Criminal No. 1:CR-90-0294 (M.D. Pa. Jun. 19, 1991) (forfeiture of business used as conduit for structuring violations);

— *United States v. Eleven Vehicles*, 836 F. Supp. 1147, 1155 (E.D. Pa. 1993) (officers of corporation participate in arms export conspiracy of which money laundering was integral part).

5. Property that Facilitates the *SUA Offense* May Be "Involved In" the Money Laundering Offense:

— *United States v. $488,342.85*, 969 F.2d 474, 477 (7th Cir. 1992) (property "involved" in money laundering offense not limited to money derived from the SUA, but may include funds that facilitated the SUA);

— *United States v. Puello*, 814 F. Supp. 1155 (E.D.N.Y. 1993) (real property and vehicles used to facilitate food stamp fraud scheme that included money laundering); *Eleven Vehicles*, *supra*;

— *United States v. All Assets of Blue Chip Coffee, Inc.*, 836 F. Supp. 104, 108 (E.D.N.Y. 1993) (property used to facilitate underlying section 659 offense forfeitable under section 981(a)(1)(A)).

D. "Clean" Money Involved in Structuring Cases May Not Satisfy Substantial Connection Test:

— *United States v. All Funds on Deposit (Great Eastern Bank)*, 804 F. Supp. 444, 447 (E.D.N.Y. 1992) (legitimate funds in bank account do not facilitate structuring;

(following *All Monies*, inventory of jewelry business forfeitable as facilitating property);

— *United States v. Puello*, 814 F. Supp. 1155, 1160 (E.D.N.Y. 19293) (forfeiture of real property and vehicles used to operate business);

— *United States v. Tencer*, 1993 WL 310527 (E.D. La. 1993) (car used to facilitate laundering offense may be forfeited under section 981 if the connection to the offense was substantial and not "merely fortuitous"); *but see United States v. One 1989 Jaguar XJ6, infra.*

3. Real Property:

— *United States v. Myers*, 21 F.3d 826, 830 (8th Cir. 1994) (farm property is involved in a money laundering offense if laundered funds are used to make payments on the purchase contract and to pay for improvements to the property and equipment used on the farm);

— *United States v. Real Property in Mecklenburg County*, 814 F. Supp. 468, 479-80 (W.D.N.C. 1993) (where drug money is hidden by using it to pay for construction of a valuable building on land, the land is involved in and facilitates the laundering offense; therefore the entire parcel is forfeitable, not just the portion traceable to the drug money);

— *United States v. Sonny Cook Motors*, 819 F. Supp. 1015, 1018 (N.D. Ala. 1993) (entire parcel of real property on which car dealership is located is "involved in" effort to launder money through the business in "sting" case);

— *United States v. Puello*, *supra*, 814 F. Supp. at 1160.

4. Businesses:

— *United States v. All Assets of G.P.S. Automotive Corp.*, 66 F.3d 483, 487 (2d Cir. 1995) (business used to sell stolen auto parts and launder proceeds forfeited under section 981);

— *United States v. Swank Corp.*, 797 F. Supp. 497, 502 (E.D. Va. 1992) (proceeds of mail fraud scheme "cleared" through corporate bank accounts; if there is substantial connection between business and laundering activity, entire business and all of its assets are forfeited regardless of amount of money laundered);

— *United States v. Contents of Account Numbers 208-06070*, 847 F. Supp. 329 (S.D.N.Y. 1994) (bank account that contains only funds transferred from account forfeitable as facilitating property is itself forfeitable);

— *But see United States v. Voight*, 89 F.3d 1050 (3rd Cir. 1996) (property purchased with laundered money is forfeitable as property "traceable to," but property purchased with funds from an account into which laundered money and clean money have been commingled is not "traceable to." ✍ ***Note:*** This case does not address the question whether the purchase of property from an account containing commingled funds is itself a money laundering offense subjecting the purchased property to forfeiture).

G. Forfeiture of Laundered Funds Under RICO:

- Where pattern of racketeering consists of money laundering offenses, money being laundered is considered "proceeds" of RICO offense for purpose of forfeiture:

  — *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (money launderer "obtains proceeds" subject to forfeiture under section 1963(a)(3) when he takes temporary possession of property and passes it on to someone else);

  — *United States v. Saccoccia*, 823 F. Supp. 994 (D.R.I. 1993), aff'd 58 F.3d 754 (1st Cir. 1995).

H. CMIR Forfeitures:

- Section 5317(c) authorizes forfeiture for violations of sections 5316 and 5324(b):

  — *United States v. $500,000 in United States Currency*, 62 F.3d 59 (2d Cir. 1995) (provision in section 5317(c) authorizing forfeiture for "attempted" violations of section 5324(b) refers only to attempts that are criminal violations of section 5324(b) by its terms; it does not create forfeiture liability for attempts to commit other violations of that statute).

- No willfulness or specific intent required to establish CMIR forfeiture:

  — *United States v. $170,000*, 903 F. Supp. 373 (E.D.N.Y. 1995) (property becomes forfeitable at the time the owner leaves it with a common carrier and fails to file CMIR form).

account itself is not subject to forfeiture; cases involving facilitation of section 1956 or 1957 offenses distinguished);

— *Marine Midland Bank N.A. v. United States*, No. 93 Civ. 0307 (RPP) (S.D.N.Y. May 11, 1993), aff'd on other grounds, 11 F.3d 1119 (2d Cir. 1993) (untainted funds in interbank account used to "clear" structured money orders not forfeitable under facilitation theory).

E. Property Held by Third Parties:

- Property may be forfeited from person other than perpetrator of money laundering offense:

— *United States v. All Monies*, 754 F. Supp. 1467, 1473 (D. Haw. 1991) (in *in rem* action against bank account, laundered money is forfeitable whether or not account holder was involved in the laundering offense; innocent account holder's remedy is affirmative "innocent owner" defense);

— *United States v. All Funds on Deposit in Any Accounts*, 801 F. Supp. 984 (E.D.N.Y. 1992) (innocence of the owner does not itself prevent forfeiture if the government can demonstrate probable cause that the property, apart from the actions of the owner, is connected to illegal activity).

F. Property "Traceable To" Forfeitable Property:

— *United States v. 5709 Hillingdon Road*, 919 F. Supp. 863 (W.D.N.C. 1996) (forfeiture of real property on which mortgage was retired with funds traceable to 33 structured deposits);

— *United States v. Eleven Vehicles*, 836 F. Supp. 1147, 1155 (E.D. Pa. 1993) (where business was forfeitable as facilitating property, salaries paid by business, and property purchased with salaries, were proceeds traceable to forfeitable property and were forfeitable even though government did not seek forfeiture of business itself);

— *United States v. 1990 Chevrolet Silverado Pickup*, 804 F. Supp. 777 (W.D.N.C. 1992) (truck traceable to earlier truck purchased with gambling proceeds is forfeitable as property traceable to property "involved in" section 1956 violation);

— *United States v. 1988 Oldsmobile Cutlass Supreme*, 983 F.2d 670 (5th Cir. 1993) (cars purchased with cashiers checks acquired in structured transaction); *United States v. Rogers*, 1996 WL 252659 (N.D.N.Y. May 8, 1996) (same);

D. Probable Cause May Be Based on Expert Opinion of Government Agents:

— *Marine Midland Bank, N.A. v. United States*, 11 F.3d 1119 (2d Cir. 1993) (affidavit regarding *modus operandi* of drug cartels and evidence that postal money orders were marked with defining symbols established probable cause);

— *United States v. $149,442.43 in U.S. Currency*, 965 F.2d 868 (10th Cir. 1992) (search warrant for financial records based on agent's opinion that records would be located in residence from which defendant conducted drug business);

— *United States v. All Funds on Deposit in Any Accounts*, 801 F. Supp. 984 (E.D.N.Y. 1992) (sophisticated money laundering activities are proper subject for expert testimony, where methods of moving currency internationally and the maintaining of corporate and bank records are not subjects easily understood without expert assistance).

E. FIRREA Cases:

- Property traceable to proceeds of bank fraud offense:

— *United States v. Real Property 874 Gartel Drive*, 79 F.3d 918 (9th Cir. 1996) (forfeiture of real property purchased with proceeds of section 1014 violation).

F. Intangible Property:

- Electronic funds exist as a credit at the intermediate bank used in a wire transfer, and constitute a *res* that may be seized from the intermediate bank.

— *United States v. Daccarett*, 6 F.3d 37 (2d Cir. 1993).

G. Probable Cause to Forfeit Entire Bank Account:

1. In civil cases, tracing the seized property to criminal activity is part of the government's probable cause burden.

— *Marine Midland Bank, N.A. v. United States*, 11 F.3d 1119 (2d Cir. 1993) (failure of government to establish probable cause to seize entire account at time of seizure results in return of property pre-trial);

I. Forfeiture of Substitute Assets:

- Substitute assets are subject to forfeiture in criminal cases under 18 U.S.C. § 982(b), but there is an exception for persons acting as "mere intermediaries":

  — *See* cases cited in Criminal Forfeiture Case Outline.

2. Establishing Probable Cause For Forfeiture

A. Substantive Elements:

— *United States v. One 1986 Mercedes Benz*, 1996 WL 208493 (D. Mass. 1996) (absence of legitimate income during time of purchase, and record of arrests for possession of stolen credit cards and stolen mail, sufficient to establish probable cause to believe car was purchased with SUA proceeds in violation of section 1956).

B. Probable Cause Must Encompass Both the Prohibited Conduct and the Mental State Required by the Relevant Statute.

— *United States v. Dollar Bank Money Market Account*, 980 F.2d 233 (3rd Cir. 1992) (in structuring case, government must have probable cause to believe that property was involved in structured transactions committed with intent to evade federal reporting requirements); *United States v. $200,000*, 805 F. Supp. 585, 590 n.12 (N.D. Ill. 1992) (same).

— *Marine Midland Bank, N.A. v. United States*, 1994 WL 381536 (S.D.N.Y. Jul. 20, 1994) (willfulness requirement in *Ratzlaf* not applicable to civil forfeiture);

— *United States v. A Parcel of Land*, 781 F. Supp. 830, 833 (D.N.H. 1992) (because section 981 only requires showing of section 5324 violation, "willfulness" requirement in section 5322 not involved);

C. Government Need Only Show Property was Involved in Crime Committed by *Someone*, Not Necessarily the Owner:

— *United States v. Account No. 50-2830-2*, 884 F. Supp. 455 (M.D. Ala. 1995) (probable cause in a structuring case is not dependent on the actions of the owner; probable cause established if another person structured the owner's money).

4. If probable cause cannot be established by circumstantial evidence or facilitation theory, government must trace money to offense giving rise to forfeiture:

   — *United States v. Banco Cafetero Panama*, 797 F.2d 1154, 1158-62 (2d Cir. 1986) (drug case; government entitled to use "first in, first out" or "first in, last out" analysis in tracing tainted funds through volatile bank account; but government subject to the "lowest intermediate balance" rule);

   — *United States v. $488,342.85*, 969 F.2d 474, 476-77 (7th Cir. 1992) (section 981 case discussing application of *Banco Cafetero* to money laundering; strict tracing, such as employed in the law of trusts, not required in civil forfeiture cases).

H. Fungible Property:

- Under 18 U.S.C. § 984, government need not satisfy tracing requirement in money laundering cases where bank account is seized within one year of date when laundering offense occurred:

  — *Marine Midland Bank, N.A. v. United States*, 11 F.3d 1119 (2d Cir. 1993)

  — *United States v. All Funds Presently on Deposit at American Express Bank*, 832 F. Supp. 542, 559 (E.D.N.Y. 1993) (with respect to actual money laundered, section 984 overrules *Banco Cafetero*); *but see id. at 560-61* (section 984 does not permit substitution of fungible property for property forfeitable under a facilitation theory; enactment of section 984 abrogates facilitation theory for section 981 cases);

- Section 984 permits forfeiture of amount equal to sting money laundered in violation of section 1956(a)(3).

  — *United States v. $814,254.76 in U.S. Currency*, No. CIV 92-659 TUC ACM (D. Ariz. Jan. 10, 1994) (unpublished), rev'd on other grounds, 51 F.3d 207 (9th Cir. 1995).

- Interbank Account Exception:

  — Foreign bank not entitled to interbank account exception in section 984(d) if employees knew of the illegal scheme. *United States v. $814,254.76 in U.S. Currency*, No. CIV 92-659 TUC ACM (D. Ariz. Jan. 10, 1994) (unpublished), rev'd on other grounds, 51 F.3d 207 (9th Cir. 1995);

— *United States v. All Funds Presently on Deposit at American Express Bank*, 832 F. Supp. 542 (E.D.N.Y. 1993) ("probable cause to seize and forfeit an active bank account . . . requires that the funds in that account be somehow 'traceable' to the alleged unlawful activity that gave rise to the forfeiture in the first place");

— *United States v. All Funds on Deposit (Great Eastern Bank)*, 804 F. Supp. 444, 446 (E.D.N.Y. 1992) (government must establish probable cause with respect to *all* of the seized property; where portion of bank account is not traceable to criminal activity and no facilitation theory applies, government has failed to establish probable cause with respect to portion of funds);

— *United States v. All Monies*, 754 F. Supp. 1467 (D. Haw. 1991) (government concedes it has burden of establishing probable cause with respect to funds not directly traceable to criminal activity; establishes probable cause to believe balance of funds were used to facilitate criminal activity);

— *United States v. $488,342.85*, 969 F.2d 474, 477 (7th Cir. 1992) (government establishes probable cause to believe that all funds in account are forfeitable by showing that scheme is ongoing and that deposits of proceeds of scheme exceed the balance of the account at the time to seizure; burden then shifts to claimant to identify the sums not subject to forfeiture as part of affirmative defense).

2. Forfeiture applies to funds, not to bank accounts; fact that dirty money passed through an account in the past does not entitle government to forfeiture of funds found in the account at later time:

— *United States v. $488,342.85*, 969 F.2d 474, 476-77 (7th Cir. 1992); *United States v. All Funds on Deposit (Great Eastern Bank)*, 804 F. Supp. 444, 447 (E.D.N.Y. 1992); *United States v. All Funds Presently on Deposit at American Express Bank*, 2832 F. Supp. 542, 562 (E.D.N.Y. 1993).

3. Forfeiture of entire account may be based on circumstantial evidence:

— *United States v. Certain Accounts*, 795 F. Supp. 391, 397 (S.D. Fla. 1992) (deposit of numerous money orders in amounts just under $10,000 into an account sufficient to establish probable cause for forfeiture of entire account even though balance exceeded total value of money orders);

— *United States v. Rogers*, 1996 WL 252659 (N.D.N.Y. May 8, 1996) (innocent owner defense rejected where claimant was present when defendant used structured cashiers checks to purchase car).

C. *Calero-Toledo* Standard in Section 981 Cases:

— *United States v. Real Property 874 Gartel Drive*, 79 F.3d 918 (9th Cir. 1996) (requirement that claimant take all reasonable steps is part of the "consent" prong of the innocent owner defense; because section 981(a)(2) lacks a consent prong, requirement does not apply);

— *United States v. $705,270.00 in U.S. Currency*, 820 F. Supp. 1398, 1402 (S.D. Fla. 1993) (because section 981(a)(2) does not contain a consent prong, *Calero-Toledo* test does not apply); *United States v. Eleven Vehicles*, 836 F. Supp. 1147, 1160 n.16 (E.D. Pa. 1993);

— *United States v. Funds Seized From Account Number 20548408 at Baybank, N.A.*, 1995 WL 381659 (D. Mass. Jun. 16, 1995) (unpublished) (wealthy Colombian who purchased 182 dollar-denominated money orders totalling $100,000 was innocent owner because he did not recognize structured nature of instruments; no duty to inquire as to source of the money).

D. *Calero-Toledo* Standard in Section 5317 Cases:

— *United States v. $69,292.00 in U.S. Currency*, 62 F.3d 1161 (9th Cir. 1995) (even though section 5317 does not contain an innocent owner provision, owner who took all reasonable steps to prevent illegal use may defeat forfeiture);

— *But see United States v. $124,813 in U.S. Currency*, 53 F.3d 108 (5th Cir. 1995) (*Calero-Toledo* did not create a general innocent owner defense applicable to section 5317 forfeitures);

— *United States v. $83,132.00 in United States Currency*, 1996 WL 599725 (E.D.N.Y. Oct. 11, 1996) (under *Bennis*, there is no innocent owner defense in CMIR cases).

E. Black Market Cases:

— *United States v. Basler Turbo-67*, 906 F. Supp. 1332 (D. 1995) (person who knows property was purchased with funds traceable to the black market in Colombia is not innocent; that black market funds come from Colombia is common knowledge in that country).

— Foreign bank not entitled to interbank account exception where government seeks forfeiture of property directly traceable to the offense, not fungible property. *Marine Midland Bank, N.A. v. United States*, 1994 WL 381536 (S.D.N.Y. Jul. 20, 1994), renewed motion for return of funds denied, 1995 WL 450483 (S.D.N.Y. Jul. 31, 1995);

— *United States v. All Funds on Deposit . . . in the Name of Perusa, Inc.*, 935 F. Supp. 208 (E.D.N.Y. 1996) (money transmitter is not a financial institution for purposes of section 984(d); definition in 18 U.S.C. § 20, not 31 U.S.C. § 5312, applies).

- Section 984 does not apply retroactively:

— *United States v. $814,254.76 in U.S. Currency*, 51 F.3d 207 (9th Cir. 1995);

— *United States v. Contents of Account Numbers 208-06070*, 847 F. Supp. 329 (S.D.N.Y. 1994).

3. Innocent Owner Defense In Money Laundering Cases

A. Standing:

— *United States v. $3,000 in Cash*, 906 F. Supp. 1061 (E.D. Va. 1995) (claimant must establish standing before asserting innocent owner defense; general unsecured creditor is not an "owner");

— *United States v. $79,000 in Account Number 2168050/6749900*, 1996 WL 648934 (S.D.N.Y. 1996) (person who deposits his funds in a third party's bank account lacks standing to contest the forfeiture of the third party's account);

— *See* standing cases in Criminal and Civil Forfeiture outlines.

B. Knowledge of the Illegal Activity:

— *United States v. 5709 Hillingdon Road*, 919 F. Supp. 863 (W.D.N.C. 1996) (to defeat innocent owner defense, government need only show claimant had knowledge of the acts constituting money laundering (structuring); it is not necessary to show claimant knew the acts were illegal);

New Federal Rule Governing Criminal Forfeitures Clears Its First Hurdle

Rule, from page 13

the Standing Committee on the Federal Rules which meets in Santa Fe, New Mexico, on June 18, 1998. If the Standing Committee approves the Rule, it will be referred to the Judicial Conference, the Supreme Court and, if there is no congressional veto, will become law in December 1999.

The text of the Rule as approved by the Advisory Committee appears below. Comments on any of its provisions — including both illustrations of how it would be helpful to prosecutors and identifications of possibly unforeseen problems or loopholes that the Rule would create — would be greatly appreciated.

Unofficial Text of Rule 32.2 as Approved by the Advisory Committee on April 28, 1998

Rules 7(c)(2), 31(e), and 32(d)(2) are repealed and replaced by the following new Rule. Rule 38(e) is amended by striking "3554," and by striking "Criminal Forfeiture," in the heading:

32.2. Criminal Forfeiture

(a) INDICTMENT OR INFORMATION. No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or information alleges that a defendant has an interest in property that is subject to forfeiture in accordance with the applicable statute.

(b) HEARING AND ENTRY OF PRELIMINARY ORDER OF FORFEITURE.

(1) As soon as practicable after entering a guilty verdict or accepting a plea of guilty or nolo contendere on any count in an indictment or information for which criminal forfeiture is alleged, the court must determine what property is subject to forfeiture because it is related to the offense. The determination may be based only on evidence already in the record, including any written plea agreement, or on evidence adduced at a post-trial hearing. If the property is subject to forfeiture, the court must enter a preliminary order directing the forfeiture of whatever interest each defendant may have in the property without determining what that interest is. Deciding the extent of each defendant's interest is deferred until any third party claiming an interest in the property has petitioned the court to consider the claim.

(2) If no such petition is timely filed, the court must determine whether the property should be forfeited in whole or in part depending on the extent of the defendant's interest in the property. The determination may be made at any time before the order of forfeiture becomes final pursuant to subdivision (c), and may be based on evidence already in the record, including a written plea agreement, or evidence submitted by the [G]overnment in a motion for the entry of a final order of forfeiture. The defendant may not object to the entry of the final order of forfeiture on the ground that the property belongs, in whole or in part, to a co-defendant or third party. If the court determines that the defendant, or any combination of co-defendants, were the only persons with a legal interest (or, in the case of illegally obtained property, a possessory interest) in the property, the court must enter a final order forfeiting the property in its entirety. If the court determines that the defendant, or any combination of co-defendants, had a legal interest (or, in the case of illegally obtained property, a possessory interest) in only a portion of the property, the court must enter a final order forfeiting the property to the extent of the defendant or defendants' interest.

F. Willful Blindness:

— *United States v. Real Property 874 Gartel Drive*, 79 F.3d 918 (9th Cir. 1996) (willful blindness is the same as "knowledge" under section 981(a)(2));

— *United States v. All Monies*, 754 F. Supp. 1467, 1478 (D. Haw. 1991) (claimant must prove "that he did not know of the illegal activity, did not willfully blind himself from the illegal activity, and did all that reasonably could be expected to prevent the illegal use" of his property); *United States v. All Funds Presently on Deposit at American Express Bank*, 832 F. Supp. 542 (E.D.N.Y. 1993) (same).

4. Excessive Fines

- CMIR Forfeitures:

— *United States v. Bajakajian*, 84 F.3d 334 (9th Cir. 1996) (*all* forfeitures for currency reporting offenses are *per se* excessive and therefore unconstitutional); *United States v. $69,292.00 in U.S. Currency*, 62 F.3d 1161 (9th Cir. 1995) (forfeiture of undeclared funds under section 5317 triggers 8th Amendment analysis);

— *United States v. United States Currency in the Amount of $145,139.00*, 18 F.3d 73 (2d Cir.) (forfeiture of undeclared funds in section 5316 case is not excessive), *cert. denied* 115 S. Ct. 72 (1994).

- A complete list of cases applying the Excessive Fines Clause in light of *Austin v. United States*, 113 S. Ct. 2801 (1993) appears in "Case Outline — Excessive Fines."

large quantities of food stamps and the merchants who launder for a fee the illegally obtained stamps through their merchant accounts. As a result, almost all of those charged through the task force's efforts have been convicted of money laundering.

The theory of the prosecution is that, once food stamps are acquired through an illegal transfer (other than for the purchase of authorized food items), they become the proceeds of specified unlawful activity (7 U.S.C. § 2024, food stamp trafficking and 18 U.S.C. § 641, conversion of government money or vouchers). When the merchant deposits the illegally acquired stamps into his merchant account and represents that he has obtained the stamps in compliance with USDA regulations, as is required for all such deposits, he is concealing the illegal nature of the proceeds by making the stamps appear as if they were legitimately received in the course of business. Therefore, most cases have been brought under the concealment prong of the money laundering statute, 18 U.S.C. § 1956(a)(1)(B)(i) or (h) (conspiracy to launder).

These cases provide significant forfeiture potential, pursuant to 18 U.S.C. §§ 981 and 982, for assets "involved in" the violations and proceeds of the activity. Forfeited assets have included residences used to store illegally acquired stamps, vehicles used to transport such stamps, all funds in merchant accounts used to launder the stamps, grocery stores, proceeds from the sale of stores, proceeds from the sale of store leases, smuggled currency, and cash hoards.

The Cases

Five federal money laundering cases involving 24 defendants have been prosecuted since the task force's inception. Three of the cases involved a merchant who laundered through his store account approximately $6,000,000 in trafficked food stamps for a 4 percent fee in four years, another merchant who laundered approximately $2,000,000 in stamps in one year and a third merchant who laundered over $100,000 in stamps in just three months. Defendants have also been charged under the federal food stamp trafficking and currency smuggling laws. Several cases not warranting federal prosecution have also been referred to the local prosecutor for state food stamp trafficking, bribery, and other charges.

The task force has focused its efforts on the brokers who deal in large quantities of food stamps and the merchants who launder for a fee the illegally obtained stamps through their merchant accounts.

Assets with a net value of approximately $800,000 have been forfeited through the cases. At the time the investigations became overt, which was usually when the task force executed search warrants, assets which had been targeted for forfeiture were restrained or seized through the use of the pre-indictment restraining order provisions of the federal money laundering or criminal forfeiture laws (18 U.S.C. § 982(b)(1), which incorporates 21 U.S.C. § 853 (e) and(f)). Experience has taught that whatever assets are not restrained at the time the targets become aware of the investigation will be unavailable for forfeiture at the conclusion of the case.

Conclusion

The task force's investigations have revealed approximately $10,000,000 in trafficked or laundered food stamps in the Cleveland, Ohio, area alone during a period of approximately four years. The $10,000,000 figure represents, of course, only that which has been discovered by the task force. In addition, task force investigations have revealed that stamps purchased in northeastern Ohio have been redeemed in merchant accounts in other states and stamps illegally acquired outside the state have been redeemed in Ohio.

While the food stamp trafficking, laundering and related frauds appear to be widespread and involve a network of organized groups, the results of the task force's efforts are encouraging. Several well known black market brokers and launderers are serving lengthy prison terms because of money laundering convictions. Task force sources within the community of those engaged in the illegal activity described above

*See **Stamp**, page 19*