THE FIGHT AGAINST MONEY LAUNDERING: THE U.S. PERSPECTIVE

Susan L. Smith *

I. INTRODUCTION

Money laundering occurs in almost every crime where there is a financial motive. Because of the need to hide the fact that the wealth came from a criminal act, criminals need to disguise the money.[1] These proceeds of crime, particularly cash, must be laundered for reinvestment. This involves a series of complicated financial transactions (structured deposits, wire transfers, purchase of money orders or cashier's checks, etc.) which ultimately results in criminal money becoming "clean" and acceptable for legitimate business purposes.[2] This laundering of criminally derived proceeds has become a lucrative and sophisticated business in the United States and is an indispensable element of the drug cartels' and organized crime's activities.[3] By moving and concealing the existence of enormous amounts of wealth, money laundering gives large scale criminal activity a flexibility and scope which would otherwise be impossible.[4] In his 1995 remarks to the United Nations on the Occasion of the 50th Anniversary of its Creation, then President Clinton said:

> "Criminal enterprises are moving vast sums of ill-gotten gains through the international financial system with absolute impunity. We must not allow them to wash the blood off profits from the sale of drugs, from terror, or from organized crime."

It is the goal of the United States to ensure that criminals and their laundered money can find no safe haven anywhere and to destroy criminal organizations by taking the profit out of crime. The increased threat from international organized crime, coupled with the globalization of the economy and the explosion of communications technology, requires the United States' anti-money laundering efforts to be multi-dimensional. At the federal level, the United States' efforts to combat money laundering involve the coordinated work of broad array of federal agencies. The Treasury and Justice Departments lead the nation's law enforcement efforts, while the federal financial regulators (the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration and the Securities Exchange Commission) are responsible for the examination of financial institutions within their respective jurisdictions to ensure that those institutions have created effective internal systems to detect potential money laundering.[5] The United States' primary line of attack against

* Senior Trial Attorney, Asset Forfeiture and Money Laundering Section, Criminal Division, United States Department of Justice, U. S. A.

1 William F. Bruton, Money Laundering: Is It Now a Corporate Problem?, 17 Dick. J. Int'l L. 437.

2 William C. Gilmore, Dirty Money: The Evolution of Money Laundering Countermeasures, 2d Ed., Council of Europe Publishing, 1999.

3 See James D. Harmon, Jr., United States Money Laundering Laws: International Implications, 9 N.Y.L. SCH. J. INT'L & COMP. L. 1, 2 (1988).

4 Kirk McCormick and Brian Stekloff, Money Laundering, 37 Am. Crim. L. Rev. 729, (2000).

domestic and international drug and other money launderers has been and continues to focus on denying our financial system to money launderers through the implementation of the Money Laundering Control Act[6] and the Bank Secrecy Act[7]. This core group of statutory tools were enacted by Congress in order to meet the threats posed by domestic and transnational organized crime and to enhance law enforcement's ability to succeed in disrupting and dismantling the business of organized crime.

II. OVERVIEW OF MONEY LAUNDERING STATUTES

A. Background

The United States criminalized money laundering on October 27, 1986. These statutes are found at 18 U.S.C. § § 1956 and 1957. See Money Laundering Control Act of 1986, Pub. L 99-570. These statutes fully criminalized money laundering, with penalties of up to 20 years and fines of up to $500,000 for each count. Highlights of the Act include:

(i) extended criminality to persons knowingly conducting or attempting to conduct financial transactions with proceeds generated by certain specified crimes, as well as to persons who are "willfully blind to" such unlawful activity;

(ii) extended extraterritorial jurisdiction over the conduct prohibited by the statutes;

(iii) extended civil and criminal forfeiture to commissions received for conducting a money laundering transaction, (18 U.S.C. § § 981 and 982);

(iv) outlawed structuring or "smurfing" operations to avoid the Bank Secrecy Act (BSA) reporting requirements (31 U.S.C. § 5324); and

(v) mandated compliance procedures to be required of banks; (the procedures were created by 1987 regulations issued by the Secretary of the Treasury).

Over the years, emerging money laundering typologies, international requirements, prosecutorial experiences, and case law interpretations have indicated the need for legislative changes to the money laundering statutes. The changes have increased the number of crimes which can generate proceeds for the money laundering laws to approximately 170 criminal offenses. The following is a brief summary of the legislative amendments to the money laundering laws:

(i) The *Anti-Drug Abuse Act of 1988*, effective on November 18, 1988, further criminalized money laundering to include financial transactions conducted with illegal proceeds with the intent to commit tax evasion and extended criminality to persons who conduct transactions involving property "represented by a law enforcement officer to be the proceeds of specified unlawful activity" (SUA). The Act also increased the civil and criminal forfeiture statutes to include forfeiture of any property or assets involved in an illegal financial transaction related to money laundering. The Act also

5 The National Money Laundering Strategy Act for 2000.

6 Pub. L. 99-570, Title XIII (October 27, 1986), as amended, codified at 18 U.S.C. § 1956 and § 1957.

7 Pub. L. 91-508 (October 26, 1970), as amended, codified at 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-59, and 31 U.S.C. §§ 5311-5330.

added a number of criminal offenses to be included in the term "SUA," such as smuggling of goods into the United States, copyright infringement, and violations of the Arms Control Act.

(ii) The *Annunzio-Wylie Anti-Money Laundering Act of 1992*, which became effective on October 28, 1992, enlarged the definitions of "transaction" and "financial transaction" to include the use of a safe-deposit box and the transfer of title to any real property, vehicle, vessel or aircraft. The Act also enlarged "SUA" to include offenses against a foreign nation involving kidnaping, robbery, extortion, or fraud against a foreign bank, and several other criminal offenses, including food stamp fraud. Additionally, the Act extended the criminal penalties of § § 1956 and 1957 to a conspiracy to violate the money laundering statutes.

(iii) The *Money Laundering Suppression Act of 1994*, effective September 23, 1994, incorporated both substantive and technical amendments to Titles 18 and 31 (BSA). Of particular importance were the following changes: (1) a requirement that Treasury issue new regulations implementing a new BSA provision, 31 U.S.C. § 5330, requiring any person who owns or controls a money transmitter business to register with the Secretary of the Treasury; (2) an amendment to 31 U.S.C. § 5324 which legislatively overturned the January 1994 Supreme Court decision (Ratzlaf v. United States) concerning the proof required to establish a 31 U.S.C. § 5324(a)(3) structuring violation; and (3) the requirement of additional record keeping and reporting of negotiable instruments drawn on foreign financial institutions.

(iv) The *Terrorism Prevention Act*, passed by Congress on April 24, 1996, added approximately 20 new crimes to the list of "SUAs" in section 1956. The *Health Insurance Portability and Accountability Act of 1996*, Pub. L. 104-191, 110 Stat. 1936, effective August 21, 1996, added certain health care offenses to the list of predicates for money laundering violations, and the new immigration law signed by the President on September 30, 1996, added certain immigration offenses, such as alien smuggling, to the list of RICO predicates, thus making them predicate offenses under the money laundering statutes.

B. 18 United States Code, Section 1956

Section 1956, "laundering of monetary instruments," is divided into subsections (a) through (h). The substantive provision, subsection 1956(a), is divided into three subsections dealing with domestic financial transactions, international transportation of monetary instruments or funds, and sting operations, respectively. Subsection 1956(b) provides a civil penalty for violations of the first two provisions of subsection (a). Subsection 1956(c) defines most of the terms used in § 1956 (as well as in § 1957). Subsections 1956(d), (e), and (f) discuss the relationship of § 1956 to other federal statutes, agency investigative responsibilities, and extraterritorial jurisdiction, respectively. Subsection (g) requires the Attorney General to inform the appropriate regulating agency of any conviction under 18 U.S.C. § § 1956, 1957, 1960 or 31 U.S.C. § 5322 of a financial institution or any officer, director, or

employee of a financial institution. Subsection (h) raises the penalties for conspiracies to violate § 1956 and § 1957 to the level of the substantive offense. The focus of this discussion is on the elements of the crimes set forth in § 1956(a), with reference to the definitions set forth in subsection (c) where appropriate.

As stated above, section 1956(a) is divided into three parts. Subsection 1956(a)(1) primarily addresses domestic money laundering and prohibits the knowing participation in financial transactions with criminal proceeds. Subsection 1956(a)(2) addresses international money laundering and prohibits the knowing transportation or transfer of criminally derived monetary instruments in foreign commerce. Subsection 1956(a)(3) explicitly authorizes the use of government undercover "sting" operations to expose money laundering.

C. Essential Elements of Section 1956(a)(1)

The elements of an offense under Section 1956(a)(1) are: (1) that the defendant conducts or attempts to conduct a financial transaction; (2) that the defendant knew that the property involved in the financial transaction represents the proceeds of some form of unlawful activity; (3) that the financial transaction in fact involves the proceeds of specified unlawful activity; and (4) that the defendant conducted the financial transaction with one of four purposes: (i) with the intent to promote the carrying on of specified unlawful activity; (ii) with the intent to evade taxes; (iii) knowing that the transaction was designed in whole or in part to disguise the nature, location, source, ownership, or control of the proceeds of the specified unlawful activity or (iv) to avoid a transaction reporting requirement under State or Federal law. United States v. Awan, 966 F.2d 1415 (11th Cir. 1992); United States v. Posters 'N' Things, 969 F.2d 652, (8th Cir. 1992), cert. granted, 113 S.Ct. 1410 (1993); United States v. Brown, 944 F.2d 1377, 1387 (7th Cir. 1991); United States v. Jackson, 935 F.2d 832 (7th Cir. 1991); United States v. Blackman, 904 F.2d 1250 (8th Cir. 1990); United States v. Massac, 867 F.2d 174 (3rd Cir. 1989).

1. A Financial Transaction

Subsection 1956(c)(4) defines a "financial transaction" as either:

> (A) a transaction[8] (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or
>
> (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree.

The statute defines "financial transaction" very broadly. See S.Rep. No. 433, 99th Cong. 2d Sess. 12-13 (1986). The statute contains four alternative definitions of "financial transaction" presented in subsection 1956(c)(4): (i) the movement of funds by wire or other means; (ii) the use of a monetary instrument; (iii) the use of a financial institution; and (iv) the transfer of title to any real property vehicle, vessel, or aircraft, which in any way or degree affects interstate or foreign commerce.

[8] As defined in subsection 1956(c)(3), the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(i) The Movement of Funds by Wire or Other Means

The word "funds" is not defined in the statute. Moreover, there is no legislative history to explain its meaning. This subdefinition apparently includes all forms of wire or electronic funds transfer that affect interstate or foreign commerce. Thus, if an individual wire transfers the proceeds of criminal activity, he or she will have engaged in a financial transaction. United States v. Herron, 97 F.3d 234, 237 (8th Cir. 1996). The language of the statute is not so limited, however. The word "funds" has been defined as "available money" or "money available for use". Thus, in a broader sense, one who transfers funds by other means could also be said to have engaged in a financial transaction as defined in this subdefinition. Included in the "transfer of funds" could be debit card transfers and barter exchanges. Therefore, if an individual exchanged the proceeds of a crime for a work of art as a means of laundering money, such an exchange could fall within the ambit of this subdefinition.

Generally, courts have interpreted "funds movement" broadly. Included within this subdefinition is the transfer of cashier's checks, United States v. Arditti, 955 F.2d 231 (5th Cir. 1992) (noting that § 1956(c)(5) defines "bank checks" but not cashier's checks as monetary instruments), as well as the mere transfer of illegal proceeds from one person to another, 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).

(ii) The Use of a Monetary Instrument[9]

Under this subdefinition, the term "financial transaction" includes the purchase, sale or disposition of any kind of property as long as the disposition involves a monetary instrument. United States v. Blackman, 904 F.2d at 1257. As an example, an individual who transfers any "monetary instrument" to another, whether or not that instrument ever finds its way into a financial institution, has engaged in a "financial transaction." See United States v. Gallo, 927 F.2d 815 (5th Cir. 1991)(transfer of a box of currency from one individual to another is a financial transaction); United States v. Hamilton, 931 F.2d 1046 (5th Cir. 1991)(the mailing of the proceeds of drug transactions to another is a financial transaction); United States v. Castano-Martinez, 859 F.2d 925 (11th Cir. 1988)(financial transactions included various "transfers" of currency from the defendant's house to vehicles parked outside).

(iii) Use of a Financial Institution

This definition cross references the term "financial institution" which is defined at subsection 1956(c)(6) by further cross reference to 31 U.S.C. § 5312(a)(2) and its implementing regulations.[10] The most common transactions involving banks and similar institutions are covered by this definition. The writing of a check drawn

[9] Monetary instrument is defined in subsection 1956(c)(5) as: (i) coin or currency of the United States or of any other country, traveler's checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments in bearer form or otherwise in such form that title passes upon delivery.

[10] 31 U.S.C. § 5312(a)(2) includes within the meaning of "financial institutions" such entities as banks; thrift institutions; securities brokers and dealers; investment bankers or companies; currency exchanges; issuers, redeemers, or cashiers of travelers' checks, checks, or money orders; credit card companies; insurance companies; travel agencies; licensed senders of money; telegraph companies; vehicle dealers; realtors; the United Postal Service; government agencies involved in the aforementioned activities; and, other businesses as designated by the Secretary of the Treasury.

on an account maintained in such a financial institution, whether for cash or to a vendor who has provided services, clearly falls within the definition of a financial transaction contained in § 1956(c)(4)(B). United States v. Jackson, 935 F.2d at 841. See also S.Rep. No. 433, 99th Cong. 2d Sess. 12-13 (1986); United States v. Martin, 933 F.2d 609 (8th Cir. 1991), and United States v. Blackman, 904 F.2d at 1257.

(iv) The Transfer of Title

This subdefinition includes any transfer of title to real estate, vehicles, vessels or aircraft. United States v. Kaufmann, 985 F.2d 884 (7th Cir. 1993) (sale of car for cash is a financial transaction.) This subdefinition was added in 1992 to close a loophole in the definition of "financial transaction" under §§ 1956 and 1957 where a transfer involved neither a monetary instrument, a transfer of funds, nor a financial institution.[11]

(v) *Affects Interstate or Foreign Commerce*

All the subdefinitions of "financial transaction" contained in subsection 1956(c)(4) require that the transaction "affect interstate or foreign commerce" or be conducted through or by a financial institution which engaged in or the activities of which affect interstate of foreign commerce "in any way or degree." The term "affect commerce in any way or degree" is derived from the *Hobbs Act*, 18 U.S.C. § 1951, and is intended to reflect the full exercise of Congress' powers under the Commerce Clause of the Constitution. United States v. Gallo, 927 F.2d at 823. The broad language of the Hobbs Act manifests an intention "to use all the constitutional power Congress has to punish interference with interstate commerce ..." United States v. Eaves, 877 F.2d 943 (11th Cir. 1989) cert. denied 493 U.S. 1977 (1990), quoting Stirone v. United States, 361 U.S. 212, 215 (1960). The appropriate inquiry is whether a defendant's conduct constitutes a sufficient threat to interstate commerce so as to implicate an area of federal concern sufficient to give rise to federal jurisdiction. United States v. Jannotti, 673 F.2d 578 (3rd Cir.), cert. denied 457 U.S. 1106 (1982). The purpose of the interstate commerce nexus in the money laundering statute is to provide a predicate for federal legislative jurisdiction. United States v. Koller, 956 F.2d 1408 (7th Cir. 1992). See United States v. Kelley, 929 F.2d 582 (10th Cir.) cert. denied 112 S.Ct. 341 (1991). There is substantial agreement that the "in or affecting interstate commerce" requirement is broadly construed and a "minimal effect" on interstate commerce is sufficient to establish federal jurisdiction. Id. at 586; United States v. Eaves, 877 F.2d at 946. See, e.g., United States v. Lucas, 932 F.2d 1210 (8th Cir.) cert. denied 112 S.Ct. 399 (1991); United States v. Tuchow, 768 F.2d 855, 870 (7th Cir. 1985); United States v. Robinson, 763 F.2d 778, 781 (6th Cir. 1985); United States v. Sorrow, 732 F.2d 176, 189 (11th Cir. 1984).

2. Knowing That the Property Represents the Proceeds of Some Form of Unlawful Activity

The government must establish, with direct or circumstantial evidence, that the defendant actually or constructively knew that the property involved in the financial transaction was the proceeds of some state, federal, or foreign felonious activity.[12] This knowledge element is separate and distinct from the specified unlawful activity

[11] See § 1527 of the Annunzio-Wylie Anti-Money Laundering Act of 1992. Even before the amendment, there was case law supporting this proposition. See United States v. Blackman, 904 F.2d 1250, 1257 (8th Cir. 1990)(transfer of title on defendant's truck qualified as "financial transaction").

element. The defendant need not know that the property was in fact proceeds of specified unlawful activity. Rather, it is sufficient if he knows the property to be the proceeds of some form of felonious conduct under state, federal or foreign law. United States v. Campbell, 977 F.2d 854, 858 (4th Cir. 1992); United States v. Awan, 966 F.2d at 1424-1425; United States v. Jackson, 935 F.2d at 838; United States v. Sutera, 933 F.2d 641, 644-646; United States v. Ortiz, 738 F. Supp. 1394, 1399 (S.D.Fla. 1990); S. Rep. No. 433, 99th Cong., 2d Sess. 12 (1986).

The knowledge element can be met in several ways. The defendant's knowledge may be either actual, constructive, or deemed by operation of the defendant's willful blindness to the facts. Id. at 9-10; United States v. Campbell, 977 F.2d at 857-59; United States v. Ortiz, 738 F. Supp. at 1400, n. 3. See also United States v. Giovannetti, 919 F.2d 1223 (7th Cir. 1990); United States v. Nersesian, 834 F.2d 1294 (2nd Cir. 1987); United States v. Jewel, 532 F. 2d 697 (9th Cir. 1976), cert. denied, 426 U.S. 951 (1976). Circumstantial evidence will suffice to establish the requisite knowledge. See United States v. Campbell, 977 F.2d at 859 (evidence of drug dealer's lifestyle, defendant's statement that the money "might have been drug money," and the fraudulent nature of the transaction in which the defendant participated sufficient to allow jury to find that defendant was willfully blind as to the source of the money); United States v. Atterson, 926 F.2d 649, 656 (7th Cir.) cert. denied, 111 S.Ct 2909 (1991) (jury may conclude that defendant who wires cash for drug dealing boyfriend knew the cash was the proceeds of unlawful activity); United States v. Gallo, 927 F.2d at 822 (jury may conclude that defendant who meets a drug dealer in a parking lot and receives a box of currency wrapped in aluminum foil packets from him knew that the cash was the proceeds of unlawful activity); United States v. Isabel, 945 F.2d 1193 (1st Cir. 1991) (jury may conclude that defendant knew the cash was the proceeds of unlawful activity when the defendant receives cash from an individual with no legitimate source of income and had previously been arrested on drug charges); United States v. Brown, 944 F.2d 1377, 1387 (7th Cir. 1991) (defendant received over $70,000 through a number of "elaborate and time-consuming transfers," carefully engineered to avoid the reporting requirements and he knew that the individuals had access to large amounts of marijuana).

3. Proceeds of Specified Unlawful Activity

This element requires proof that the property involved in the transaction was, in fact, the "proceeds of specified unlawful activity," as defined in § 1956(c)(7). While the government must only establish that a defendant knew that the property was derived from "some" form of felonious activity under state, federal or foreign law, the government must prove that the proceeds were in fact derived from "specified unlawful activity." However, the government is not required to trace the proceeds back to a particular offense. United States v. Blackman, 904 F.2d at 1257. Frequently, defendants will commingle the proceeds of specified unlawful activity with legally derived funds. In United States v. Jackson, the

[12] The term "knowing that the property involved in the financial transaction represents the proceeds of some form of unlawful activity" is defined in § 1956(c)(1) to mean that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7). Paragraph (7) defines the term "specified unlawful activity."

court addressed this issue and stated,

> §1956(a)(1)(B)(i) require[s] only that a transaction "involve[ ]" the proceeds of an activity which the participant knows is unlawful, and which in fact "involves" the proceeds of one of the types of criminal conduct identified in § 1956(c)(7). We do not read Congress' use of the word "involve" as imposing the requirement that the government trace the origin of all the funds deposited into a bank account to determine exactly which funds were used for what transaction. Moreover, we cannot believe that Congress intended that participants in unlawful activities could prevent their own convictions under the money laundering statute simply by commingling funds derived from both "specified unlawful activity" and other activities.

935 F.2d at 840. See also United States v. Johnson, 971 F.2d 562 (10th Cir. 1992); United States v. Poster 'N' Things, 969 F.2d 652 (8th Cir. 1992).

4. Specific Intent - Intent to Promote Specified Unlawful Activity

This element requires the government to prove that the defendant conducted or attempted to conduct a financial transaction with the intent to promote a specified unlawful activity. Courts have found that the reinvesting of illegal proceeds into an illegal enterprise are the types of activities which can show an intent to promote a specified unlawful activity. United States v. Hildebrand, 152 F.3d 756, 762 (8th Cir. 1998) (payments for office supplies, secretarial services and staff wages constitute transactions with intent to promote an on-going fraud scheme); United States v. Mirabella, 73 F.3d 1508 (9th Cir. 1996) (using fraud proceeds to pay commissions to persons who brought in more victims promoted specified unlawful activity); Unites States v. Munoz-Romo, 947 F.2d 170 (5th Cir. 1991) (purchase of house in which cash from drug sales were hidden, and purchase of cars used to drive to sites of drug sales are transactions that promote specified unlawful activity). Additionally, where a defendant distributes the proceeds to other co-conspirators or uses the proceeds to keep the scheme ongoing are instances which the courts have found to promote the specified unlawful activity. United States v. Coscarelli, 105 F.3d 984, 990 (5th Cir. 1997), *aff'd en banc*, 149 F.3d 342 (5th Cir. 1998) (using proceeds of telemarketing fraud to pay co-conspirators and overhead expenses promote the fraud scheme); United States v. Masden, 170 F.3d 790 (7th Cir. 1999) (using money from new investors to pay off earlier investors - as in a classic Ponzi scheme - promotes the scheme because it foster good will and nurtures false impression that investors who want their money back will be paid).

5. Specific Intent - Intent to Engage in a Violation of § 7201 or § 7206 of the Internal Revenue Code

This element requires the government to prove that the defendant conducted a financial transaction with the intent to evade Federal taxes. In an analysis explained by the chairman of the Senate Judiciary Committee:

> [This provision] is vital to the effective use of the money laundering statute and would allow the Internal Revenue Service with its expertise in investigating financial transactions to participate in developing cases under §1956. Under this provision any person who conducts a financial transaction that in whole or in part involves property derived from unlawful activity, intending to engage in conduct that constitutes a violation of the tax laws, would be guilty of a

money laundering offense[13]

The scope of subsection (a)(1)(A)(ii) is controlled to a large extent by the reach of § § 7201 and 7206 of the Internal Revenue Code of 1986. Consequently, in seeking to determine whether a defendant has acted with intent to violate § 7201 or § 7206, those sections must be consulted. In general, § 7201 covers attempted tax evasion (willfully attempt in any manner to evade or defeat any tax or the payment thereof) and § 7206 covers the preparation and filing of false tax returns and other false documents. The subsection, therefore, essentially extends to a person who engages in a financial transaction involving proceeds derived from specified unlawful activity with the intent to evade the payment of taxes or with the intent to submit a materially false tax return or document to the IRS. Conduct evidencing this type of intent has been found where the defendant failed to report the laundered funds as income or disguise the transfer of illegal proceeds as a loan payment. United States v. Suba, 131 F.3d. 662 (11th Cir. 1998) (defendant's failure to report three checks on him income tax return is evidence that he laundered them with intent to evade taxes); United States v. Zanghi, 189 F.3d 71 (1st Cir. 1999) (transferring fraud proceeds in a manner designed to make it appear to be a loan payment instead of income violates the tax laws and is sufficient to show an intent to evade taxes). This intent element is rarely charged by prosecutors because of the necessity of obtaining approval by the Tax Division of the U.S. Department of Justice.

[13] 134 Cong. Rec. S17367 (daily ed. November 10, 1988) (statement of Sen. Biden).

6. Specific Intent - Intent to Conceal or Disguise the Nature, Location, Source, Ownership, or Control of Proceeds of Unlawful Activity

This element requires the government to prove that the defendant conducted or attempted to conduct a financial transaction knowing that the transaction was designed, in whole or in part, to conceal the nature, the location, source, ownership or control of the proceeds of specified unlawful activity. The Tenth Circuit in United States v. Sanders, 929 F.2d 1466, 1470-1473 (10th Cir.), cert. denied, 112 S.Ct. 143 (1991), explored the requirements of this element. In reversing the money laundering convictions of the defendants who had used drug proceeds to purchase automobiles, the court noted that merely spending the proceeds of illegal activities did not violate the money laundering statute. The court further stated that,

> the purpose of the money laundering statute is to reach commercial transactions intended (at least in part) to disguise the relationship of the item purchased with the person providing the proceeds and that the proceeds used to make the purchase were obtained from illegal activities.

Id. In reversing the conviction, the court emphasized that no third-parties were involved and no effort was made to conceal the identity of the defendants as the purchasers. Id.

The Tenth Circuit further clarified its holding concerning this issue in United States v. Edgmon, 952 F.2d 1206 (10th Cir. 1992), cert. denied, 1992 WL 127032 (1992), and United States v. Lovett, 964 F.2d 1029 (10th Cir. 1992). In Edgmon, the court upheld the defendant's money laundering conviction where the factual circumstances suggested a complicated scheme which used a third-party to conceal

the true ownership of the proceeds. The court stated, "The involved transactions, unlike the simple automobile purchases in Sanders, certainly support a finding under the money laundering statute of intent to conceal the origin or nature of the proceeds of unlawful activity." United States v. Edgmon, 952 F.2d at 1211. In Lovett, the defendant was charged, among other things, with four counts of money laundering under § 1956(a)(1)(B)(i). The court applied the standards relied on in Sanders to each of the four counts. The court upheld Lovett's convictions on two counts where he instructed his brother not to tell the victim about the purchase of the pick-up truck and where he gave a number of conflicting statement regarding the source of the cash used in the purchase of a home. The court reversed the remaining two counts, where the defendant had purchased a car for his own use and a diamond ring for his wife, by concluding that the government had failed to introduce any direct evidence supporting the defendant's intent to conceal or disguise the origin of the proceeds used in those transactions. The court found, however, that neither the money laundering statute nor its holding in Sanders created a requirement that "every money laundering conviction must be supported by evidence of intent to conceal the identity of the participants of the transaction." United States v. Lovett, 964 F.2d at 1034. The court further stated,

> To find that the money laundering statute is aimed solely at those transactions designed to conceal the identity of the participants to the transaction is to ignore the broad language of the statute. We see no reason why the concealment requirement may not be met by other affirmative acts related to the commercial transaction — acts designed to quell the suspicions of third parties regarding the nature, location, source, ownership or control of the proceeds of the defendant's unlawful activity. . . [T]he 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.
>
> Id. at 1034, n. 3.

The Seventh Circuit, while endorsing the court's reasoning in Sanders, upheld the money laundering conviction of the defendant in United States v. Jackson, 935 F.2d at 841, where the defendant commingled the proceeds of his drug distribution operation with the "legitimate" funds deposited in the business accounts. The court found that the very act of commingling the funds was itself suggestive of a design to hide the source of ill-gotten gains. Id. at 840. The court further explained that:

> [t] he conversion of cash into goods and services as a way of concealing or disguising the wellspring of the cash is a central concern of the money laundering statute... To convict under § 1956(a)(1)(B)(i) the government must prove not just that the defendant spent ill-gotten gains, but that the expenditures were designed to hide the provenance of the funds involved.

Id. at 841-842. See also United States v. Posters 'N' Things, 969 F.2d 652 (defendant's commingling in one account of legitimate business receipts and illegitimate receipts was evidence of defendant's intent to disguise the nature or source of the proceeds from her unlawful business); United States v. Beddow, 957 F.2d 1330, 1335 (6th Cir. 1992) (evidence of defendant's convoluted financial dealings with his banks and his charter boat

business supported a conclusion that he intended to disguise the illegal source of his money); 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 is evidence of intent to conceal the illegal source of the money); United States v. Sutera, 933 F.2d 641, 648 (8th Cir. 1991) (defendant deposited illegal gambling proceeds into business account which he used to pay personal bills and gambling expenses; while the money could have been better hidden, a reasonable jury could find that the defendant had the intent to hide the gambling proceeds); United States v. Martin, 933 F.2d 609 (8th Cir. 1991) (evidence which showed the purchase of stock with drug proceeds and the issuance of the stock certificates in the name of a third party instead of the purchaser was sufficient to prove defendant's intent to conceal or disguise); United States v. Massac, 867 F.2d 174, 178 (3d Cir. 1989) (intent to conceal found where defendant, a drug dealer, used a cash transmitting business, rather than a bank, to transfer $22,000 in cash to Haiti over a five month period). Cf. United States v. Gonzalez-Rodriguez, 966 F.2d 918, 925-926 (5th cir. 1992) (no evidence of concealment found where defendant readily cooperated with law enforcement officers, voluntarily disclosing her possession of the cash and turning it over to the agents for counting, and she made no false exculpatory statements to the agents).

7 Specific Intent - Intent to Avoid a Federal or State Reporting Requirement

This element requires the government to prove that the defendant conducted or attempted to conduct a financial transaction knowing that the transaction was designed, in whole or in part, to avoid a federal or state reporting requirement. In this context, the federal or state reporting requirements include all the federal and state currency transaction reports as well as state campaign finance reporting laws. Most cases in which the courts have found evidence of this intent involve instances where the defendant "structured" deposits or payments under the $10,000 reporting threshold. See United States v. Morales, 108 F.3d 1213 (10th Cir. 1997) (purchase of bar with 50 payments under $10,000 evidenced intent to avoid a reporting requirement); United States v. Griffin 84 F.3d 912 (7th Cir. 1996) (converting $99,810 in drug proceeds to cashier's checks in amounts under $10,000 is a violation of this element); United States v. Patino-Reyes, 974 F.2d 94 (8th Cir. 1992) (defendant buys two cashier's checks in amounts under $10,000, evading CTR requirement, and uses checks to buy boat, evading Form 8300, reporting requirement).

D. Elements of Section 1956(a)(2)

Subsection 1956(a)(2) provides that whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States (A) with the intent to promote the carrying on of specified unlawful activity; or (B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or (ii) to avoid a transaction reporting requirement under State or Federal law... [is guilty of an offense].

Unlike § 1956(a)(1), which has three elements common to all of its subdivisions, the elements of this statute differ from subdivision to subdivision. Only the "transportation, transmission, or transfer" element, which corresponds to the "financial transaction" element of § 1956(a)(1), is common to all parts of the statute.

1. Transportation, Transmission, or Transfer

Prior to the 1988 amendments, subsection 1956(a)(2) prohibited "monetary transportation" offenses using the operative term "transports or attempts to transport." The term "transport" was undefined and the Department of Justice concluded that the term encompassed all means of transporting funds or monetary instruments, including wire transmissions, electronic fund transfers, etc. This conclusion was reinforced by the fact that the statute proscribed the transportation of "funds" in addition to "monetary instruments" and left the term "funds" undefined. Thus, the transportation of "funds" arguably included electronic fund transfers and other forms of non-paper financial transfers.

Subsection 6471(b) of the Anti-Drug Abuse Act of 1988 amended the statute to replace the phrase "transports or attempts to transport" with the phrase "transports, transmits, or transfers, or attempts to transport, transmit, or transfer." The legislative history indicates that by adding the terms "transmit" and "transfer," Congress intended only to clarify the scope of activities that it thought was already embraced within the term "transport."[14] Section 1531 of the Annunzio-Wylie Anti-Money Laundering Act of 1992 replaced the term "transportation," as it appeared in § 1956 (a)(2) and (b), with "transportation, transmission, or transfer."

All of the subdivisions of subsection 1956(a)(2) apply to situations in which a person transports or attempts to transport "monetary instruments" (as defined in subsection 1956(c)(5)) or funds into or out of the United States for certain illicit purposes. Which of the other elements apply depends on which of the specific intent alternatives is alleged.

2. With the Intent to Promote the Carrying on of Specified Unlawful Activity

The offense described in § 1956(a)(2)(A) requires that the transportation, transmission, or transfer, or attempted transportation, transmission, or transfer be carried out "with the intent to promote the carrying on of specified unlawful activity." Unlike the corresponding provision in subsection 1956(a)(1)(A)(i), there is no requirement in this subsection that the monetary instrument or funds be the product of specified unlawful activity.[15] Nor is there any "knowledge" requirement. Prosecutors must only establish that the defendant transported, transmitted, or transferred, or attempted to transport, transmit, or transfer the monetary

[14] See 134 Congressional Record, S17360 (daily ed., November 10, 1988) (statement of Sen. Biden).

[15] See United States v. Piervinazi et al., Nos. 92-1473,1474 (2nd Cir. May 2, 1994)(Noting the distinction between § § 1956(a)(1), 1957 and 1956(a)(2) with respect to the element of proceeds). It is important to note that the absence of a requirement that the monetary instruments or funds be the proceeds of unlawful activity would allow for the use of government funds in "sting" and other types of operations where government agents provide the instruments or funds to be laundered. Thus, if an individual or domestic money laundering organization was willing to launder its money through outbound currency transportation, the use of government funds would not preclude an otherwise viable subsection

instrument or funds with the "intent to promote the carrying on of specified unlawful activity.

In a Second Circuit case, United States v. Piervinazi et al., 23 F.3d 670 (2d Cir. 1994), the court was called upon to examine the promotion intent prong in a § 1956(a)(2) context. In this case, defendant argued that the overseas transmission or attempt must accomplish some "secondary" criminal purpose separate and apart from the particular activity generating the proceeds in order to promote some future criminal activity. The court there held that the intent to promote in an (a)(2)(A) context was satisfied by finding that the purpose of the international transportation, or transmission, or attempt, was to promote the very activity underlying the transfer, and did not require proof that "the laundering would promote subsequent criminal activity." Thus, assuming the purpose of the transfer were proven to have been to promote an ongoing bank or wire fraud, then § 1956(a)(2)(A)'s requirements were satisfied.

3. With the Intent to Conceal or Disguise the Nature, Source, etc., of the Proceeds of Specified Unlawful Activity

This subsection adds two or three elements of proof to a subsection 1956(a)(2) prosecution. First, like subsection 1956(a)(1)(B)(i), it requires that the defendant know that the monetary instrument or funds involved in the transportation or attempted transportation represent the proceeds of some form of unlawful activity. The analysis applicable to subsection 1956(a)(1) in regard to this element is applicable to subsection 1956(a)(2)(B)(i) prosecutions.

Second, like subsection 1956(a)(1)(B)(i), this subsection requires proof that the transportation was designed in whole or part "to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity."[16]

Third, there is at least an implication that the transportation, transmission or transfer must involve the proceeds of specified unlawful activity. The statute is ambiguous in this regard. On the one hand, as mentioned above, § (a)(2), unlike subsection (a)(1), contains no generally applicable proceeds requirement.[17] On the other hand, Congress included a reference to "the proceeds of specified unlawful activity" in subparagraph (a)(2)(B)(i), suggesting that for the purposes of this provision only, a violation of § 1956(a)(2) occurs only when the proceeds of specified unlawful activity are involved.

Section 108 of the Crime Control Act of 1990 eases the government's burden of proof with respect to both of the knowledge requirements in 18 U.S.C. § 1956(a)(2)(B). The amendment specifically makes it possible to satisfy these requirements by having an undercover agent or confidential informant make representations to the defendant concerning the source of the money and the purpose of the transaction. Thus, in a case under § (a)(2)(B), the

1956(a)(2)(A) prosecution if it could be established that the purpose of the transportation was to promote the carrying on of specified unlawful activity (§ 1956 (c)(7)). The absence of a requirement that the monetary instruments or funds be the proceeds of unlawful activity would also be useful in a circumstance where legitimate funds are transferred to influence participation in a specified unlawful activity.

[16] The legislative history of this section is Sec. 510 of S.1970; and Sec. 1410 of S. 1972, 101st Cong. See 135 Congressional Record, S16760 (daily ed., November 21, 1989).

[17] See United States v. Hamilton, 931 F.2d 1046, 1052 (5th Cir. 1991).

government could satisfy the knowledge requirements by having a confidential informant, working under the direction of a federal agent, tell the defendant that the property being sent into or out of the was to disguise the ownership of the property.

4. With the Intent to Avoid a Transaction Reporting Requirement under State or Federal Law

This element, like subsection (B)(i) above, requires proof that the defendant knew that the monetary instruments or funds involved in the transportation, transmission, or transfer or attempted transportation, transmission, or transfer represent the proceeds of some form of unlawful activity. But this provision already does not require the government to prove that the property was, in fact, the proceeds of specified unlawful activity. In addition, subsection (a)(2)(B)(ii) adds the element of proof that such transportation be designed in whole or part "to avoid a transportation reporting requirement under State or Federal law." Thus, all that has to be proven in addition to the transportation element is that: (1) the defendant knew the funds to be the product of some kind of unlawful activity; and (2) the defendant knew that the purpose of the movement in or out of the country was to avoid a reporting requirement. Both of these elements may, after the 1990 amendments, be established with evidence of a proper representation by a law enforcement officer, and evidence that the defendant believed the law enforcement officer's representation to be true.

In United States v. Ortiz, 738 F.Supp. 1394, 1398-1400 (S.D. Fla. 1990), the portion of § 1956(a)(2) that requires the government to prove that the defendant dealt with proceeds "knowing" the proceeds were criminally derived was challenged as ambiguous. In Ortiz, the defendant was charged with attempting to transport $497,000 in U.S. currency from Miami to a place outside the United States knowing that the money was the proceeds of some unlawful activity and knowing that the movement of the funds was designed to avoid the transaction reporting requirement. The court found no ambiguity. Citing § 1956(c)(1)'s definition of "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity," the court said the following: "This definition suggests that the statute is applicable to the transportation of the proceeds of any felonious activity where the defendant has knowledge that the proceeds are derived from felonious activity". See also United States v. Levine, 750 F. Supp. 1433 (D. Colo. 1990) (language in indictment charging defendant acted "knowing that the transactions were designed ... to conceal or disguise the nature ... of the proceeds of these specified unlawful activities" is a sufficient charge that the defendant also knew that transactions involved illegal proceeds); United States v. Lizotte, 856 F.2d 341 (1st Cir. 1988).

E. Elements of Subsection 1956(a)(3) - Undercover "Sting" Operations

In 1988, § 6465 of the Anti Drug Abuse Act created an entirely new money laundering offense that may be committed as a result of a government "sting" operation. 18 U.S.C. § 1956(a)(3)[18] states: Whoever, with the intent (A) to promote the carrying on of specified unlawful activity; (B) to conceal or disguise the nature, location, source, ownership or control of property believed to be the proceeds of specified unlawful activity; or (C) to avoid a transaction reporting requirement under State or Federal law conducts or attempts

[18] Enacted by § 6465 of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4375, eff. Nov. 18, 1988.

to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both.

The term "represented" is defined in this subsection as meaning any representation made by either a law enforcement officer or by another person at the direction of, or with the approval of, a federal official authorized to investigate or prosecute violations of 18 U.S.C. § 1956. Subsection 1956(a)(3) was added to the statute expressly to permit prosecution where the defendant believed the proceeds were derived from specified unlawful activity because of a representation made by a law enforcement officer or an informant working under the officer's control. In his analysis of § 6465 of the *Anti-Drug Abuse Act of 1988*,[19] which added subsection (a)(3) to 18 U.S.C. § 1956, Senator Joseph R. Biden, Jr., Chairman of the Senate Judiciary Committee, said the following:

> This amendment to the money laundering statute, 18 U.S.C. § 1956, would permit undercover law enforcement officers to pose as drug traffickers in order to obtain evidence necessary to convict money launderers. The present statute does not provide for such operations because it permits a conviction only where the laundered money "in fact involves the proceeds of specified unlawful activity." 18 U.S.C. § 1956(a)(1). Since money provided by an undercover officer posing as a drug trafficker does not "in fact" involve drug money, the laundering of such money is not presently an offense under the statute.[20]

[19] Pub. L. 100-690, 102 Stat. 4375.

1. The Representation Clause

As amended in 1992,[21] the representation clause of § 1956(a)(3) reads as follows:

"... involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity ..." Thus, it is an offense under § 1956(a)(3) if a law enforcement officer says, "this is drug money" and the defendant uses the money (or attempts to use the money) to conduct a financial transaction with one of the alternative intents specified in subparagraphs (A), (B) or (C), i.e., to promote future specified unlawful activity (such as buying an airplane to be used for drug smuggling); to conceal or disguise the ownership of the money (such as by wiring it to an account held by a fictitious corporation); or to violate a currency reporting requirement (such as by engaging in structured deposits). It is also an offense under § (a)(3) if the officer says, "this is an airplane/firearm/farm used to facilitate drug trafficking" and the defendant then engages in a financial transaction involving that property with one of the specific intents.

Congress saw the elimination of the knowledge and proceeds requirements as justified only because the representation requirement was to be added. The legislative history makes clear that the representation element was seen as an

[20] 134 Cong. Rec. S17365 (daily ed. November 10, 1988). Section 6465 was derived from § 2353 of S.2852, 100th Cong., 2d Sess., the Senate version of what became the Anti-Drug Abuse Act of 1988. The original Senate language of the provision appears at 134 Cong. Rec. S14335 (daily ed. October 3, 1988). An analysis of that language appears, id. at pp. S14072 and S14096.

[21] See § 1531 of the Annunzio-Wylie Anti-Money Laundering Act of 1992.

essential element of the new statute. Thus the proper reading of the representation clause is that, whereas a representation is essential, the officer or other authorized individual may make either of two kinds of representations: 1) that the property is the proceeds of criminal activity, or 2) that the property was used to conduct or facilitate criminal activity.

The representation need not be explicit. Ambiguous statements concerning the illegal derivation of the funds are sufficient to satisfy the representation element as long as the agent suggests that he is involved in an illegal activity. In United States v. Breque, 964 F.2d 381 (5th Cir.), cert. denied, 113 S.Ct. 1253 (1993), for example, the undercover IRS agent never explicitly told the defendant that the money he was laundering through his currency exchange business was drug money. However, based on the defendant's responses to the agent's veiled references to drug dealing, including a suggestion to his co-conspirator that they charge a higher commission because of the dangers involved in dealing with drug traffickers, the court held that a jury could infer that the defendant knew that the money had been represented as drug money. Similarly, in United States v. Kaufmann, 985 F.2d 884 (7th Cir. 1993), a government agent buying a Porsche automobile from the defendant never explicitly stated that the $40,000 in cash he was using was drug proceeds. The court held that the government need not prove that the agent expressly indicated the source of the cash to the defendant, but rather "[i] t is enough that the government prove that an enforcement officer or authorized person made the defendant aware of circumstances from which a reasonable person would infer that the property was drug proceeds." Id. at 893. In addition, there is no requirement that agents in sting operations "recite the alleged source" of the represented tainted funds at each transaction during the course of a sting operation. According to the Fifth Circuit, doing so would place an unnecessary burden on the government's ability to carry out credible sting operations. See United States v. Arditti, 955 F.2d 331, 339 (5th Cir. 1992).

2. Differences in Intent Requirements in (a)(1) and (a)(3)

Congress recognized that the substitution of the representation requirement in (a)(3) for the knowledge and proceeds requirements in (a)(1) was imperfect: a knowledge requirement applies to all defendants; to be convicted of an offense under (a)(1), even an aider and abetter has to know that the property was derived from some form of unlawful activity. The representation requirement, however, is not part of the mens rea of the offense. To compensate for the elimination of the knowledge requirement from the mens rea, Congress made the intent requirement in (a)(3) stricter than it is in (a)(1). Senator Biden addressed this point as follows:

> While this [the fact that the representation requirement is not part of the mens rea] 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.[22]

The reference to the "strengthened specific intent requirement" is to differentiate between the language in §§ 1956(a)(1)(B)(i) and (ii) and the language in §§ 1956(a)(3)(B) and (C). While the three alternative intent elements of subsection (a)(3) are very similar to the three corresponding elements in the original

version of subsection (a)(1), they are not identical. The second and third alternatives in (a)(3) require proof of specific intent "to conceal or disguise the nature, location, source, ownership, or control" of the criminal proceeds, § 1956(a)(3)(B), or "to avoid a transaction reporting requirement," § 1956(a)(3)(C). In contrast, subsection (a)(1)(B) requires only proof that the defendant had knowledge that the purpose of the transaction was "to conceal or disguise the nature, location, source, ownership, or control" of the criminal proceeds, § 1956(a)(1)(B)(i), or "to avoid a transaction reporting requirement," § 1956(a)(1)(B)(ii). The legislative history suggests that the "had knowledge" requirement of (a)(1) is a weaker standard than the specific intent requirement of (a)(3).[23]

F. 18 United States Code Section 1957 - Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity

Section 1957 contains an offense entitled, "Engaging in monetary transactions in property derived from specified unlawful activity." In essence, subsection 1957(a) proscribes the knowing disbursement or receipt of over $10,000 of criminally derived funds if a financial institution is utilized at some point. The statute does not require that these funds be used for any additional criminal purpose nor that the defendant engaged in the transaction with any specific intent. For example, assuming more than $10,000 was involved, the deposit in a bank of the proceeds of a house sale by a seller who knows that these proceeds were funds derived from drug dealing would constitute a violation of this statute. Thus, § 1957 is the equivalent of a financial transaction offense under § 1956(a)(1) with the specific intent requirements replaced by the requirement that the transaction involve $10,000 and a financial institution.

1. Essential Elements

The elements of § 1957 are: (1) an individual must engage or attempt to engage in a "monetary transaction";[24] (2) the defendant must know that the property involved in the transaction is criminally derived; and (3) the property must in fact be derived from "specified unlawful activity."[25]

[22] 134 Cong. Rec. S14072, S14096 (daily ed., October 3, 1988).

[23] 134 Cong. Rec. S14072, S14096 (daily ed., October 3, 1988).

[24] The term "monetary transaction", as originally defined in Subsection 1957(f)(1), included: the deposit, withdrawal, transfer or exchange, in or affecting interstate or foreign commerce, of funds or monetary instrument . . . by, through, or to a financial institution (as defined in 31 U.S.C. § 5312(a)(2)). Additional language was added in 1988 to state that the term "monetary transaction" . . . does not include any transaction necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment to the Constitution. . . ." The term "monetary instrument" in § 1957 as originally enacted was given the same definition as under 31 U.S.C. § 5312(a)(3) and 31 C.F.R. § 103.11(k). This definition includes U.S. currency and all negotiable instruments that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes immediately upon delivery.

Effective November 18, 1988, § 6184 of the ADAA amended 18 U.S.C. § 1957(f)(1) to specify that the term "monetary instrument" was to have the same definition as in 18 U.S.C. § 1956(c)(5), which is as follows:

1. coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, or
2. investment securities or negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(a) Monetary Transaction

The term "monetary transaction" is narrower than the term "financial transaction" as used in § 1956 in that it requires that a financial institution and at least $10,000 be involved in the transaction. This is the only substantive provision of either § 1956 or § 1957 that requires that a financial institution participate or otherwise be connected to the transaction in order for that transaction to be criminal money laundering. But the definition of "financial institution" in § 5312 of Title 31 is extremely broad. Thus, for example, a transaction occurring at a car dealership or a jewelry store is a "monetary transaction" under § 1957.

A defendant may violate § 1957 simply through the deposit of proceeds from an underlying offense. In United States v. Griffith, 17 F.3d 865 (1994), the Court affirmed the § 1957 conviction of the defendant who deposited proceeds received from the transfer of fraudulently procured camera equipment. In United States v. Lovett, 964 F.2d 1029 (10th Cir.), the defendant embezzled funds from his grandmother's bank accounts, and used the money as collateral for a loan. The Tenth Circuit held that each time the defendant deposited loan proceeds, which he had divided into six separate checks, he violated § 1957. Similarly, in United States v. Hollis, 971 F.2d 1141 (10th Cir. 1992), the defendant was convicted under § 1957 for depositing checks from a completed wire fraud scheme. One court has even held that simply spending proceeds will violate § 1957. See United States v. Kelley, 929 F.2d 582, 585 (10th Cir.), cert. denied, 112 S.Ct. 341 (1991)(defendant used proceeds of fraudulently obtained loan to buy a car).

[25] Subsection 1957(f)(3) defines "specified unlawful activity" in accordance with the definition contained in subsection 1956(c)(7).

(b) Knowledge and Proceeds

The knowledge requirement contained in § 1957 is only that the individual know that the monies involved are derived from some kind of criminal activity. There is no requirement of knowledge that the funds be derived from any particular kind of crime or, indeed, that the funds were derived from a felony rather than a misdemeanor. The proceeds requirement is identical to the analogous provision in § 1956(a)(1). Thus the knowledge and proceeds elements of a § 1957 offense are not unlike the same elements under § 1956, and the same case law is applicable to both.

III. RECENT DEVELOPMENTS IN THE U.S. STRATEGY AGAINST MONEY LAUNDERING

On October 15, 1998, Congress passed the Money Laundering and Financial Crimes Strategy Act of 1998. The Act, which was introduced by Congresswoman Nydia Velazquez of New York and signed into law by President Clinton, called upon the President, acting through the Secretary of the Treasury and in consultation with the Attorney General, to develop a national strategy for combating money laundering and related financial crimes. The Act called for the first national strategy to be sent to Congress in 1999, and updated annually for the following four consecutive years. The first annual strategy was released on September 23, 1999. The National Money Laundering Strategy for 2000 was released on March 8, 2000, at a press conference co-chaired by Deputy Attorney General Eric Holder and Deputy Treasury Secretary Stuart Eizenstat.

The 2000 Strategy is organized according to four overarching goals:

(1) to strengthen domestic enforcement in order to disrupt the flow of illegal money;

(2) to enhance regulatory and cooperative public-private efforts to prevent money laundering;
(3) to strengthen partnerships with state and local governments to fight money laundering throughout the United States; and
(4) to strengthen international cooperation in order to disrupt the global flow of illicit money.

These four goals are supported by identified objectives which, in turn, are to be accomplished through approximately 65 specific action items set out in the strategy. The following are summaries of the most significant action items:

A. Designation of High Intensity Financial Crime Areas (HIFCAs)

The designation of HIFCAs was mandated by the 1998 legislation and was the first action item in the 1999 Strategy. HIFCAs are defined as special, high-risk areas or sectors where law enforcement will concentrate its resources and energy to combat money laundering. The Justice and Treasury Departments led a process to identify and designate the first HIFCAs. As part of this process, the two departments convened an interagency HIFCA Working Group to collect and analyze relevant information and make recommendations to the Deputy Attorney General and the Deputy Treasury Secretary for the HIFCA designations. The 2000 Strategy designated the first HIFCAs: (1) the New York City/Northern New Jersey area; (2) the Los Angeles, California, metropolitan area; (3) San Juan, Puerto Rico; and (4) a "systems" HIFCA to focus and enhance current efforts addressing the problem of cross-border currency smuggling/movements between Mexico and Texas and Arizona.

The HIFCA programme is intended to concentrate law enforcement efforts at the federal, state, and local levels to combat money laundering in the designated high-intensity money laundering zones. In order to implement this goal, money laundering action teams have been created or identified within each HIFCA to spearhead a coordinated federal, state, and local anti-money laundering effort. Future HIFCAs will be selected from applications received from prospective areas or from candidates proposed by the Secretary of the Treasury or the Attorney General.

B. Financial Crime-Free Communities Support Programme (C-FIC)

The 2000 Strategy announces the launching of the C-FIC programme. The C-FIC programme is also the result of a legislative mandate which calls for the establishment of a federal grant programme to provide seed capital for emerging state and local counter-money laundering enforcement efforts. The Bureau of Justice Assistance (BJA) is assisting the Treasury Department in administering this grant programme. Congress appropriated $2.9 million in fiscal year 2000 for the commencement of this programme. The first nine recipients for C-FIC grants were announced in September 2000 and included a variety of programs proposed by state and local law enforcement agencies in New York, Illinois, Arizona, Florida, Texas and California.

C. Money Service Business Suspicious Activity Report (SAR) Reporting

In conjunction with the release of the strategy, the Treasury Department announced the issuance of final regulations, effective December 31, 2001, mandating that money transmitters, issuers, sellers, and redeemers of money orders and traveler's checks must report suspicious transactions to the Treasury Department.

D. Financial Crime Havens

The 1999 Strategy called for the formation of an interagency working group to explore whether measures should be adopted to restrict financial institutions in the United States from opening or maintaining correspondent banking accounts for foreign banks that are organized in "lax" offshore jurisdictions. This initiative was pursued in conjunction with the Financial Action Task Force's initiative which resulted in the naming of fifteen Non-cooperative Countries and Jurisdictions in June 2000. The issuance of this list was followed by the issuance of FinCEN Advisories to United States financial institutions concerning the fifteen designated jurisdictions.

E. "Gatekeepers"

Pursuant to the 1999 Strategy, an interagency working group was created to examine the responsibilities of professionals, such as lawyers and accountants, with regard to money laundering. The 2000 Strategy directed the working group to continue its review and "to make recommendations - ranging from enhanced professional education, standards or rules, to legislation - as might be needed." In April 2000, a meeting of representatives from the G-7 countries was convened in Washington, D.C. to discuss this issue. Because of the difficult legal and policy issues involved when considering the responsibilities of lawyers and accountants in this area, the working group will continue to study this issue and prepare recommendations for the Steering Committee in 2001.

F. Proposed Legislation

The Treasury Department announced that, in conjunction with the 2000 Strategy, the administration was sending new anti-money laundering legislation to Congress. The International Counter-Money Laundering Act of 2000 offered critically needed new authority to take calibrated action against foreign financial crime havens. In addition to seeking enactment of the Treasury bill, the 2000 Strategy called for the administration to seek enactment of the Justice Department's Money Laundering Act of 2000, which was submitted to Congress on November 10, 1999. This bill contained numerous provisions which would enhance the effectiveness of the money laundering statutes. However, neither of these bills was enacted in 2000. It is expected that these bills will be re-submitted to Congress in 2001.

In conjunction with the announcement of the 2000 Strategy, on March 7, 2000, the Attorney General and the Secretary of the Treasury issued a joint memorandum to all U.S. Attorneys (USAs) and the heads of all of the federal law enforcement agencies, which emphasized the importance of anti-money laundering enforcement and requested the implementation of several action items recommended in the 1999 Strategy. Specifically, the memorandum urged the USAs and the law enforcement agencies:

(i) to encourage below-threshold investigations and prosecutions that potentially have a systemic or financial sector-wide effect on money laundering;
(ii) to establish SAR review teams;
(iii) to ensure that all informants and cooperating witnesses are debriefed with respect to money laundering methods and their knowledge of money laundering techniques;
(iv) to increase the use of electronic surveillance in appropriate money laundering cases;
(v) to enhance the support and analysis of multi-district money laundering investigations;

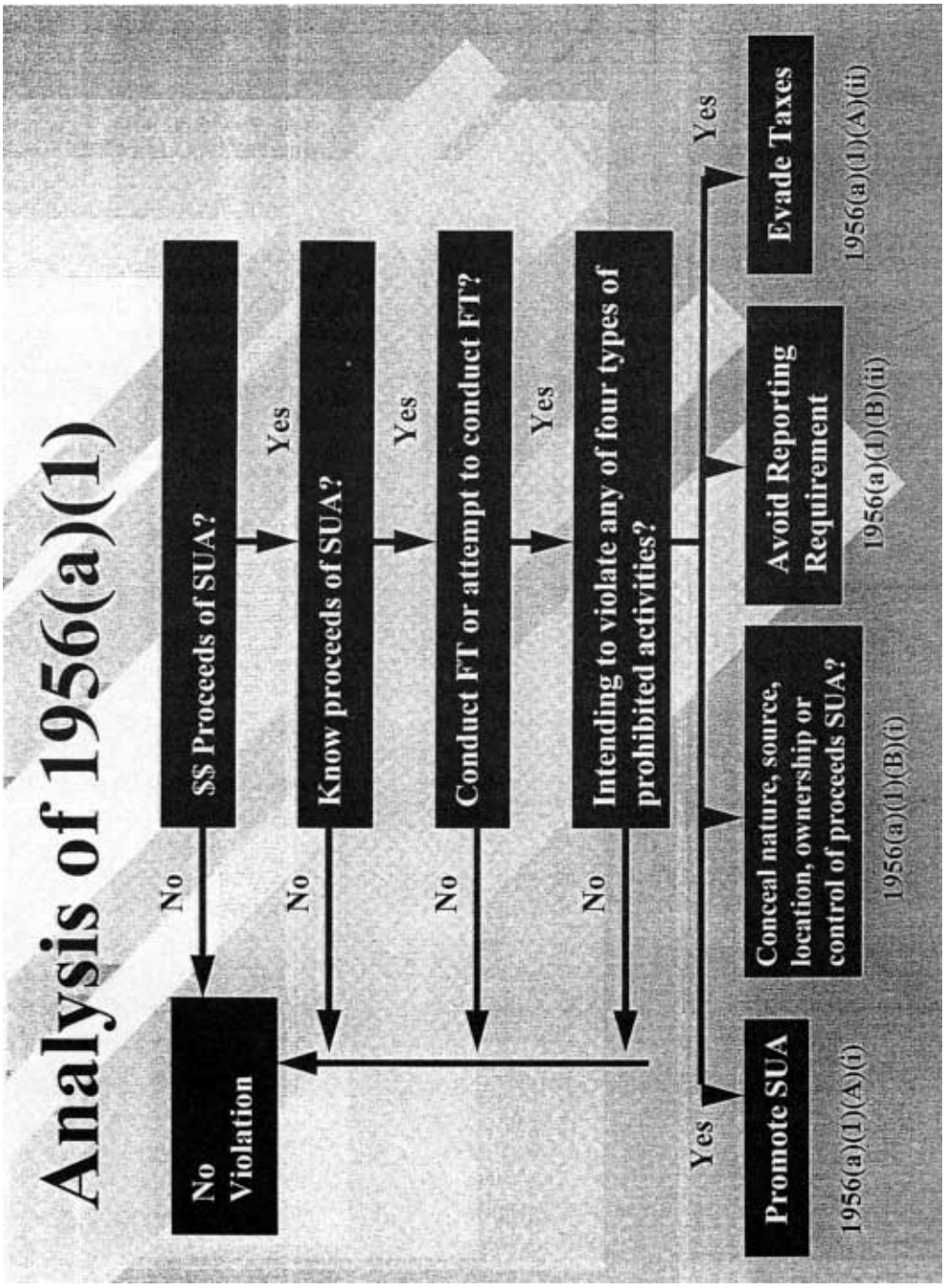
(vi) to increase training for financial investigations; and
(vii) to increase the strategic use of asset forfeiture in money laundering cases.

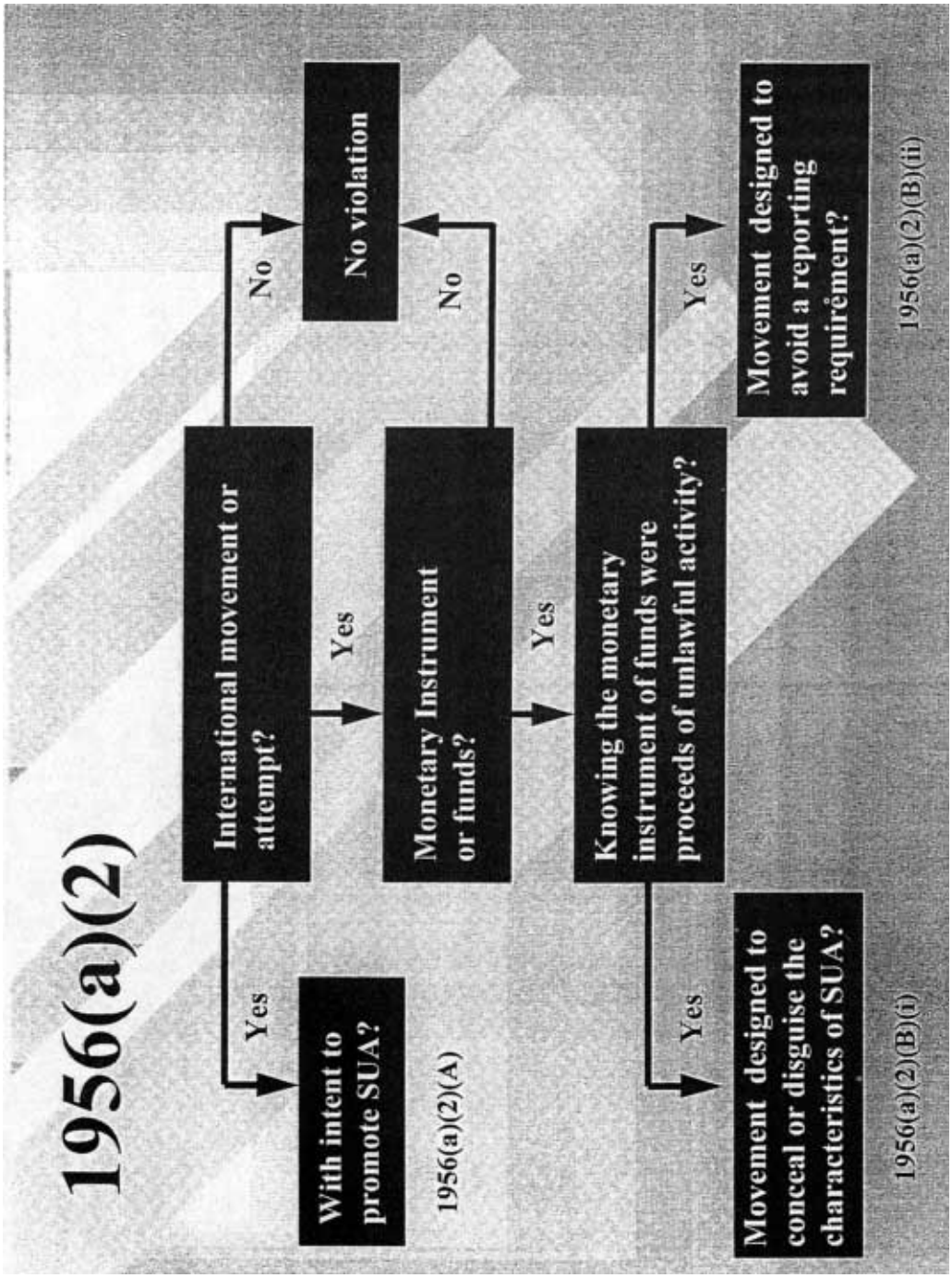
The 2000 Strategy set out a far-reaching and highly ambitious regimen of action items and milestones to be addressed and accomplished during 2000. The implementation of the Money Laundering Strategy was being guided by an interagency Steering Committee co-chaired by the Deputy Secretary of the Treasury and the Deputy Attorney General, with the participation of relevant departments and agencies. The Steering Committee has the responsibility of tracking and identifying progress toward fulfillment of the goals and objectives identified in the 2000 Strategy and this progress will be reported in the 2001 Strategy.

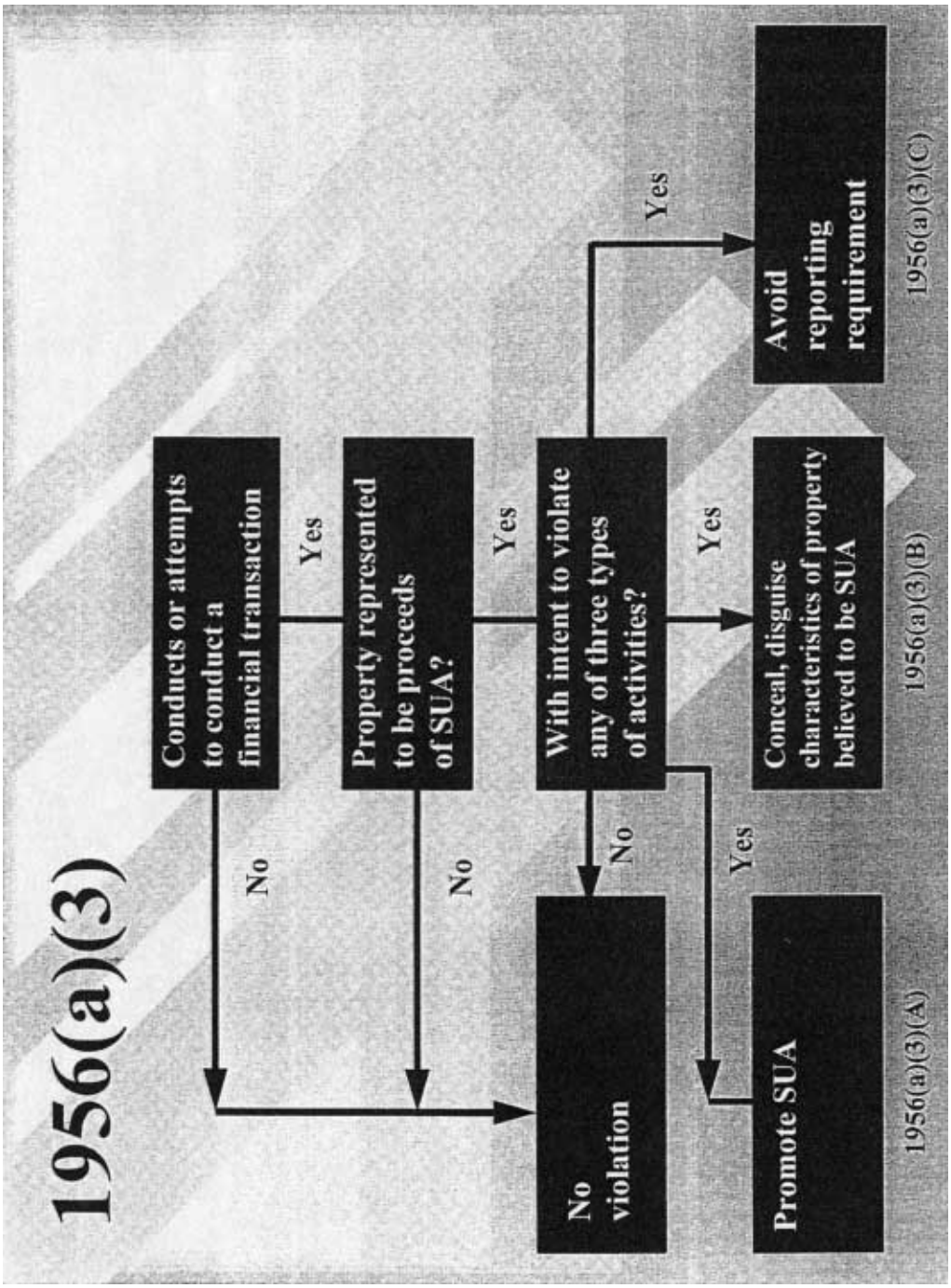
IV. CONCLUSION

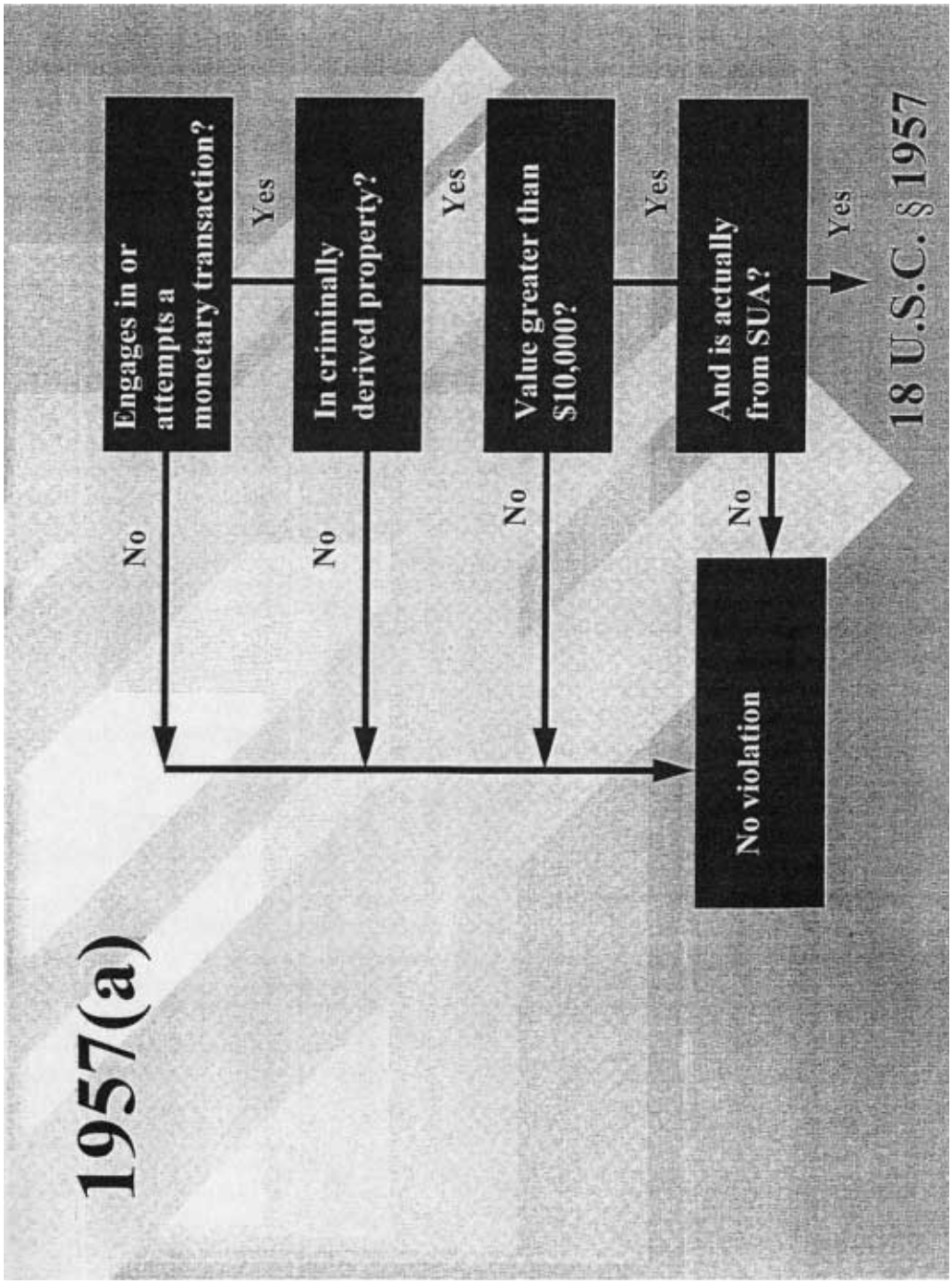
Today, more than ever before, money laundering is a world-wide phenomenon and an international challenge. While no hard numbers exist on the amount of worldwide money laundering, former IMF Managing Director Michel Camdessus has estimated the global volume between two and five per cent of the world's gross domestic product. Even at the low end of that range, the amount of proceeds from narcotics trafficking, arms trafficking, bank and securities fraud, and other similar crimes laundered worldwide each year amounts to almost $600 billion. In light of American financial institutions' prominent role in the international financial system, it is likely that a substantial portion of that $600 billion will be laundered through the United States. The basic anti-money laundering objective of the United States must be, and is currently, to identify and prevent the initial placement of illicit proceeds into our nation's financial system. It is at this stage that the launderers of illicit money are most vulnerable to detection and prosecution, and their illicit proceeds are most vulnerable to identification, seizure and forfeiture. Although the United States has aggressively pursued the investigation and prosecution of those laundering illicit funds, prosecuting approximately 2000 defendants per year, its objectives and strategy must not remain static but must continue to strengthen federal enforcement of the money laundering laws and to intensify its law enforcement efforts to identify money launderers and disrupt the flow of illicit money in the United States. Additionally, the United States must continue to work closely with its international partners in bilateral and multilateral contexts to take coordinated action against the financial power of drug trafficking and other criminal organizations. While this action will not eradicate international drug trafficking or transnational organized crime, it will create an increasingly hostile environment for the money launderer and afford new elements of protection to economic and political systems.[26]

[26] William C. Gilmore, Dirty Money: The Evolution of Money Laundering Countermeasures, 2d Ed., Council of Europe Publishing, 1999.


Analysis of 1956(a)(1)
$$ Proceeds of SUA?
Know proceeds of SUA?
Conduct FT or attempt to conduct FT?
Intending to violate any of four types of prohibited activities?
No
Yes
No Violation
Promote SUA
1956(a)(1)(A)(i)
Conceal nature, source, location, ownership or control of proceeds SUA?
1956(a)(1)(B)(i)
Avoid Reporting Requirement
1956(a)(1)(B)(ii)
Evade Taxes
1956(a)(1)(A)(ii)


1956(a)(2)
International movement or attempt?
Yes
No
No violation
With intent to promote SUA?
1956(a)(2)(A)
Monetary Instrument or funds?
Yes
No
Knowing the monetary instrument of funds were proceeds of unlawful activity?
Yes
Movement designed to avoid a reporting requirement?
Yes
Movement designed to conceal or disguise the characteristics of SUA?
1956(a)(2)(B)(i)
1956(a)(2)(B)(ii)


1956(a)(3)
Conducts or attempts to conduct a financial transaction
Yes
Property represented to be proceeds of SUA?
Yes
With intent to violate any of three types of activities?
Yes
Avoid reporting requirement
1956(a)(3)(C)
No
No
Yes
Conceal, disguise characteristics of property believed to be SUA
1956(a)(3)(B)
No violation
Promote SUA
1956(a)(3)(A)


1957(a)
Engages in or attempts a monetary transaction?
Yes
No
In criminally derived property?
Yes
No
Value greater than $10,000?
Yes
No
And is actually from SUA?
Yes
No
No violation
18 U.S.C. §1957