2101. MONEY LAUNDERING OVERVIEW

Section 1956(a) defines three types of criminal conduct: domestic money laundering transactions (§ 1956(a)(1)); international money laundering transactions (§ 1956(a)(2)); and undercover "sting" money laundering transactions (§ 1956(a)(3)). *See* this Manual at 2182.

To be criminally culpable under 18 U.S.C. § 1956(a)(1), a defendant must conduct or attempt to conduct a financial transaction, knowing that the property involved in the financial transaction represents the proceeds of some unlawful activity, with one of the four specific intents discussed below, and the property must *in fact* be derived from a specified unlawful activity.

The actual source of the funds must be one of the specified forms of criminal activity identified by the statute, in 18 U.S.C. § 1956(c)(7), or those incorporated by reference from the RICO statute (18 U.S.C. § 1961(1)). Section 1956(c)(7)(B) includes in the list of specified unlawful activity certain offenses against a *foreign* nation. Thus, proceeds of certain crimes committed in another country may constitute proceeds of a specified unlawful activity for purposes of the money laundering statutes.

To prove a violation of § 1956(a)(1), the prosecutor must prove, either by direct or circumstantial evidence, that the defendant knew that the property involved was the proceeds of any felony under State, Federal or foreign law. The prosecutor need not show that the defendant knew the specific crime from which the proceeds were derived; the prosecutor must prove only that the defendant knew that the property was illegally derived in some way. *See* § 1956(c)(1).

The prosecutor must also prove that the defendant initiated or concluded, or participated in initiating or concluding, a financial transaction. A "transaction" is defined in § 1956(c)(3) as a purchase, sale, loan, pledge, gift, transfer, delivery, other disposition, and with respect to a financial institution, a deposit, withdrawal, transfer between accounts, loan, exchange of currency, extension of credit, purchase or sale safe-deposit box, or any other payment, transfer or delivery by, through or to a financial institution.

A "financial transaction" is defined in § 1956(c)(4) as a transaction which affects interstate or foreign commerce and: (1) involves the movement of funds by wire or by other means; (2) involves the use of a monetary instrument; or (3) involves the transfer of title to real property, a vehicle, a vessel or an aircraft; or (4) involves the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce.

PRACTICE TIP: The legislative history indicates, and several cases have held, that each separate financial transaction should be charged separately in an individual count. For example, if an individual earns $100,000 from offense. If he then withdraws $50,000, he commits a second offense. If he then purchases a car with the withdrawn $50,000, he commits a third offense. Each transaction should be charged in a separate count. Charging multiple financial transactions in a single count is duplicitous. *See, e.g.*, *United States v. Prescott*, 42 F.3d 1165 (8th Cir. 1994); *United States v. Conley*, 826 F. Supp. 1536 (W.D. Pa. 1993).

In conducting the financial transaction, the defendant must have acted with one of the following four specific intents:

1. § 1956(a)(1)(A)(i): intent to promote the carrying on of specified unlawful activity;
   § 1956(a)(1)(A)(ii): intent to engage in tax evasion or tax fraud;

   § 1956(a)(1)(B)(i): knowledge that the transaction was designed to conceal or disguise the nature, location, source, ownership or control of proceeds of the specified unlawful activity; or

   § 1956(a)(1)(B)(ii): knowledge that the transaction was designed to avoid a transaction reporting requirement under State or Federal law [e.g., in violation of 31 U.S.C. §§ 5313 (Currency Transaction Reports) or 5316 (Currency and Monetary Instruments Reports), or 26 U.S.C. § 6050I (Internal Revenue Service Form 8300)].

Prosecutions pursuant to 18 U.S.C. § 1956(a)(2) arise when monetary instruments or funds are transported, transmitted or transferred internationally, and the defendant acted with one of the requisite criminal intents (i.e., promoting, concealing, or avoiding reporting requirements). The intent to engage in tax violations is not included in § 1956(a)(2).

f the transportation, transmission or transfer was conducted with the intent to conceal the proceeds of specified unlawful activity or to avoid a reporting requirement, the prosecutor must show that the defendant knew the monetary nstrument or funds represented the proceeds of some form of unlawful activity. *However*, if the transportation, transmission or transfer is conducted with the intent to promote the carrying on of specified unlawful activity, the prosecutor need not show that the funds or monetary instruments were actually derived from any criminal activity.

The transportation, transmission or transfer must cross the border -- either originating or terminating in the United States. That term includes all means of transporting funds or monetary instruments, including wire or electronic funds transfers, and the transfer of currency, checks, money orders, bearer securities and negotiable instruments.

Section 1956(a)(3) relates to undercover operations where the financial transaction involves property represented to be proceeds of specified unlawful activity. The proceeds in § 1956(a)(3) cases are not actually derived from a real crime; they are undercover funds supplied by the Government. The representation must be made by or authorized by a Federal officer with authority to investigate or prosecute money laundering violations. The representation may also be made by another at the direction of or approval of a Federal officer. It should be noted that the specific intent provisions in § 1956(a)(3) are slightly different from those in § 1956(a)(1). First, the intent to violate the tax laws is *not* included in this subsection. Second, subsections 1956(a)(3)(B) and (C) require that the transaction be conducted with the *intent* to conceal or disguise the nature, location, source, ownership or control of the property or to avoid a transaction reporting requirement, respectively, in contrast to subsections 1956(a)(1)(B)(i) and (ii), which only require that defendant *know* that the transaction is designed, in whole or in part, to accomplish one of those ends.

Violations of § 1956 have a maximum potential twenty year prison sentence and a $500,000 fine or twice the amount involved in the transaction, whichever is greater. The general sentencing provisions in 18 U.S.C. §§ 3551-3571 should also be consulted.

There is also a civil penalty provision in § 1956(b) which may be pursued as a civil cause of action. Under this provision, persons who engage in violations of subsections 1956(a)(1), (a)(2) or (a)(3) are liable to the United States for a civil penalty of not more than the greater of $10,000 or the value of the funds involved in the transaction. Copies of pleadings in § 1956(b) actions are available from the Section.

Prosecutions under 18 U.S.C. § 1957 arise when the defendant knowingly conducts a *monetary* transaction in criminally derived property in an amount greater than $10,000, which is in fact proceeds of a specified unlawful activity. Section 1957(f)(1) defines a monetary transaction as a "deposit, withdrawal, transfer, or exchange, in or affecting nterstate or foreign commerce, of funds or a monetary instrument . . . by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) . . . ." Section 1957 carries a maximum penalty of ten years in prison and maximum fine of $250,000 or twice the value of the transaction. There is no civil penalty provision.

The most significant difference from § 1956 prosecutions is the intent requirement. Under § 1957, the four intents have been replaced with a $10,000 threshold amount for each non-aggregated transaction and the requirement that a financial institution be involved in the transaction. Although the prosecutor need not prove any intent to promote, conceal or avoid the reporting requirements, it still must be shown that the defendant knew the property was derived from some criminal activity and that the funds were in fact derived from a specified unlawful activity.

There is extraterritorial jurisdiction for violations of § 1956 if: (1) the transaction or series of related transactions exceeds $10,000; and (2) the laundering is by a United States citizen, or, if by a foreign national, the conduct occurs in part in the United States. *See* § 1956(f). There is extraterritorial jurisdiction for violations of § 1957 if the defendant is a United States person. *See* § 1957(d).

Sections 1956 and 1957 include "attempts" as well as completed offenses. Conspiracies are indictable under 18 U.S.C. § 1956(h). It should be noted that, in October 1992, Congress added § 1956(g), which provides a separate offense for money laundering conspiracy. Since Congress inadvertently added two sections designated as § 1956(g), the

conspiracy provision was redesignated § 1956(h) in September 1994. The conspiracy provision in § 1956(h) is modeled after the conspiracy provision in 21 U.S.C. § 846. Thus, it should not be necessary to plead overt acts in the indictment. However, the Section recommends that overt acts be included in the indictment if practicable. A set of indictment forms can be found in this Manual at 2106 et seq. Jury instruction forms begin at 2111. *See also* this Manual at 2100.

For a comprehensive review of the money laundering statutes and case law, please consult Chapter Three of the *Money Laundering Federal Prosecution Manual* (June 1994), prepared by the Asset Forfeiture and Money Laundering Section, Criminal Division. Additional resources available from the Section include a newsletter entitled *The Money Laundering Monitor*, money laundering caselists, sample indictments and jury instructions. For further information, please contact the Asset Forfeiture and Money Laundering Section at the following address: Chief, Asset Forfeiture and Money Laundering Section, United States Department of Justice, P.O. Box 27322, Central Station, Washington, D.C. 20038. Telephone: (202) 514-1263. Fax: (202) 514-5522.

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