WHAT IS MONEY LAUNDERING

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I. Introduction

Money laundering is a term that can mean many different things

- the classic meaning is that money laundering is the act of concealing or disguising criminal proceeds, what is called *concealment money laundering*

- but it can mean other things as well

Some money laundering statutes focus not on the concealment of the source or ownership or location of money derived from a crime that occurred in the past, but on the use of money – tainted or untainted – to promote a new offense in the future

- this is called *promotional money laundering*

- others make it a crime merely to receive, to spend or simply to possess the proceeds of crime

Moreover, the same statutes often may be applied when the defendant is laundering the proceeds of his own crime; what is called *self-money laundering*

- Or may be applied to a third party – a family member, co-conspirator, accountant or lawyer or professional money launderer who launders money on behalf of the one who committed the original crime

- What is called *third-party money laundering*

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I will talk about the different types of money laundering and why a person might want to engage in money laundering activity

- I'll also talk in general terms about the ways in which people launder money – what are called *methodologies*

- But I will use the bulk of my time to talk about what the prosecutor has to prove to obtain a conviction for a money laundering offense

II. Why Launder Money

1. **Concealment money laundering**

The defendant may have several objectives in committing a concealment money laundering offense

- The first and most obvious is that he wants to conceal or disguise the illegal origin of the money and make it appear legitimate

- He may also want to conceal the location of the money so that it cannot be found and seized by law enforcement

- Or he may want to conceal or disguise his relationship to the money, to distance himself from the criminal conduct that generated the money so that he is not convicted of the offense

The ways in which a criminal money launderer may accomplish these objectives are too numerous to mention, but these are a few typical examples

- Running the money through a legitimate business to make the money appear to be legitimate business proceeds

- Commingling tainted money with untainted money so that it is difficult to tell that criminal proceeds are part of an asset

- Depositing money or using it to purchase an asset in a third party's name

- Converting money to another form – such as fixed property, securities, gold or jewelry – and then selling that property (or using is as collateral for a loan)

- Moving the money off-shore to a bank-secrecy jurisdiction, or putting it in an account held by a shell corporation whose ownership is unknown

- Simply engaging in a series of convoluted transactions that make the money impossible to trace

There is also an entire category of cases – called *trade-based money laundering* – where the money launderer uses illicit money as part of an otherwise legitimate business transaction, to acquire (for himself or others) legitimate goods and services

— I'll give more examples as we go on and talk about the elements of a money laundering offense and particular cases

2. Promotional money laundering

As I mentioned, when someone commits a promotional money laundering offense, he is not concerned with concealing or disguising the provenance of the money or its ownership or location

— Rather, his purpose is to use the money to commit or promote the commission of a new crime in the future, or to keep a criminal scheme going

In some cases the money in question is criminal proceeds, but it other cases it is not

— in either case, the focus is on the crime being promoted

— A typical case might involve a drug dealer who is using the proceeds of past illegal drug sales to buy more drugs, to pay his couriers, to pay bribes, or to purchase an airplane to be used in smuggling

— Or it might involve a person who committed a fraud who needs to use the fraud proceeds to keep the scheme going – by luring in new victims, or paying the expenses of a business that is fronting for the fraud scheme

In other cases, however, the defendant is using money – tainted or untainted – to commit some entirely new (and perhaps much more serious) offense

— The classic example of which is terrorist financing

- In a terrorist financing case, the money may be from drug dealing, fraud, or any number of other relatively minor crimes

- Or it may be the proceeds of charitable donations, a legitimate business, or someone's personal wealth

- But the point is that regardless of the source of the money, the money launderer engages in a number of steps designed to use the money to finance an act of terrorism

The ways in which a person would commit a promotional money laundering offense are often the same as those used to commit concealment money laundering:

- Commingling, use of legitimate businesses, use of third party names, moving money off-shore or into shell corporations, engaging in legitimate trade

- The point is that the same techniques that are used to conceal or disguise the source of money derived from a crime in the past can be used to make the money available to commit a new crime in the future

- But in such cases, the prosecutor is not as concerned with the source of the money or how it is being concealed as he is with the purpose for which it is intended

3. Receiving, spending and possessing criminal proceeds

Finally, some money laundering statutes simply make it an offense to receive criminal proceeds or to spend them

- In fact, in some countries, it is an offense merely to possess criminal proceeds

- The idea is to make the criminal proceeds untouchable – to make it impossible to receive, spend or possess them without committing a crime – so that the money becomes worthless to the criminal

- And if it's worthless to the criminal – if he can't spend it or give it to anyone – these is less incentive for him to commit the crime in the first place

- It is a means of deterrence

So, for example, a criminal who has obtained a lot of money from committing fraud or selling drugs may want to use the money to buy a luxury car, or jewelry for his girlfriend, or invest in fixed property or securities

- If it is an offense to spend criminal proceeds, he cannot do any of those things without committing a new offense

- And if is an offense to *receive* criminal proceeds, then the car dealer, or jewelry dealer, or investment broker *who knows that the money is derived from a crime* cannot take the money without exposing himself to criminal liability as well

- Again, the point being to make the criminal's money worthless to him

So those are the types of money laundering offenses that we are talking about

- And those are a few of the many ways in which money can be laundered

What we need to talk about now are the elements that a prosecutor would have to prove to obtain a money laundering conviction, and the ways in which he might prove them

- I'm going to discuss the common elements of a typical suite of money laundering statutes, using examples from the case law to illustrate the evidence that might be used to prove each one

III. Common Elements

What are the elements that every country's money laundering statutes tend to have in common?

1. Some type of *financial transaction* conducted by the defendant

2. *Knowledge* on the part of the defendant that the property was criminally derived

3. Proof that the property involved in the transaction was in fact criminal *proceeds*

4. And, depending on the focus of the statute, evidence that the transaction *concealed or was intended to conceal* the criminal proceeds, or *promoted or was intended to promote* another crime

Let's look at these four common elements one at a time.

Financial transaction

What is a financial transaction?

- simply stated, a financial transaction is virtually anything you can do with money
- it can involve cash, or monetary instruments, or electronic or other funds
- or under some statutes, it may involve no money at all, but simply the transfer of title to real property or a vehicle, vessel or aircraft
- here are some examples from the case law:
    - *United States v. Jenkins*, 633 F.3d 788, 804 (9th Cir. 2011) (wire transfer of funds is a financial transaction);
    - *United States v. Bronzino*, 598 F.3d 276, 278 n.1 (6th Cir. 2010) (cashing chips at a casino is a financial transaction);
    - *United States v. Rounsavall*, 115 F.3d 561 (8th Cir. 1997) (writing check to purchase cashier's checks is financial transaction);
    - *United States v. Brown*, 31 F.3d 484, 489 n.4 (7th Cir. 1994) (processing credit card charges is a financial transaction);
    - *United States v. Day*, 700 F.3d 713, 726 (4th Cir. 2012) (gold – when used as a financial asset – constitutes "funds" so its transfer is a financial transaction);
    - *United States v. Hall*, 434 F.3d 42, 52 (1st Cir. 2006) (recording a mortgage is a financial transaction);
    - *United States v. Ulbricht,* 2014 WL 3362059, *24 (S.D.N.Y. July 9, 2014) (Bitcoins are "funds" because their purpose is to allow a person to pay for things; thus, paying for things with Bitcoins is a financial transaction);

The simple delivery of cash from one person to another can be a financial transaction

- *United States v. Blair,* 661 F.3d 755, 764 (4th Cir. 2011) (attorney conducts financial transaction when he receives duffle bag stuffed with cash from client in his office);

- *United States v. Reed,* 77 F.3d 139, 142 (6th Cir. 1996) (giving drug proceeds to a courier is a financial transaction that "involves monetary instruments, namely the currency");

One note of caution: in most countries simple possession and transportation of criminal proceeds is not enough

-- for there to be a financial transaction, the defendant either has to use a financial institution to deposit or move the money, or there has to been a transfer or disposition of the property between two people

- *United 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);

Choosing the right financial transaction

The typical crime, conducted for profit, will involve a whole series of financial transactions.

— it could be just one or two transfers or it could be a complex series of transfers

— for example, in a drug case, someone gets money, gives it to someone in exchange for drugs, that person transfers the money to someone else, he deposits it in the bank, the next guy wires it to Colombia, and so forth.

Choosing the right financial transaction to charge as a money laundering offense may be critical to the prosecutor's case because the financial transaction is the *actus reus* of the crime

- *United States v. Roy*, 375 F.3d 21 (1st Cir. 2004) (conducting a financial transaction is the *actus reus* of section 1956(a)(3) offense; the intent to promote is part of the mens rea);

- *United States v. Mikell*, 163 F. Supp. 2d 720, 739 (E.D. Mich. 2001) (financial transaction is the *actus reus* of the money laundering offense; the proceeds requirement is only a "circumstance element");

Here are some of the issues that may come into play where there are multiple financial transactions.

1. Unit of prosecution

Is each financial transaction a separate offense that must be charged separately?

- Or can a series of financial transactions be charged together in a single allegation

- For example, if the defendant launders drug proceeds through a series of steps, is that one money laundering offense or a series of separate money laundering offenses

- Or if the defendant launders different sums of money at different times in a given period of time, are those separate money laundering offenses or one money laundering offense charged as a continuing course of conduct

The courts in the United States are not all in agreement on those points, and the answer would likely turn on your national law:

- *United States v. Smith*, 44 F.3d 1259, 1265 (4th Cir. 1995) (the financial transaction is the "core" of the money laundering offense, distinguishing one money laundering offense from another);

- *United States v. Majors*, 196 F.3d 1206, 1212 n.14 (11th Cir. 1999) (*dicta*) (money laundering is not a continuing offense; each transaction constitutes a separate offense).

- *United States v. Askarkhodjaev*, 2010 WL 3940450, *6 (W.D. Mo. Sept. 16, 2010) (each monetary transaction in excess of $10,000 is a separate violation of Section 1957 and each may be charged in a separate count even if all of the transactions were part of the same scheme);

- *United States v. Prescott*, 42 F.3d 1165 (8th Cir. 1994) (charging multiple financial transactions as a continuing course of conduct in a single count is duplicitous);

- *United States v. Gray*, 101 F. Supp. 2d 580, 586 & n.7 (E.D. Tenn. 2000) (indictment that alleges a course of conduct must be dismissed not because it is duplicitous, but because it alleges an offense that does not exist; the unit of prosecution is the individual financial transaction);

- *But see United States v. Moloney*, 287 F.3d 236 (2d Cir. 2002) ("a single money laundering count can encompass multiple acts provided that each act is part of a unified scheme");

2. Statute of limitations

Money laundering is a way of extending the statute of limitations

– Because the financial transaction is the *actus reus* of the money laundering offense, any statute of limitations would run from date on which the financial transaction was complete:

  - *United States v. Bucci,* 582 F.3d 108, 116 (1st Cir. 2009) (for purposes of the statute of limitations, a bank deposit occurs when the bank processes it, even though the customer actually made the deposit late in the previous business day);

– so, in a case where there were multiple financial transactions, the prosecutor would typically allege a financial transaction that occurred within the statute of limitations and could prevail, even if the underlying predicate crime occurred *outside* of the limitations period

– So, for example, if your statute of limitations for bringing a money laundering charge is five years, and someone has laundering the proceeds of a drug offense that occurred six years ago in a series of transactions, the last of which occurred four years ago, the prosecutor could use that last offense to charge money laundering within the limitations period.

  - *United States v. Ross,* 2014 WL 3750452, *1 n.2 (N.D. Cal. Jul. 29, 2014) (because the statute of limitations runs from the date of the money laundering offense, there is no reason money laundering charges cannot be filed more than 5 years after the date of the predicate crime);

  - *United States v. Miller*, 2012 WL 2362366 (E.D. Pa. June 21, 2012) (defendant convicted of concealment money laundering when he uses house purchased 10 years earlier with drug proceeds to obtain a new mortgage loan and then launders the proceeds);

3. When the "knowledge" "intent" and "proceeds" elements apply

The choice of the financial transaction to allege as money laundering is also important because it fixes the time at which the other elements apply

-- as we'll discuss, the defendant must have the requisite knowledge and intent, and the property must be criminal proceeds, at the time the financial transaction takes place

- *United States v. McDougald*, 990 F.2d 259 (6th Cir. 1993) (circumstantial evidence insufficient to prove defendant knew money was proceeds of unlawful activity at the time the transaction occurred; what defendant learned afterwards does not help Government);

- *United States v. Hughes*, 230 F.3d 815, 820-21 (5th Cir. 2000) (defendant must know money was criminal proceeds at the time he conducts the money laundering transaction);

"Conducts" a Financial Transaction

To be guilty of a money laundering offense, the defendant must be the person who conducted the transaction

— Depending on your national law, the term "conducts" may be defined broadly or narrowly

— In the US, for example, it is defined broadly to include "initiating, concluding, or participating in initiating, or concluding a transaction."

— so the receiver of the criminal proceeds can be the money launderer

- *United States v. Gotti*, 459 F.3d 296, 335 (2d Cir. 2006) (person who accepts a transfer of cash participates in the conclusion of the transfer, and therefore "conducts" the transaction within the meaning of section 1956(c)(2));

- *United States v. Li*, 55 F.3d 325, 330 (7th Cir. 1995) ("either initiating or concluding a transaction constitutes the conducting of a transaction");

— or he or she may be a person who directs others to move money

- *United States v. Prince*, 214 F.3d 740 (6th Cir. 2000) (defendant conducts transaction when he directs third party to withdraw cash from a bank, or to send him a check);

— or any member of a money laundering conspiracy

- *United States v. Clark*, 717 F.3d 790, 809 (10th Cir. June 18, 2013) (defendant substantively liable for a money laundering offense in which he did not participate because he was a member of the underlying fraud conspiracy, the money

laundering offense furthered the fraud conspiracy, and it was foreseeable to defendant that the fraud proceeds would be laundered);

- generally, it is not difficult to prove, as a factual matter, that the defendant is the one who conducted the financial transaction

Extra-territorial jurisdiction

Many financial transactions involve property that crosses an international border

- generally your court would have jurisdiction over the offense as long as the transaction occurred *in part* in your country:

- for example, it involved a wire transfer from your country to another place or *vice versa*

Depending on your national law, however, your court may or may not have jurisdiction over a financial transaction that occurs entirely in another country but is conducted by a person who is subject to your jurisdiction, such as a citizen of your country who is living or working abroad.

- Moreover, depending on your national law, you would likely have jurisdiction over a transaction occurring entirely in another country if the instructions for conducting the transaction were given by a person in your country.

- Under section 1956(f), the United States has extraterritorial jurisdiction over a money laundering offense committed by a U.S. citizen, even if the offense occurs entirely overseas:

  - *United States v. Tarkoff*, 242 F.3d 991, 993-94 (11th Cir. 2001) (defendant, a U.S. citizen, convicted of section 1956(a)(1)(B)(i) offense when he transferred funds from Curaçao to Israel; distinguishing section 1956(a)(2), which requires transfer to or from United States);

  - *United States v. Chao Fan Xu*, 706 F.3d 965 (9th Cir. 2013) (court had jurisdiction over transfer of proceeds of Chinese fraud from China to U.S. under § 1957(d) because the transfer took place in the U.S.);

  - *United States v. Garcia,* 533 Fed. Appx. 967, 982 (11th Cir. 2013) (there is extraterritorial jurisdiction over the transfer of drug proceeds from the U.S. to Mexico and on to Colombia because even though most of the activity occurred outside of the U.S., it did occur in part in the U.S., which is all § 1956(f) requires);

- *United States v. All Assets Held at Bank Julius Baer & Co.*, 571 F. Supp. 2d 1 (D.D.C. 2008) (district court has jurisdiction over wire transfer of dollars between foreign countries where money passed through a New York bank acting as intermediary; applies equally to sections 1956 and 1957);

- *United States v. Real Property Known as 2291 Ferndown Lane,* 2011 WL 2441254, *4 (W.D. Va. June 14, 2011) (to invoke the court's extraterritorial jurisdiction, the Government need only show that the money laundering transaction occurred in part in the U.S.; the underlying crime may have occurred wholly in a foreign country if it is one of the offenses covered by § 1956(c)(7)(B)); *United States v. Real Property Known as Unit 5B*, 2012 WL 1883371, *3 (S.D.N.Y. May 21, 2012) (same);

- *But see United States v. Kuok*, 671 F.3d 931, 939-40 (9th Cir. 2012) (district court has jurisdiction over a money laundering offense involving money sent into the U.S. by a non-citizen only if the transaction involves more than $10,000);

Knowledge

Under virtually every country's money laundering statute, the Government must show that at the time the financial transaction occurred, the defendant knew that the property involved in the financial transaction was derived from a criminal offense

-- in most cases, he must know that the property represented the proceeds of "some form" of unlawful activity, but he does not need to know precisely what unlawful activity this was;

-- so, it is generally not a defense for the defendant to say, "I didn't know it was drug money, I thought it was the proceeds of insurance fraud"

- *United States v. Turner,* 400 F.3d 491, 496 (7th Cir. 2005) (defendant need not know actual source of the money, but only that it came from "some illegal activity");

- *United States v. Rivera-Rodriguez*, 318 F.3d 268, 271 (1st Cir. 2003) ("defendant is not required to know what type of felony spawned the proceeds but only that some felony did so");

- *United States v. Reiss*, 186 F.3d 149 (2d Cir. 1999) (defendant need only know money is criminally derived; he does not need to know it is drug proceeds; distinguishing sentencing enhancement under 2S1.2 which requires knowledge money is drug proceeds);

Where the defendant is laundering his own money (self-money laundering), his knowledge that the money is criminal proceeds is obvious, but the launderer need not be person who committed the underlying offense

- *United States v. Chon*, 713 F.3d 812, 820 (5th Cir. 2013) (defendant's knowledge that the property was from an illegal source is established if defendant was a participant in the underlying crime);

- *United States v. Godwin*, 272 F.3d 659, 669 (4th Cir. 2001) (knowledge element established by proof the defendant was "intimately involved" in the underlying crime);

-- how do you prove a defendant knew he was laundering someone else's dirty money?

Circumstantial evidence of knowledge

In third party money laundering cases, the Government generally must rely on circumstantial evidence of the defendant's knowledge

— such as the defendant's relationship to the source of the money or knowledge of the source's circumstances:

- *United States v. Alaniz*, 726 F.3d 586, 603 (5th Cir. 2013) (jury could infer that defendant's family members knew the source of his income from his sudden accumulation of unexplained wealth and their willingness to engage in inexplicably convoluted transactions);

- *United States v. George,* 761 F.3d 42, 50 (1st Cir. 2014) (circumstantial evidence established that lawyer who laundered money for former client, knowing that he had retained proceeds of past crimes, knew he was laundering criminally derived property, even though he also knew former client had legitimate assets as well; evidence of "bad acts" committed with the former client was admissible to illustrate the relationship);

- *United States v. Podlucky,* 567 Fed. Appx. 139, 145-46 (3rd Cir. 2014) (wife's awareness that she was spending more than income shown on joint tax return would allow, her use of convoluted transactions involving trusts and corporate accounts and fictitious address for personal expenses, and her awareness of forfeiture action commenced by the Government and co-defendant's plea, sufficient to show knowledge);

- *United States v. Maragh,* 532 Fed. Appx. 256, 258 (3d Cir. 2013) (that defendant was willing to serve as intermediary for transfer of drug proceeds from dealer to supplier on 16 occasions, and that supplier trusted him in that role, was sufficient

evidence to establish knowledge that the money was proceeds of some form of unlawful activity);

– or the unusual nature of the transaction:

- *United States v. Ledee,* 772 F.3d 21 (1st Cir. 2014) (conducting real estate transaction on a holiday, using housekeeper as named seller, and convoluted use of eight cashier's checks show purpose was to conceal property from bankruptcy);

- *United States v. Persaud,* 411 Fed. Appx. 431, 434 (2nd Cir. 2011) (defendant's knowledge that his parents were accused of fraud by investors, his failure to declare the money placed in his name for tax purposes, and his engaging in multi-layered transactions with their money, was sufficient to establish his knowledge);

- *United States v. Cedeno-Perez,* 579 F.3d 54, 59 (1st Cir. 2009) (use of code words and concern about police detection reflected defendant's awareness that the currency he was transferring derived from unlawful activity);

- *United States v. Turner*, 400 F.3d 491 (7th Cir. 2005) (that the money involved in a loan came in the form of structured checks, payable to a third party, that were endorsed over to defendant with instructions not to deposit them into a local bank must have suggested to defendant "that something was amiss" regarding the source of the money);

- *United States v. Robins*, 673 Fed. Appx. 13 (2nd Cir. 2016) (circumstantial evidence that car dealer knew he was being paid with drug proceeds included failure to file Form 8300, titling vehicle in third party's name, and putting lien on the vehicle despite receiving payment in full);

– or the use of third parties or other deception:

- *United States v. Rivera-Rodriguez*, 318 F.3d 268, 272 (1st Cir. 2003) (structuring large cash transactions and use of third party name shows knowledge of illegal source of funds);

- *United States v. Cassano*, 372 F.3d 868 (7th Cir. 2004) (evidence that defendant cashed checks for third party while third party was in jail, continued to do so after third party was released, was highly paid for this service, and refused to cosign the checks was sufficient to show knowledge);

— incredible denials:

- *United States v. Odiase,* 2018 WL 2926626, *3 (S.D.N.Y. Jun. 12, 2018) (implausible story regarding source of the money was itself evidence that defendant knew money was illegally derived and was attempting to avert suspicion from herself);

- *United States v. Singh,* 2018 WL 1662483, *4 (C.D. Cal. Apr. 2, 2018) (hawala operator's receipt and transmission of large sums of bulk currency, taking in codes, and lying to law enforcement that box containing large sum of currency actually contained his wife's shoes sufficient to establish knowledge or deliberate ignorance of the illegal source of the money);

— use of offshore accounts; advanced technology:

- *United States v. Bansal*, 663 F.3d 634, 646 (3d Cir. 2011) (knowledge of illegal source inferred from defendants' keeping accounts offshore and using the internet to preserve anonymity);

Knowledge may also be shown by willful blindness

- *United States v. Flores*, 454 F.3d 149, 255-56 (3d Cir. 2006) (attorney was willfully blind to the illegal source of money he assisted client in moving through bank accounts; it was not necessary to show attorney knew the money was from drug trafficking);

- *United States v. Rivera-Rodriguez*, 318 F.3d 268, 272 (1st Cir. 2003) ("because governing law equates willful blindness with knowledge, it would suffice for the jury to conclude that [defendant] consciously averted his eyes from the obvious explanation for the funds");

- *United States v. Puche*, 350 F.3d 1137, 1147 n.4, 1149 (11th Cir. 2003) (defendant's deliberate ignorance shown by his reaction when undercover agent attempted to explain the source of the cash he was laundering: defendant said, "No, no, no," and said agent should not say anything about the source of the money);

— but we must prove that the defendant had the required knowledge *at the time the financial transaction took place*

- *United States v. Hughes*, 230 F.3d 815, 820-21 (5th Cir. 2000) (defendant must know money was criminal proceeds at the time he conducts the money laundering transaction; where Brady violation is alleged, evidence that defendant did not learn money was such proceeds until 6 weeks after he received it is relevant to transactions that occurred during such time, but not to transactions conducted later);

Proceeds

The third common element is proof that the money was in fact the proceeds of one of the predicate crimes:

— In most countries, any felony can be a predicate for a money laundering offense, including a foreign crime

- Many countries also include both foreign and domestic minor crimes

- Other countries, like the United States, however, have a list of predicate crimes – we call them "specified unlawful activities" or "SUAs" – that include some foreign and domestic crimes but not others.

- You must check your national law on this point

Proving that the money involved in the transaction is the proceeds of a predicate offense is easy if you can trace the money to a particular offense, but the prosecutor need not do that

- It is sufficient to prove that the money was generated by the specified unlawful activity without identifying the date and place of the offense

  - *United States v. Shafer*, 608 F.3d 1056, 1067 (8th Cir. 2010) ("The Government is not required to trace funds to prove a violation of § 1957;" when drug dealer buys car for cash, conviction may be based on his lack of legitimate income and history of using large quantities of cash in his drug business and to purchase personal items);

  - *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. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (where SUA is mail fraud, Government need only show that laundered funds came from a fraudulent scheme and that the use of the mails furthered that scheme; no need to trace proceeds to a particular mailing);

Proceeds need not be money:

  - *United States v. Myers,* 854 F.3d 341 (6th Cir. 2017) (rejecting defendant's claim that he had no proceeds of stealing motorhomes until he sold the vehicles; the vehicles themselves were the proceeds of the theft, so defendant's sale of the motorhomes was properly charged as a money laundering offense);

  - *United States v. Frank*, 354 F.3d 910 (8th Cir. 2004) (because car that defendant should have disclosed to court in compliance with restitution order was SUA proceeds, sale of car was a money laundering offense);

  - *United States v. George*, 363 F.3d 666 (7th Cir. 2004) (when defendant used counterfeit securities to buy computer chips, the chips became SUA proceeds, so subsequent sale of chips was section 1957 offense);

"Proceeds" need not be newly-acquired property

- In some cases, the "proceeds" are assets that the defendant was able to *retain* as a consequence of his offense

- *United States v. Esquenazi,* 752 F.3d 912, 936 (11th Cir. 2014) (money defendant retained by having its debt reduced in exchange for promise to pay a bribe was proceeds of the bribery offense);

- *United States v. Yusuf*, 536 F.3d 178 (3d Cir. 2008) ("unpaid taxes unlawfully retained by defendants represented the 'proceeds' of a fraud");

Proceeds remain proceeds as they change form, no matter how much time passes or who else handles the money:

- *United States v. George*, 363 F.3d 666 (7th Cir. 2004) (where defendant uses counterfeit securities to buy computer chips and then converts the chips to cash, the cash becomes the SUA proceeds);

- *United States v. Hall*, 434 F.3d 42, 51 (1st Cir. 2006) (money remained drug proceeds after it was loaned to a third party, the loan was repaid, and the payments were deposited into a bank account and transferred to another account);

- *United States v. Magluta,* 418 F.3d 1166 (11th Cir. 2005) (Government agent's handling of drug money as an intermediary at one stage of the case did not purge it of its taint; it was still SUA proceeds when defendant used it to conduct his transaction);

- *United States v. Ward*, 197 F.3d 1076 (11th Cir. 1999) ("once proceeds become tainted, they cannot become untainted"; funds in a commingled bank account still involve SUA proceeds even though months have passed, and other transactions have occurred, since the SUA proceeds were commingled);

Finally, otherwise untainted property may be considered the proceeds of criminal offense if it is part of a related or parallel transaction that involves the criminal proceeds

- otherwise money launderers could evade prosecution by putting criminal proceeds in one account and taking money from another, or by using a hawala

- for example, suppose the defendant receives drug proceeds from a drug dealer and puts the money in Bank Account A

- then, because he has the money in Account A, he is able to use the money

in Bank Account B to conduct a financial transaction

— in that case, the money taken from Account B should be considered criminal proceeds

- *United States v. Covey*, 232 F.3d 641, 646 (8th Cir. 2000) (where defendant receives cash from drug dealer and gives drug dealer checks drawn on own funds in return, transfer of checks is a money laundering offense involving SUA proceeds);

- *United States v. Mankarious*, 151 F.3d 694, 706-07 (7th Cir. 1998) (if check constituting SUA proceeds is deposited in bank account and second check is written on that account, second check constitutes proceeds, even if first check has not yet cleared);

Circumstantial evidence

The case law is filled with colorful examples of instances where the government proved the proceeds element with circumstantial evidence:

- *United States v. Richardson*, 658 F.3d 333, 338 (3th Cir. 2011) (proof that drug dealer's legitimate business was insolvent was evidence the money he used to buy a house came from his drug business);

- *United States v. Huy Chi Luong*, 468 Fed. Appx. 710, 712 (9th Cir. 2012) (defendant's access to funds at the time he was committing criminal offenses, and when he lacked other sources of income, sufficient to allow jury to find the funds were SUA proceeds);

- *United States v. Slagg*, 651 Fed. Appx. 832, 845 (8th Cir.2011) ("pointedly guarded telephone conversations," defendant's drug dealing and lack of legitimate income, and efforts to collect money from people who owed debts to defendant, sufficient to show money used to pay defendant's bail was drug 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);

Lack of legitimate income or a "net worth" analysis may be used to establish the proceeds element:

— This is often the most important evidence that the defendant must have used his criminal proceeds – and not clean money – to conduct the transaction:

- *United States v. Shafer*, 608 F.3d 1056, 1067 (8th Cir. 2010) (affirming § 1957

conviction for buying car with cash based on lack of legitimate income; that defendant received large lawsuit settlement 10 months earlier did not undermine verdict where defendant had cashed the check and spent three times the amount of the settlement on other items in the intervening period);

- *United States v. Hardwell*, 80 F.3d 1471, 1483 (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. McQueen,* 636 Fed. Appx. 652 (6th Cir. 2016) (case agent's testimony that defendant's sole source of income at the time the conducted the alleged money laundering transactions was funds obtained from investors was sufficient to satisfy the "proceeds element" of §§ 1956 and 1957);

Remember, the defendant charged with money laundering need not be the person who committed the underlying SUA (third party money laundering)

— the money may be the proceeds of a crime committed by a third party

- *United States v. Wert-Ruiz*, 228 F.3d 250, 253 (3d Cir. 2000) (money remitter convicted of laundering drug money for drug traffickers; good explanation of how money remitters operate);

- *United States v. Abbell*, 271 F.3d 1286, 1290 (11th Cir. 2001) (defense attorney convicted of laundering client's money);

Only part of the money need be dirty; any money involved in a transaction from a commingled account is considered "proceeds"

- *United States v. Warshak*, 631 F.3d 266, 332 (6th Cir. 2010) (a transaction does not have to consist solely of criminal proceeds to constitute a money laundering offense; that a transaction may have included proceeds of a legitimate side of defendant's business is irrelevant);

- *United States v. Huber*, 404 F.3d 1047, 1058 (8th Cir. 2005) (the presence of legitimate funds does not make a money laundering transaction lawful; it is only necessary to show that the transaction *involves* criminal proceeds);

- *United States v. Bieganowski*, 313 F.3d 264, 379-80 (5th Cir. 2002) (even if some of health care provider's income was legitimate, transfer of commingled funds would satisfy the proceeds element of section 1956(a)(1));

The defendant need not have physical possession of the funds for them to be proceeds:

- the money laundering offense can take place after the defendant has caused the proceeds to be sent to a third party

    - *United States v. Prince*, 214 F.3d 740, 752-53 (6th Cir. 2000) (money becomes proceeds when victim wires it to third party designated by defendant; defendant need not be in physical possession for money to be proceeds);

Merger issue

I talked about timing with respect to the knowledge requirement: the defendant has to know the property is the proceeds of some form of unlawful activity at the time the financial transaction takes place

- similarly, the money must be SUA proceeds *at the time the financial transaction occurs*

- for example, if a drug sale takes place on a street corner, you have a financial transaction, but it does not involve SUA proceeds because there are no proceeds until the sale is complete;

    - *United States v. Harris,* 666 F.3d 905, 909 (5th Cir. 2012) ("mere payment of the purchase price for drugs by whatever means . . . does not constitute money laundering" because the money does not become proceeds until the payment is made);

- the subsequent deposit of the money would involve proceeds, however

- and it would be different if you could show that the "buy" money was the proceeds of an earlier sale

The merger of the money laundering financial transaction and the underlying SUA is also a big problem in fraud cases:

- inducing a victim to wire money to the defendant is not money laundering if happens all in one step

    - *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);

- the rule is that the acts that produce the proceeds being laundered must be distinct from the conduct that constitutes money laundering;

- *United States v. Butler*, 211 F.3d 826, 830 (4th Cir. 2000) ("the laundering of funds cannot occur in the same transaction through which those funds first become tainted by crime"); *United States v. Richard*, 234 F.3d 763 (1st Cir. 2000) (same; quoting *Butler*);

- *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (explaining *Johnson*);

- *United States v. Carucci*, 364 F.3d 339 (1st Cir. 2004) (conviction reversed because evidence did not establish that the SUA offense occurred before the money laundering transaction);

— but a two-step transaction -- victim sends check to defendant, defendant deposits check -- is money laundering

- *United States v. Baxter,* 761 F.3d 17, 29-30 (D.C. Cir. 2014) (where defendant embezzled funds by writing check from her employer to front company, which in turn transferred funds to co-defendant, latter transactions occurred after the money was proceeds);

- *United States v. Silvestri,* 409 F.3d 1311 (11th Cir. 2005) (mail fraud yielded proceeds in the form of a check before defendant committed a money laundering offense by depositing the check);

— so is a transaction that takes place after the first phase of the underlying crime is complete, but while the underlying crime is still on-going

- *United States v. Kennedy,* 707 F.3d 558, 566-67 (5th Cir. 2013) (there was no merger problem when bank transferred fraudulently-obtained loan proceeds to defendant's loan-closing company as the first step, and defendants transferred a portion of those proceeds to a shell corporation they controlled as the second step; after step one, defendants had possession of the proceeds of a completed wire fraud offense);

- *United States v. Singh*, 518 F.3d 236, 247 (4th Cir. 2008) (conviction based on prostitute's paying for motel room with money received from her customer did not violate the rule that the money laundering transaction must be separate from the transaction that generated the proceeds because the prostitution offense was complete when the prostitute received payment for her services; following *Butler*);

- *United States v. Castellini*, 392 F.3d 35 (1st Cir. 2004) (acts occurring after the money becomes SUA proceeds may be charged either as money laundering or additional substantive SUA offenses, or both);

- *United States v. Morelli*, 169 F.3d 798 (3rd Cir. 1999) (proceeds may be derived from a completed offense, or from a completed phase of an ongoing offense of which the money laundering transaction is also a part);

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

Specific Intent

Under some money laundering statutes, the defendant must act with specific intent, or the money laundering transaction must have a particular effect

- For example, a concealment money laundering statute may require proof that the defendant *intended to* conceal or disguise the nature, source, location, ownership or control of the criminal proceeds

- Or that the transaction *had the effect* of concealing or disguising those things

1. Promotion money laundering

Understanding that not every country makes promotion money laundering an offense, let's look at what the Government would have to prove under a "promotion money laundering" statute

- to prove promotion money laundering, the Government would have to prove that the defendant intended to promote another criminal offense

- this can be the same offense that generated the proceeds or an entirely separate crime

- As I mentioned earlier, in such a case the prosecutor would *not* have to prove any intent to conceal or disguise the criminal proceeds: that would be "concealment money laundering" which we'll discuss in a minute

    - *United States v. Alerre*, 430 F.3d 681, 693 n.14 (4th Cir. 2005) (explaining the difference between promotion and concealment money laundering);

    - *United States v. Marbella*, 73 F.3d 1508, 1514 (9th Cir. 1996) (statute is worded in the disjunctive; therefore, conviction can be based on intent to promote without any evidence of intent to conceal or disguise);

    - *United States v. Reed*, 264 F.3d 640, 650-52 (6th Cir. 2001) (that defendant conducted the transaction without concealing or disguising anything has no bearing on her conviction for a promotion offense under section

1956(a)(1)(A)(i));

Examples of promotion money laundering:

- plowing back: defendant reinvests the money to continue the offense

  - *United States v. Lawrence*, 405 F.3d 888 (10th Cir. 2005) (using proceeds of Medicare fraud scheme to pay doctor whose participation was essential to the scheme, and to keep "the doors of the clinic open," promoted the scheme and were not ordinary business expenses);

  - *United States v. Grasso*, 381 F.3d 160 (3d Cir. 2004) (reinvesting proceeds of fraudulent scheme to cover advertising, printing, and mailing expenses was promotion money laundering);

  - *United States v. Fitzgerald,* 496 Fed. Appx. 175, 178 (3rd Cir. 2012) (following *Grasso*; reinvestment or "plowing back" drug proceeds to buy more drugs is still a promotion money laundering offense even though the transaction is part of the offense being promoted);

  - *United States v. Coles*, 558 Fed. Appx. 173, 180 (3d Cir. 2014) (paying for apartment where equipment used to divide and package cocaine is located is promotion even though, for *Santos* purposes, it is not an essential expense);

- but ordinary expenses that would have been incurred in any event by a legitimate business are not promotion expenses:

  - *United States v. Miles*, 360 F.3d 472 (5th Cir. 2004) (any expenditure in furtherance of wholly illegitimate business can be a promotion offense; but paying "customary, reasonable and legal operating expenses" of a partially legitimate business is not promotion);

  - *United States v. Brown*, 186 F.3d 661, 670-71 (5th Cir. 1999) (using proceeds of fraud for ordinary business expenses of legitimate business through which fraud was conducted is insufficient to show intent to promote even though such expenses indirectly keep the scheme going by bringing in more potential victims; expenses must be more directly related to the fraud to prevent the Government from using section 1956(a)(1)(A)(i) as a "money spending" statute);

- distributing proceeds:

  - *United States v. Valdez*, 726 F.3d 684, 691 (5th Cir. 2013) (paying employees who submitted the false billings in a health care fraud scheme above normal salary supported jury's conclusion that the payments were made to secure loyalty or cooperation in the scheme, and were not normal business expenses);

- *United States v. Warshak,* 631 F.3d 266, 319 (6th Cir. 2010) (distributing proceeds to employees of a fraud scheme "to reward faithful service and encourage future commitment to the criminal endeavor" promotes the continuation of the scheme);

- *United States v. Alerre*, 430 F.3d 681, 695 (4th Cir. 2005) (distributing fraud proceeds to codefendants and other employees as compensation for their participation in a health care fraud scheme promotes the scheme);

- *United States v. Kelley*, 471 Fed. Appx. 840, 845 (11th Cir. 2012) (monthly dividend payments gave the principals in a steroid distribution scheme "an incentive to continue their activities despite the risks inherent in such activity;" "there is no requirement that the funds were reinvested into the illegal activity");

– using proceeds to facilitate the SUA or keep the scheme going:

- *United States v. Ayala-Vazquez,* 751 F.3d 1, 15-16 (1st Cir. 2014) (using drug proceeds to pay for Christmas parties in public housing project promoted the drug organization's success by maintaining good relations with the project's residents);

- *United States v. Pendelton,* 832 F.3d 934 (8th Cir. 2016) (using drug proceeds to buy more drugs is promotion money laundering);

- *United States v. Fata,* 650 Fed. Appx. 260 (6th Cir. 2016) (using the proceeds of health care fraud to fund a clinic that will be used to generate more fraudulent billings constitutes promotional money laundering);

- *United States v. Frazier,* 605 F.3d 1271, 1281-82 (11th Cir. 2010) (paying a courier to drive drugs from Canada to the U.S. and return with firearms promotes a specified unlawful activity);

- *United States v. Singh*, 518 F.3d 236, 247-48 (4th Cir. 2008) (prostitute who uses the money received from her first customer of the day to pay for her motel room commits promotion money laundering where the payment gives her the right to the use of the room for the rest of the day without further charge, and creates goodwill for future transactions);

- *United States v. Brown*, 553 F.3d 768, 782 (5th Cir. 2008) (using proceeds of illegal sales of hydrocodone to purchase more of the same drug is a promotion offense; it is not necessary to show that all of the drug would be sold illegally);

– using proceeds to "lull" prospective fraud victims or to create an aura of legitimacy promotes SUA offense:

- *United States v. Warshak,* 631 F.3d 266, 319 (6th Cir. 2010) (using fraud proceeds to make a charitable contribution promotes the scheme if it was "intended to raise [Defendant's] philanthropic profile and create an aura of legitimacy");

– transaction intended to avoid detection:

- *United States v. Huber,* 404 F.3d 1047 (8th Cir. 2005) (transaction that helps defendant maintain the appearance of eligibility for funds for which he was not eligible promotes the underlying fraud scheme);

A third party money launderer may be guilty of promoting someone else's offense:

- *United States v. Arthur*, 582 F.3d 713, 719 (7th Cir. 2009) (wife commits promotion money laundering when she deposits funds husband is concealing from bankruptcy trustee into her bank account, thus promoting the fraud);

- *United States v. Bueno,* 585 F.3d 847, 850 (5th Cir. 2009) (that currency courier knew he was working with a drug organization was sufficient evidence that he intended to promote their operation when he transported money on their behalf);

The troublesome cases are ones in which the promotion relates to a crime that has already been completed

— for example, suppose the defendant receives drugs on consignment and uses the proceeds of his sale of the drugs to pay the consignor

— is he really promoting an offense?

- *Compare United States v. Martinez*, 151 F.3d 384, 389 (5th Cir. 1998) (paying for drugs received on consignment with proceeds of street sales from same consignment promotes drug trafficking); *United States v. Skinner*, 946 F.2d 176, 179-80 (2d Cir. 1991) (same); and *United States v. Barragan*, 263 F.3d 919, 923-24 (9th Cir. 2001) (same)

- *With United States v. Heaps*, 39 F.3d 479, 485-86 (4th Cir. 1994) (on same facts, holding that payment for consignment merges with the SUA and therefore does not constitute money laundering);

— does it make a difference if we can prove he's doing this to make sure he has a continuing source of supply or otherwise is able to keep the scheme going?

- *United States v. Robinson-Gordon*, 418 Fed. Appx.173, 176 (4th Cir. 2011) (payment on a completed contract for fraudulent visas promotes the scheme where there is evidence the parties intended to continue the scheme but would do so only if past services were paid for);

- *United States v. Singh*, 518 F.3d 236, 247-48 (4th Cir. 2008) (prostitute's payment for past use of a motel room promotes the continuation of the prostitution scheme in the future; limiting *Heaps* to cases where the payment is

a one-time payment on an antecedent debt and there is no evidence it was made to create goodwill for future transactions);

– Suppose the defendant just takes the proceeds of his crime and puts them in the bank or converts them to cash – is that "promotion?"

- *Compare United States v. Montoya*, 945 F.2d 1068, 1076 (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);

- *With United States v. Jolivet*, 224 F.3d 902, 910 (8th Cir. 2000) (deposit of fraud proceeds does not promote the already completed crime; rejecting *Montoya*);

These are the types of cases that judges tend to treat very carefully.

2. Concealment money laundering

A concealment money laundering statute makes it an offense to conduct a financial transaction knowing that the purpose of the transaction was to "conceal or disguise" the source, location, ownership, nature or control of criminal proceeds.

- *United States v. Dvorak,* 617 F.3d 1017, 1022 (8th Cir. 2010) (Congress made concealing the location of criminal proceeds a serious offense under the money laundering laws because "money that cannot be found cannot be subject to forfeiture");

– proof that the transaction was designed to conceal *any one* of the listed attributes is sufficient

- *Cuellar v. United States*, 553 U.S. 550 (2008) (rejecting view that the only way to commit concealment money laundering is to attempt to create the appearance of legitimate wealth; such "classic money laundering" is one way to violate the statute, but the text makes clear that there are many other ways to violate it as well);

- *United States v. Concepcion,* 2008 WL 4585331 (2d Cir. Oct. 14, 2008) (following *Cuellar*; creating the appearance of legitimate wealth is not the only way to satisfy the concealment element);

Knowledge that the purpose of the transaction was to conceal or disguise almost always has to be shown by circumstantial evidence

-- engaging in unusual or convoluted transactions implies knowledge that purpose was to conceal or disguise:

- *United States v. Wilkes*, 662 F.3d 524, 547 (9th Cir. 2011) (making three transfers within a week before using proceeds of fraudulently-obtained contract to pay kickback was a convoluted transaction designed to conceal the source and future ownership of the money);

- *United States v. Morales-Rodriguez*, 467 F.3d 1, 13 (1st Cir. 2006) (monthly secretive transfers of funds between three separate bank accounts was an attempt to conceal the nature, location, source, ownership, and control of proceeds);

- *United States v. Magluta,* 418 F.3d 1166 (11th Cir. 2005) (moving cash from Miami to New York to Israel, where it was deposited in an account in a false name, was sufficient to show that when defendant paid his lawyer with check drawn on that account, he intended to conceal the source of the money);

-- using third party name, or name of legitimate business

- *United States v. Sheridan,* 679 Fed. Appx. 492 (7th Cir. 2017) (having third party open bank accounts that were used to deposit drug proceeds in one part of the country and funnel them to California concealed the relationship of the money to the drug dealer and his customer; that the transactions were conducted in third party's name and did not conceal his identity was irrelevant);

- *United States v. Ayala-Vazquez,* 751 F.3d 1, 16 (1st Cir. 2014) (using straw purchaser to acquire race cars with drug proceeds was concealment money laundering);

- *United States v. Davis*, 690 F.3d 912, 921 (8th Cir. 2012) (drug dealer's putting cash in girlfriend's account so she could get a cashier's check and use it to buy a car in her name shows purpose was to conceal or disguise);

- *United States v. Cruzado-Laureano,* 404 F.3d 470 (1st Cir. 2005) (corrupt mayor who deposited extortion checks payable to wife's dental practice into her account had intent to conceal; that he was well known in the bank is no defense);

- *United States v. Shepard*, 396 F.3d 1116 (10th Cir. 2005) (depositing fraud proceeds in bank account of family member shows intent to conceal);

-- commingling dirty money and clean money

- *United States v. Jackson*, 935 F.2d 832, 841 (7th Cir. 1991) (commingling drug proceeds with legitimate funds in church bank account showed intent to conceal or disguise);

- *United States v. Ward*, 197 F.3d 1076, 1082 (11th Cir. 1999) ("commingling of funds is itself suggestive of a design to hide the source of ill-gotten gains"; following *Jackson*);

- *United States v. Shepard*, 396 F.3d 1116 (10th Cir. 2005) (commingling fraud proceeds with funds in bank account of legitimate business shows intent to conceal);

— structuring transactions to conceal:

- *United States v. Elder,* 682 F.3d 1065, 1072 (8th Cir. 2012) (paying for prescriptions with used, small denomination bills rather than by check, and instructing intermediary to limit bank deposits to amounts under $10,000, is circumstantial evidence of intent to conceal or disguise);

- *United States v. Richardson,* 658 F.3d 333, 341 (3d Cir. 2011) (listing ways in which concealment may be shown, including making structured cash deposits before using funds to conduct a transaction, and funneling money through a legitimate business);

- *United States v. Puerto,* 392 Fed. Appx. 692, 697 (11th Cir. 2010) (structuring transactions in a convoluted or highly unusual way is sufficient to establish an intent to conceal);

— use of codes; unusual secrecy:

- *United States v. Gotti*, 459 F.3d 296, 337 (2d Cir. 2006) (cash transactions conducted through several intermediaries, in a surreptitious manner, and using coded language, evidenced intent to conceal the source of the money);

— falsifying nature of the transaction:

- *United States v. Kelley*, 461 F.3d 817, 829-30 (6th Cir. 2006) (disguising kickback to public official as payment to wife for consulting services, depositing check, and having bank issue cashier's check to hotel to pay for wife's birthday party);

- *United States v. Hall*, 434 F.3d 42, 53 (1st Cir. 2006) (giving seller $24,000 in cash in a paper bag and falsifying the bill of sale to show the price of a vehicle was only $5,000 allowed defendant to conceal the additional funds);

— using real estate transaction to conceal or disguise:

- *United States v. Delgado*, 653 F.3d 729, 738 (8th Cir. 2011) (understating the purchase price on real estate documents and paying the difference with cash in an unrecorded transaction violates § 1956(a)(1)(B)(i));

— sending property abroad:

- *United States v. Cihak*, 137 F.3d 252, 262 (5th Cir. 1998) (defendant's apparent hurry to liquidate accounts and transfer them out of the country sufficient to show intent to conceal source and location);

— converting proceeds to goods and services or to cash:

- *United States v. Ayala-Vazquez,* 751 F.3d 1, 15-16 (1st Cir. 2014) (paying expenses in small bills in paper bags through third parties was evidence of concealment);

- *United States v. Bowman*, 235 F.3d 1113, 1117-18 (8th Cir. 2000) (transformation of stolen funds into another form — *i.e.,* merchandise purchased by defendant's girlfriend—evinces the design to conceal);

- *United States v. Dvorak*, 617 F.3d 1017, 1024 (8th Cir. 2010) (depositing fraud proceeds in a bank account and immediately withdrawing the funds as cash, while not dispositive, is strong evidence of an intent to conceal the location of the funds "for the simple reason that cash cannot be traced");

Be careful, simply spending money on goods or services may not be sufficient to show purpose was to conceal or disguise

- *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 concealment money laundering; it is merely "money spending");

- *United States v. Demmitt,* 706 F.3d 665, 679 (5th Cir. 2013) (simply sending portion of defendant's fraud proceeds to her son, without any evidence that she used "classic money laundering techniques" to do so, was only "money spending" and not concealment money laundering);

— Where the defendant is making what would otherwise be a legitimate commercial transaction, the Government must show that there was something about the transaction that evidenced an intent to conceal or disguise

- *United States v. Messino*, 382 F.3d 704 (7th Cir. 2004) (purchase of real property made with structured cash deposits and property titled in defendant's daughter's name was intended to conceal);

- *United States v. Magluta,* 418 F.3d 1166 (11th Cir. 2005) (using drug proceeds to pay attorney's fee was not simply money spending where defendant went to great lengths -- including use of foreign bank account in false name -- to conceal source of the money);

- *United States v. Norman,* 143 F.3d 375 (8th Cir. 1998) (purchase of car may not have concealed defendant's identity but it did conceal what happened to the SUA

proceeds; converting the money from one form to another -- bank deposit to consumer goods -- may constitute violation);

Note that in these cases, the defendant could be found guilty for concealing or disguising *any* of the attributes of the property being laundered

— it is an offense to conceal or disguise the nature, source, location, ownership or control of the property

— the crime is *not* limited to concealing the identity of the wrongdoer:

- *United States v. Delgado*, 653 F.3d 729, 737 (8th Cir. 2011) ("the money laundering statute does not require an intent to conceal the launderer's identity");
- *United States v. Warshak*, 631 F.3d 266, 321 (6th Cir. 2010) (transactions conducted in defendant's own name did not conceal his identity, but their enormous complexity evinced an intent to conceal the nature and source of the proceeds);
- *United States v. Spencer*, 592 F.3d 866, 880 (8th Cir. 2010) (following *Norman*; defendant's purchase of real property in his own name did not conceal his identity, but the conversion of cash to checks concealed the source and nature of the money);
- *United States v. Hall*, 434 F.3d 42, 50 (1st Cir. 2006) (the transaction need not conceal defendant's identity; it is enough to show the purpose was to conceal the origin of the funds);
- *United States v. Bikundi,* 2016 WL 912169, *42 (D.D.C. Mar. 7, 2016) (moving money from business bank account through accounts of shell companies that defendants' controlled, and ultimately to their personal accounts may not have concealed identity, but it concealed the source of the money);

I always enjoy the cases where the defendant says, "my transaction concealed nothing; it was entirely transparent; even a law enforcement agent could follow it"

- *United States v. Tobin*, 676 F.3d 1264, 1290 (11th Cir. 2012) ("complex arrangements" may be helpful in showing an intent to conceal but are not necessary; that defendant withdrew funds from his bank account after Government executed a search warrant "provided a sufficient basis for the jury to find that [defendant] sought to conceal those funds from the Government");
- *United States v. Naranjo,* 634 F.3d 1198, 1210 (11th Cir. 2011) ("It is irrelevant that [Defendant] left enough evidence to allow a novice investigator to trace" the transactions back to him; "the statute requires only that proceeds be concealed, not

that they be concealed well");

- *United States v. Kneeland*, 148 F.3d 6 (1st Cir. 1998) (defendant's transfer of funds through series of bank and brokerage accounts, while creating a paper trail that agents could follow, nevertheless was so complex that it indicated an intent to conceal or disguise);

- *United States v. Shepard*, 396 F.3d 1116 (10th Cir. 2005) (that defendant's transactions created a paper trail that agents could follow was not a defense to concealment money laundering);