THE MONEY LAUNDERING STATUTES

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I. Introduction

Thank you for the opportunity to speak to you about money laundering

- Which is one of my favorite topics

There are several ways to approach this

- We could keep it at the 30,000 foot level
- That is, we could talk about why criminals launder their money and how they do it in general terms without getting into the weeds
- In fact, when I'm asked to speak to groups of agents, prosecutors and judges at law enforcement conferences in foreign countries -- where they may or may not have much experience with using their money laundering statutes -- that is exactly what I do
- I talk about the various motives for laundering money – hiding the money, making it appear legitimate, using it to keep a scheme going, pretending that the money is not yours
- And I talk about typologies – the various techniques that criminal money launderers use to achieve all of that – using third party money launderers, cryptocurrency, running money through a legitimate business or off-shore shell companies, and so forth

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- But I do not get into the weeds
- I do not spend a lot of time on the elements of the various money laundering offenses

But today, we will very much get into the weeds

- You know why criminals launder money and you have seen how they do it
- What you want to know is what you have to prove to obtain a money laundering conviction
- So, that's what we're going to talk about

We are going to spend the next 90 mins talking about the elements of the various money laundering statutes and what the case law says about the evidence that is sufficient to prove each one

- And I am going to try to do it in a way that makes all of the basic points for those who have never done a money laundering case
- But also including the "hot topics" and difficult issues that may be of interest to the person who has done 20 money laundering cases
- Along the way, I am going to give lots of examples, and I encourage you to raise your hands and engage in a discussion if there is an issue that is troubling you

Why charge money laundering?

But first, I do want to address a very basic question:

- Why charge someone with money laundering, and why include the financial side of the offense in the investigation, in the first place?
- In other words, what is the point of this entire exercise?
- If this were an IRS conference, I know that the answer would be, "we need to charge money laundering to get credit for the case"

- But there are better reasons

- And they all have to do with expanding the scope of your case

1. **Expand the universe of defendants**: Many money laundering defendants are persons who are laundering the proceeds of their own crimes

   - That is called self-money laundering

But a money laundering offense can be committed by a person who was involved only in the movement of the money *after* the crime was complete

- there is nothing that requires that the person who commits a money laundering offense be the person who committed the underlying crime that generated the proceeds being laundered

- the money laundering offense could just as well be committed by 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

- when that happens it is called *third-party money laundering* (or sometimes *stand-alone money laundering* if the underlying predicate crime is not charged)

  - *United States v. Tolliver*, 949 F.3d 244 (6th Cir. 2020) (defendant acquitted of drug conspiracy but convicted of laundering the drug proceeds);

  - *United States v. Silver*, 948 F.3d 538 (2nd Cir. 2020) (there is no requirement that the defendant be convicted of the SUA or even that he was the perpetrator; it is sufficient to prove, beyond a reasonable doubt, that someone committed each of the elements of the SUA, and that the defendant knew the money was criminally derived);

- The most recent example of that is the Fourth Circuit case in which a defense attorney was convicted of laundering money for his drug dealer clients

  - *United States v. Ravenell,* 66 F.4th 472 (4th Cir. 2023);

The point is that by including the financial side in the investigation, you bring in defendants who could not be charged with the underlying crime, but who could be charged with money laundering

- if you *don't* do that; if you don't follow the money –

- you'll never catch the third-party money launderers, and an entire class of defendants will go free

OK, one way that money laundering allows you to expand the scope of your case is by expanding the universe of persons who can be charged as defendants

2. Extend the statute of limitations: Money laundering also allows you to expand the scope of your case in terms of time

- in effect, it extends the statute of limitations for the underlying crime

The statute of limitations for the underlying crime runs from when that crime occurred

- It is generally five years (unless extended by statute, *e.g.*, by the wartime statute of limitations provision)

- But the statute of limitations for money laundering runs not from the date when the predicate crime occurred, but from the date of when the money laundering transaction occurred

- So, you could have someone who committed theft or fraud 10 years ago but conducted a transaction involving the proceeds yesterday

- In which case you would have five more years to bring the money laundering offense

    - *United States v. Silver,* 948 F.3d 538 (2nd Cir. 2020) (the statute of limitations for money laundering runs from the date of the financial transaction, which is the *actus reus* of the crime, not from the date of the SUA; thus, a money laundering conviction may be based on transactions involving proceeds of an SUA that occurred outside the 5-year limitations period for money laundering);

    - *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. Expand the evidence admissible at trial: Charging money laundering also expands the categories of evidence that will be admissible at trial.

- When the defendant is charged only with the underlying crime, courts will generally allow only evidence relevant to that crime into evidence.

- That can lead to some very colorful and effective evidence regarding what the defendant did with the money – bought expensive cars, hid it in bank accounts in third party names – being excluded

- But if the defendant is charged with money laundering, all of that is relevant and admissible

    - *United States v. Arledge*, 553 F.3d 881, 896 (5th Cir. 2008) (evidence of defendant's lavish spending was relevant to the money laundering counts, was not an improper appeal to class prejudice, and did not have a spillover prejudicial effect on other counts);

4. Sentencing: Including money laundering in the case can also increase the defendant's exposure at sentencing.

- The sentencing guidelines provide for a bump of one or two offense levels for a defendant who is convicted of money laundering in addition to the predicate offense.

- In fact, the Sentencing Guidelines treat self-money launderers more harshly than they do third party money launders, precisely because they have committed two crimes, not just one

    - *United States v. Diaz-Menera,* 60 F.4th 1289 (10th Cir. 2023) (§ 2S1.1(a)(1) imposes a harsher penalty on self-money launderers than § 2S1.1(a)(2) imposes on third-party money launderers; because a person who launders money for a drug organization may be considered a participant in the drug conspiracy than generated the proceeds that he laundered, such a person must be treated as a self-money launderer for purposes of applying § 2S1.1(a)(1));

5. Forfeiture: Finally, including money laundering in your case can greatly expand the categories of assets that can be forfeited once the defendant is convicted.

- As will be discussed in the next presentation, forfeiture for money laundering is much broader than it is for the SUA

- It is always a good idea to make the financial investigation part of your case from the beginning because it will lead to the discovery of assets that can be seized or restrained to preserve them for trial

- But the point is that by charging the defendant with money laundering, you not only can recover the proceeds of the underlying crime, but whole categories of other assets as well.

II. The Money Laundering Statutes

OK, that's why you want to include money laundering in your investigation

- Now, what are the money laundering offenses that we're talking about

Concealment, promotional, and transactional money laundering

Money laundering is a term that can mean many different things

- Most people who think about money laundering are thinking about the act of concealing or disguising criminal proceeds, what is called *concealment money laundering*

- but money laundering 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, spend, or transfer the proceeds of crime

- this is called *transactional money laundering*

Finally, some money laundering statutes don't involve the proceeds of, or the intent to commit, another crime at all

- they simply make it an offense to conduct a transaction in cash without filing the required Government report

- or they make it an offense to conduct a transaction that simply conceals the identity of the person conducting it

How are these types of money laundering reflected in the federal money laundering statutes?

Section 1956(a)(1)(B)(i) is the *concealment* money laundering statute

- It makes it an offense to conceal or disguise the source, nature, ownership, location, or control of SUA proceeds

Section 1956(a)(1)(A)(i) is the *promotional* money laundering statute

- It makes it an offense to use criminal proceeds to conduct a transaction with the intent to promote an SUA

And Section 1957 is the *transactional* money laundering statute

- It makes it an offense merely to spend, transfer, or receive more than $10,000 in SUA proceeds

There are also international versions of these statutes in Section 1956(a)(2), of which the promotional version in § 1956(a)(2)(A) is the most important, for reasons that I will mention

- And there is a "sting" version of these statutes in Section 1956(a)(3) where the money does not have to be criminal proceeds but only money represented by an agent to be such proceeds

Finally, there is a set of money laundering statutes not in title 18 but in the Bank Secrecy Act, which is codified in title 31, beginning at Section 5311

- 31 U.S.C. § 5324, for example, makes it an offense for a financial institution, or anyone involved in a trade or business, to fail to file a report –

or to file a false report -- on any currency transaction involving more than $10,000

- To fail to file a CMIR report when taking more that $10,000 in cash in or out of the country

- Or to structure a transaction – breaking the money into smaller amounts – to evade the reporting requirement

III. Title 31 Offenses

Let's start our discussion of the elements of the money laundering offenses right there – with the currency reporting offenses in title 31.

To prove the offense of failing to file a report, all you need is proof that the defendant conducted a currency transaction in excess of $10,000, knowing of the reporting requirement, and that he failed to file.

- This is most often used when merchants like jewelers and car dealers make a sale for cash and don't file the Form 8300

  - *United States v. Hadjiev,* 2023 WL 3739039 (E.D. Pa. May 31, 2023) (jeweler's statement to undercover source who was purchasing a Rolex for $29,000 in cash, "More than ten thousand we gotta report it to IRS" sufficient to establish knowledge of the Form 8300 requirement);

  - *United States v. Robins*, 673 Fed. Appx. 13 (2nd Cir. 2016) (listing circumstantial evidence sufficient to establish all of the elements of a failure to file, when car dealer failed to file 8300s on cash sales);

- In the case of international travelers, it is most often used when someone tries to leave the airport on an international flight with currency concealed on his person or in his luggage

- Or when someone arrives from overseas at airport and does not declare the money he is carrying on the Customs form

  - *United States v. Del Toro-Barboza,* 673 F.3d 1136, 1146-47 (9th Cir. 2012) (CMIR violations charged under § 5324(c) require proof that the defendant was aware of the reporting requirement and was aware that he was carrying more than $10,000 in currency; former was shown by defendant's conversation with border agent and posting of signs at the border; latter was shown by circumstantial evidence);

A structuring violation can apply to an attempt to evade any of the reporting requirements by dividing more than $10,000 in currency in to sub-$10,000 amounts

- Again, this only requires proof that the defendant was aware of the reporting requirement and conducted the transactions with the intent to evade it

- This is commonly charged when a bank customer, aware of *the bank's* obligation to file a CTR form, structures his deposits so that the bank will not file

- In such cases, the pattern of deposits is frequently enough to establish both the defendant's knowledge and his intent

    - *United States v. Tantchev,* 916 F.3d 645 (7th Cir. 2019) (evidence that defendant made 100 cash deposits, close in time, totaling $575,000, with no deposit exceeding $10,000, and then quickly wired the money to Bulgaria, was sufficient to establish the elements of a structuring offense);

- But a structuring offense can also occur when a traveler at the airport divides more than $10,000 among multiple passengers to evade the CMIR requirement

    - *United States v. Melo,* 954 F.3d 334 (1st Cir. 2020) (courier who received envelopes from another person at an airport, distributed them to other travelers, flew to an international destination, and collected the envelopes and returned them to the person who gave them to him, convicted of structuring under § 5324(c)(3));

- Or when a merchant and his customer divide up the cash payment for something sold more than $10,000

    - *United States v. Calmes,* 574 Fed. Appx. 295 (5th Cir. 2014) (motorcycle dealer who knows that his customers want to avoid having currency transaction reports filed with the IRS, and suggests "options" for structuring the transaction for that purpose, is guilty of structuring under Section 5324(b)(3));

Bulk cash smuggling and foreign political figures

Finally, Section 5332, the bulk cash smuggling offense, makes it a crime to conceal currency for the purpose of transporting it in or out of the country without filing a CMIR form

- *United States v. Jimenez*, 421 F. Supp. 2d 1008, 1014 n.9 (W.D. Tex. 2006) (a bulk cash smuggling offense is complete once concealment with appropriate intent occurs and the defendant begins to move the money toward a destination outside of the United States; thus, the offense can be committed before the defendant reaches the border);

— And Section 5335 makes it an offense to conduct a transaction through a financial institution involving more than $1 million

— That is, *any* transaction, not just a currency transaction --

— while concealing or falsifying the identity of the owner of the funds if he is a "senior foreign political figure" or an entity designated as a "primary money laundering concern"

Importantly, none of these title 31 money laundering offenses requires proof that the money was the proceeds of another crime, or that the defendant intended to commit another crime

- *United States v. Cuellar*, 553 U.S. 550, 560 (2008) (bulk cash smuggling has no proceeds requirement; it punishes the transportation of lawfully acquired funds with the intent to evade the CMIR requirement);

- *United States v. Tatoyan*, 474 F.3d 1174, 1178-79 (9th Cir. 2007) (court properly excluded evidence of legitimate source of the funds; the Government is not required to show motive for failing to file a report or for attempting to evade it, so the absence of an evil motive is irrelevant);

— and they all carry forfeiture as part of the penalty, just as the title 18 money laundering offenses do

IV. Title 18 Money Laundering: 18 U.S.C. §§ 1956 and 1957

The title 31 money laundering offenses are important and can and should be charged in appropriate cases

— For the balance of our time, however, we are going to focus on the money laundering offenses in Title 18

— Starting with 18 U.S.C. § 1956(a)(1), the domestic money laundering statute, which as I have said, proscribes concealment money laundering *and* promotional money laundering

Elements of § 1956(a)(1) ("domestic money laundering"):

The defendant --

1) **knowing** that the property involved in the financial transaction represents the proceeds of some form of unlawful activity; and

2A) intending to

a. **promote** the carrying on of the specified unlawful activity, or

b. engage in conduct which violates 26 U.S.C. §§ 7201 or 7206, **or**

2B) knowing that the transaction was designed to:

c. **conceal** or disguise the nature, location, source, ownership, or control of the proceeds of the specified unlawful activity, or

d. avoid a transaction reporting requirement;

3) takes the **proceeds** of a specified unlawful activity (SUA); and

4) conducts or attempts to conduct a **financial transaction**.

So, the *actus reus* of the crime is the financial transaction;

-- all the rest of the elements are mental states (knowledge and intent) or factual predicates (SUA proceeds) that must be present at the time the financial transaction takes place

Financial transaction

What is a financial transaction?

— the term is defined in Sections 1956(c)(3) and (4); there's a laundry list of things that constitute a financial transaction, but it's not necessary to get into the details

— simply stated, a financial transaction is virtually anything you can do with money

- it can be any “disposition” of money between two people, or any use of a financial institution

- it can involve cash, or monetary instruments, or electronic or other funds

- or it can 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. Gonzalez,* 918 F.3d 808 (10th Cir. 2019) (wire transfer between bank accounts is a transaction);

    - *United States v. Gonzalez,* 918 F.3d 808, 815 n.7 (10th Cir. 2019) (using a safe deposit box is a transaction under § 1956(c)(3); the “use” need be nothing more than accessing funds in the box; proof that defendant added or subtracted funds from the box is not required);

    - *United States v. Bronzino*, 598 F.3d 276, 278 n.1 (6th Cir. 2010) (cashing chips at a casino is a financial transaction because a casino is a financial institution under § 5312(a)(2)(X));

    - *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 because it involves "payment, transfer, or delivery by, through or to a financial institution");

    - *United States v. Iossifov*, 45 F.4th 899 (6th Cir. 2022) (Bitcoins constitute funds for money laundering purposes; collecting cases);

    - *United States v. Phillips,* 2022 WL 16990050 (W.D.N.Y. Nov. 17, 2022) (the exchange of Bitcoin for cash is a financial transaction not only because the Bitcoin are “funds” but also because the cash is a monetary instrument);

    - *United States v. Hall*, 434 F.3d 42, 52 (1st Cir. 2006) (recording a mortgage is a financial transaction);

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

    - *United States v. Matthews,* 31 F.4th 436 (6th Cir. 2022) (a courier’s delivery of cash to another person is a “financial transaction” for purposes of the money

laundering statute);

- *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);

Limitation: The only serious limitation in the case law is that the simple transportation of cash from point A to point B may not be a financial transaction

-- unless there is a financial institution involved, there has to be a transfer or disposition of the cash 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);

- *But see United States v. Elso*, 422 F.3d 1305, 1310 n.7 (11th Cir. 2005) (defendant who retrieves third party's money from third party's house, puts it in his car, and drives away, conducts a "transaction");

- *United States v. Silva,* 356 Fed. Appx. 740, 741 (5th Cir. 2009) (distinguishing *Puig-Infante*; courier may be convicted of attempting to conduct a financial transaction if she transports SUA proceeds with the intent to return them to the person who hired her);

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 is critical to your 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");

– which financial transaction you choose will therefore determine many other things:

1. Unit of prosecution

– most courts hold that the financial transaction is the unit of prosecution, so each transaction constitutes a separate offense and must be charged separately

- *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).

– this is true for both § 1956 and § 1957

- *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);

– most courts consider charging multiple transactions in the same count to be duplicitous:

- *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. Conkey*, 826 F. Supp. 1536 (W.D. Pa. 1993) (dismissing duplicitous charge with leave to refile);

- *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. Venue

The Supreme Court has held that venue for a money laundering prosecution lies where the financial transaction took place, not where the underlying crime that generated the criminal proceeds occurred.

- *United States v. Cabrales*, 524 U.S. 1 (1998)

– That means that the money laundering offense may be prosecuted in any district through which the money moves

- *United States v. Stern*, 2017 WL 4676660 (S.D.N.Y. Oct. 17, 2017) (defendant who conducts a transaction by receiving money after it has been transported through multiple districts may be prosecuted in any of the districts through which the money moved; watch dealer in E.D.N.Y. who receives money from courier who crossed the Verrazano-Narrows Bridge may be prosecuted in SDNY);

Moreover, in response to *Cabrales*, Congress enacted 18 U.S.C. § 1956(i), which provides that the prosecution may be brought where the financial transaction occurred *or* where the underlying proceeds were generated, if the defendant participated in moving the proceeds from that district to the place where they were laundered

– That's because money laundering is a continuing offense that begins when the money begins to move

- *United States v. Nichols*, 416 F.3d 811, 824 (8th Cir. 2005) (defendant who was charged with committing the SUA in Missouri, and who participated in moving the proceeds from Missouri to California, where the money was laundered, could be charged with money laundering in Missouri);

- *United States v. Myers*, 854 F.3d 341, 353-54 (6th Cir. 2017) (following *Nichols*; defendant who stole motorhome in Michigan and transported it to another state where, in selling it, he committed a money laundering offense, could be prosecuted in Michigan for the money laundering offense under § 1956(i)(1)(B));

Note that venue for a conspiracy lies wherever any overt acts takes place,

- *United States v. Iossifov,* 45 F.4th 899 (6th Cir. 2022) (under § 1956(i)(2), venue for money laundering conspiracy lies in any district court where overt act was committed by any co-conspirator; that Defendant never set foot in the U.S. makes no difference);

— and the SUA is itself an overt act in furtherance of the conspiracy

- *United States v. Myers*, 854 F.3d 341, 354 (6th Cir. 2017) (venue for a § 1956(h) conspiracy lies wherever any overt act takes place – even though proof of an overt act is not required; because the SUA itself is an overt act in furtherance of the conspiracy, a § 1956(h) conspiracy may be prosecuted in the district where the SUA occurred);

3. Statute of limitations

As I've already mentioned, the statute of limitations runs from date on which the financial transaction is 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, by choosing the right financial transaction you can extend the statute of limitations even if the underlying crime occurred many years ago

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

The choice of the financial transaction 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. Fujinaga*, 2022 WL 671018 (9th Cir. Mar. 7, 2022) (unpub.) (the term "proceeds" had the meaning that it had when the monetary transaction took place, not when the underlying SUA occurred or when the defendant acquired the SUA proceeds);

Conducts" Financial Transaction

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

- but "conducts" is defined by 18 U.S.C. § 1956(c)(2) 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. Stern,* 2017 WL 4676660 (S.D.N.Y. Oct. 17, 2017) (defendant "conducts" a continuing transaction touching on multiple districts when he takes delivery of drug money from a courier);

- 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);

  - *United States v. Gross*, 661 Fed. Appx. 1007 (11th Cir. 2016) (defendant can be guilty of money laundering if he directs a subordinate to transfer funds; that defendant was not a signatory on the account from which the funds were transferred is irrelevant);

- or any member of a money laundering conspiracy

  - *United States v. Clark*, 717 F.3d 790, 809 (10th Cir. 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);

  - *United States v. Ramirez*, 724 Fed. Appx. 704 (11th Cir. 2018) (chiropractors who joined a conspiracy to use insurance fraud proceeds to keep the scheme going by paying the participants are liable under *Pinkerton* not only for the payments to themselves, but for the payments made to other participants, such as the recruiters who recruited people to stage fake accidents);

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

- but in close cases, circumstantial evidence may be sufficient to establish that he did so

    - *United States v. Coffman*, 574 Fed. Appx. 541, 550 (6th Cir. 2014) (circumstantial evidence sufficient to allow jury to find that defendant conducted transactions even though his wife controlled the funds involved);

    - *United States v. Balotin*, 2023 WL 2264181 (M.D. Fla. Feb. 28, 2023) (that defendant had control over the account from which the transaction originated, and in the absence of any evidence that his wife, a joint account holder, conducted the transaction, the evidence was sufficient to show that defendant conducted the transaction),

Interstate Commerce

Finally, the financial transaction must affect interstate commerce

- This requirement is easily met, but don't forget that it is required

- Examples:

    Use of a bank:

    - *United States v. Oliveros*, 275 F.3d 1299, 1303-04 (11th Cir. 2001) (handing over a check implicates interstate commerce if subsequently the check is deposited in a bank; bank's involvement can be incidental and need not be integral to the particular transaction charged as money laundering);

    Use of bitcoin, money remitters or other businesses:

    - *United States v. Costanzo,* 956 F.3d 1088 (9th Cir. 2020) (peer-to-peer transfer of bitcoin from the digital wallet on one cell phone to the digital wallet on another cell phone affects interstate commerce

    - *United States v. Beras*, 2004 WL 203041, *2 n.5 (S.D.N.Y. 2004) (delivery of cash to money remitter, who wires it overseas and converts it back to cash, affects interstate commerce);

    - *United States v. Patel*, 1999 WL 615196, *7 (N.D.N.Y. 1999) (use of business sufficient to prove interstate commerce element if the Government proves business engages in interstate commerce; proof that business bank account was opened by business in Canada sufficient);

— The effect on interstate commerce may also be implicit given the nature of the SUA

- *United States v. Burgos*, 254 F.3d 8, 11 (1st Cir. 2001) (simple transfer of cash affects interstate commerce if the cash is drug money);
- *United States v. Vega,* 813 F.3d 386, 400-01 (1st Cir. 2013) (commerce element satisfied by showing source of funds was federal health care fraud);
- *United States v. Hatcher*, 323 F.3d 666, 672 (8th Cir. 2003) (laundering jewelry stolen from stores doing business in interstate commerce satisfies the commerce requirement);

Knowledge

The Government must show that at the time the financial transaction occurred, the money launderer knew that the property involved in the financial transaction was dirty money

-- 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;

- "Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means 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; *see* 18 U.S.C. § 1956(c)(1):

-- it's 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");

Where the defendant is laundering his own money, his knowledge of the illegal source of the money is obvious

- *United States v. Diggles*, 928 F.3d 380 (5th Cir. 2019) (where defendant was the perpetrator of the underlying fraud, it was reasonable for the jury to find that he "was not oblivious to the unlawful source of these funds");

- *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 SUA);

- *United States v. Leman,* 574 Fed. Appx. 699, 706-07 (6th Cir. 2014) (once the jury convicted defendant of the underlying SUA, it could not fail to find that he knew the laundered funds were proceeds of some form of unlawful activity; omitted jury instruction on that point was therefore harmless);

– but establishing the knowledge element can be more difficult in a third party money laundering case

Circumstantial evidence of knowledge

Often the Government must rely on circumstantial evidence of the defendant's knowledge

- *United States v. Matthews,* 31 F.4th 436 (6th Cir. 2022) (to establish the knowledge element, the Government does not have to produce a "smoking gun;" rather, the jury may base its verdict on circumstantial evidence);

- *United States v. Lopez-Giraldo,* 2021 WL 351985, *4 (N.D. Ga. Feb. 2, 2021) (circumstantial evidence that the Government may use to establish the knowledge element may include how the defendant came to have the money, how he treated the money, how he conducted financial transactions, how he communicated with others, and whether he received any financial benefit);

Examples:

– the defendant's relationship to the source of the money or knowledge of the source's circumstances:

- *United States v. Farrell,* 921 F.3d 116, 139 (4th Cir. 2019) (lawyer who acts as consigliere or "fixer" from drug organization and boasts that he knows 'everything' about the organization, found to have knowledge of the source of the organization's money);

- *United States v. Rivera-Izquierdo,* 850 F.3d 38 (1st Cir. 2017) (circumstantial evidence that defendant knew money given to him by his stepdaughter to buy two cars was fraud proceeds included their family relationship and his participation in luring victims into her fraud scheme);

- *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. White,* 718 Fed. Appx. 353 (6th Cir. 2017) (sister of drug dealer who knew he had no legitimate employment and, on many occasions, purchased or sold vehicles in her name using his property, and engaged in convoluted transactions that had no legitimate purpose, was at least willfully blind to the source of the money);

– the unusual nature of the transaction:

- *United States v. Rivas-Estrada,* 761 Fed. Appx. 318 (5th Cir. 2019) (that money transmitter received tens of thousands of dollars in shoe boxes from couriers, and assisted the couriers in structuring the transactions to avoid reporting requirements and suggested fake names for the senders was sufficient to establish knowledge of the illegal source);

- *United States v. Iossifov,* 45 F.4th 899 (6th Cir. 2022) (in addition to direct evidence of defendant's knowledge from co-defendants, there was evidence that defendant was willing to convert Bitcoin to cash in a paper bag, and to ignore the AML/KYC policies of his Bitcoin exchange business);

- *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);

- *United States v. Han,* ___ F. Supp.3d ___, 2022 WL 14813688 (N.D. Ill. Oct. 26, 2022) (that a stranger was willing to hand over $100,000 in cash was sufficient to allow jury to infer defendant knew the money was "dirty");

– timing of the transactions:

- *United States v. Gordon,* 754 Fed. Appx. 171 (4th Cir. 2018) (evidence establishing knowledge included oddly-timed transactions – writing checks to persons defendant had never met immediately after depositing money from the

co-defendant -- and co-defendant's statement that he told the defendant they needed to keep the transactions "off the Government's radar screen");

- *United States v. Townsend*, 720 Fed. Appx. 976 (11th Cir. 2017) (the timing of the transactions involving the victim and the victim's money may be circumstantial evidence of the defendant's knowledge of the illegal source; that the money was taken from the defrauded victim only minutes before it was deposited into accounts controlled by the defendant was circumstantial evidence that the defendant knew that the money was derived from the fraud);

— Incriminating statements:

- *United States v. Han,* ___ F. Supp.3d ___, 2022 WL 14813688 (N.D. Ill. Oct. 26, 2022) (defendant's statement to co-conspirator that there were "risks" involved in what they were doing, and that they frequently have to "deal with the feds" was evidence of knowledge that the money was criminal proceeds);

— Implausible or false story:

- *United States v. Abegunde,* 841 Fed. Appx. 867 (6th Cir. 2021) (circumstantial evidence that a third-party money launderer knowingly joined a conspiracy to launder fraud proceeds included his directing financial transactions involving the proceeds, his comment to a witness that he was "cleaning" money, and his lie to the FBI about the source of the money);

- *United States v. Odiase*, 312 F. Supp.3d 432 (S.D.N.Y. 2018) (implausible story regarding source of the money was itself evidence that defendant knew money was illegally derived and was an attempt to avert suspicion from herself), aff'd 788 Fed. Appx. 760 (2nd Cir. 2019);

Knowledge may be shown by willful blindness:

- *United States v. Matthews,* 31 F.4th 436 (6th Cir. 2022) (deliberate ignorance "is not a standard less than knowledge – but simply another way that knowledge may be proven");

- *United States v. Farrell,* 921 F.3d 116, 145 (4th Cir. 2019) (the knowledge element may be proved in two ways: "by evidence of [the defendant's] subjective knowledge that the proceeds were derived from an unlawful source, or alternatively, by evidence that he made himself 'deliberately ignorant' of that fact");

— Examples:

- *United States v. Ravenell,* 66 F.4th 472 (4th Cir. 2023) (defendant's "machinations" – directing drug dealer to move money through multiple third parties before it

comes to him – is evidence of defendant's affirmative attempt avoid knowledge of the source of the money);

- *United States v. Haire,* 806 F.3d 991 (8th Cir. 2015) (courier who carried $33,000 in a vacuum-sealed bag on behalf of a known drug dealer, using a one-way train ticket, was at least willfully blind to the illegal source of the money);

- *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);

Establishing knowledge through willful blindness and circumstantial evidence are not mutually exclusive theories:

- *United States v. Aguirre*, 853 Fed. Appx. 748 (2nd Cir. 2021) (circumstances sufficient to show that defendant either knew the illegal source of the money or consciously avoided learning the source);

- *United States v. Kissi,* 2022 WL 4103640 (S.D.N.Y. Sept. 8, 2022) (the same circumstantial evidence may be used to prove that a third-party money launderer had actual knowledge of the illegal source of the money moving through his bank accounts, or that he was deliberately ignorant of the source of the money);

In all events, the Government must prove that the defendant had the required knowledge *at the time the financial transaction took place*

— Proof that he learned of the illegal source later is not good enough

— Which, as I mentioned earlier, is one of the reasons it is important to focus on the right financial transaction

- *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 element is proceeds:

— the property involved in the financial transaction must be the proceeds of a "specified unlawful activity" (SUA), which includes all state, federal, and

foreign offenses listed in 18 U.S.C. §§ 1956(c)(7), 1961(1) (as incorporated by section 1956(c)(7)(A)), and 2332b(g)(5)(B) (as incorporated by section 1961(1)(G));

- not every crime is an SUA, but the list includes most serious federal crimes

For example, suppose you want to know if mail fraud is an SUA

- you would look first to Section 1956(c)(7), but you would not find mail fraud (18 U.S.C. § 1341) in the long list of statutes listed in subparagraphs (D) and (E)

- but notice that § 1956(c)(7)(A) incorporates, with one exception, the entire list of statutes in § 1961(1) – the RICO statute

- and if you look in § 1961(1)(B), you find § 1341 in the list of offenses that appears there

- therefore, mail fraud is what we call a money laundering predicate offense

Altogether, there are some 250 money laundering predicates

- the MLARS publication “Asset Forfeiture and Money Laundering Statutes” lists every one of the SUAs and the series of cross-references you need to get to it

- We’ll talk about foreign SUAs and what the Government must prove when it alleges that the laundered funds are the proceeds of a foreign SUA in a minute

Foreign SUAs

Some foreign crimes can serve as the SUA

- That is, if you have a financial transaction involving the proceeds of one of the categories foreign crimes listed in § 1956(c)(7)(B), you could have a U.S. money laundering offense

- But there are only seven categories of foreign crimes that qualify as SUAs under § 1956(c)(7)(B)

I. Drug trafficking
II. Crimes of violence
III. Bank fraud
IV. Bribery and public corruption
V. Arms trafficking, and
VI. Human trafficking and sexual exploitation of children
VII. Crimes for which extradition is required under a multi-lateral treaty

- *United States v. Chi,* 936 F.3d 888 (9th Cir. 2019) ([N]ot every violation of foreign law is a "specified unlawful activity. To qualify, the offense against a foreign nation" must fall within the bounds of one of the listed categories" in § 1956(c)(7)(B));

- *United States v. All Assets Held at Bank Julius Baer,* 251 F. Supp.3d 82, 103 (D.D.C. 2017) ("section 1956(c)(7)(B) requires that the financial transaction relating to the foreign offenses occur 'in whole or in part in the United States'");

When money comes into the US from overseas, it may be apparent from the circumstantial evidence that it is criminal proceeds

— But it is not always possible to say from what crime the proceeds were derived, or even from what country it came

— Nevertheless, it is necessary to do so to prove that the conduct is "an offense against a foreign nation"

— you cannot prove the conduct was an offense in a given country if you don't know what country you're talking about –

— and that it falls into one of these seven categories.

Then, at trial, you have to prove that the elements of the foreign crime are established,

— Which likely means that you will need foreign witnesses and documents

- *United States v. Chi*, 936 F.3d 888 (9th Cir. 2019) (Government alleged that the laundered funds were the proceeds of the bribery of a Government seismologist who received $1 million in violation of the applicable South Korean statute, and the court instructed the jury in accordance with the elements of that offense, using the ordinary, contemporary meaning of "bribery", not the elements of the US equivalent, § 201);

- *United States v. Thiam*, 934 F.3d 89 (2nd Cir. 2019) (Minister of Mines of Republic of Guinea received $8.5 million from Chinese company; Government acknowledges that when a defendant is charged with laundering the proceeds of a foreign crime, and there has been no trial or conviction for that offense in a foreign court, the Government must show that each of the elements of the foreign offense was satisfied; but in deciding what the terms in a foreign criminal statute mean, the court should give them the meaning that they would be given in the foreign court, not the meaning that they would have in a US court; declining to reverse conviction because trial court did not interpret "official act" in a case where the SUA was bribery under Guinean law in accord with the Supreme Court's decision in *McDonnell*);

- *But see United States v. Inniss*, 2019 WL 6117987 (E.D.N.Y. Nov. 18, 2019) (Government concedes that it must prove each element of a foreign predicate offense, notwithstanding a foreign statute shifting the burden of proof to the defendant as to one of those elements);

Proceeds need not be money:

- *United States v. Kelerchian,* 937 F.3d 895 (7th Cir. 2019) (machineguns illegally obtained from a vendor in violation of the wire fraud statute were proceeds of the fraud; their resale was therefore a violation of § 1957);

- *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 § 2312, so defendant's sale of the motorhomes was properly charged as a money laundering offense);

- *United States v. Alabed*, 2020 WL 114415 (N.D. Ga. Jan. 9, 2020) (when defendant purchased gift cards from third parties who had obtained them illegally, he was conducting a transaction involving criminal proceeds);

Section 1956(c)(9) defines "proceeds" as property obtained or retained:

- *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");

- *United States v. Frank*, 354 F.3d 910, 923 (8th Cir. 2004) (car that defendant would not have retained if he had complied with order to disclose all assets to the court for purposes of satisfying a restitution order is the proceeds of the fraud upon the court in violation of sections 1341 and 1343 and obstruction of justice);

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

- *United States v. Rivera-Izquierdo,* 850 F.3d 38 (1st Cir. 2017) (when fraud proceeds are used to gamble, the gambling winnings are "derived from" the fraud proceeds, and a subsequent transaction involving those winnings can therefore be a money laundering offense);

- *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. McQueen,* 636 Fed. Appx. 652 (6th Cir. 2016) (evidence that Defendant used fraudulently-obtained investor funds to purchase a motorcycle which he, in turn, used as a trade-in to obtain a second motorcycle, was sufficient to establish that the acquisition of the second motorcycle was an offense under § 1957);

— The "knowledge" element places – as a practical matter – a limitation on the Government's ability to claim that money remains SUA proceeds as it changes form and time passes

- *United States v. Markham,* 2019 WL 485959 (E.D. La. Feb. 7, 2019) (the "no attenuation" rule that proceeds remain proceeds as they change form does not deprive the defendant of due process, because if the attenuation is so great that the defendant is not aware that the property is criminally derived, the Government will not be able to prove the knowledge element; rejecting due process challenge where money defendant stole from public library moved through many intervening transactions before it was used to commit the money laundering offense);

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

— otherwise money launderers could evade prosecution by putting SUA proceeds in one account and taking money from another, or by using a hawala; *see* 18 U.S.C. § 1956(a)(1)

— 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

- *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);

- *United States v. Mithavayani,* 2019 WL 2125833, *7 (E.D. Ky. May 15, 2019) (that defendants may have funneled criminal proceeds through legitimate business did not prevent jury from finding that money used to conduct money laundering offense was SUA proceeds; citing the "parallel or dependent transaction" language in § 1956(a)(1));

Circumstantial evidence

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

— it's sufficient if you can prove that the money was generated by the specified unlawful activity without identifying the date and place of the offense

- *United States v. Davis*, 53 F.4th 833 (5th Cir. 2022) (where indictment alleged laundering proceeds of wire fraud scheme, Government need not allege or prove that the money involved in a particular money laundering transactions was linked to a particular execution of the scheme, such as those alleged as substantive fraud counts in the indictment);

- *United States v. Colon,* 919 F.3d 510 (7th Cir. 2019) (the Government is not required to tie or trace the cash deposited into a bank account to a particular drug sale);

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

- *United States v. Bui,* 2022 WL 475002 (11th Cir. Feb. 16, 2022) (circumstantial evidence showing that money paid to drug supplier was from prior drug sales included number of prior transactions, amount of drugs, structuring purchases of money orders, and testimony of cooperating supplier);

- *United States v. Garbacz,* 33 F.4th 459 (8th Cir. 2022) (to show that the funds involved in a financial transaction were SUA proceeds and not funds from another source, the Government may rely on circumstantial evidence such as the timing of the transactions in relation to the underlying crime; deposits into priest's bank account coincided with thefts from the collection plate after Sunday mass);

- *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. Prevezon Holdings, Ltd.,* 251 F.Supp.3d 684 (S.D.N.Y. 2017) (where there have been numerous intervening transactions, the timing and pattern of transactions may serve as circumstantial evidence that the money moving is traceable to the original SUA);

But the circumstantial evidence that is used most often to establish the proceeds element is the defendant's lack of legitimate income:

— 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. Jones,* 56 F.4th 455 (7th Cir. 2022) (defendant's failure to file tax returns or receive W-2 forms is circumstantial evidence that the money he used to buy a vehicle was derived from his drug trafficking offense, and not from legitimate income);

- *United States v. Gordon,* 954 F.3d 315 (1st Cir. 2020) (evidence that defendant was a marijuana trafficker spending far more money than was generated by his legitimate business sufficient to allow jury to find that he was spending drug proceeds);

- *United States v. Smith,* 824 Fed. Appx. 508 (9th Cir. 2020) (defendant's lack of legitimate income as a prison inmate, and his involvement in a drug conspiracy, were sufficient to allow jury to infer that the money he transferred to a fellow inmate was drug proceeds);

- *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);

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

- *United States v. Colon*, 919 F.3d 510 (7th Cir. 2019) (where defendant deposits commingled cash, it is only necessary to show that each cash deposit "included at least some drug proceeds;" given scale of defendant's drug operation and his use of his business as a front, jury could infer that every one of defendant's cash deposits included at least some drug money);

- *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. Thompson,* 758 Fed. Appx. 398 (6th Cir. 2018) (evidence that Tennessee drug dealer's drug proceeds were the greater part of his overall income, which included income from an auto-repair business, sufficient to show that money wired to his Ohio drug supplier "involved" commingled drug proceeds; applying *Warshak);*

- *United States v. Tajwar,* 2023 WL 3510891 (E.D. Ky. May 17, 2023) (evidence sufficient to show that money picked up from barbershop was drug proceeds even though it was possible that it also included some proceeds of legitimate business);

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*

- this is another reason why it is important to focus on the right financial transaction

- 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);

    - *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, 769 (1st Cir. 2000) (same; quoting *Butler*);

- 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;

    - *United States v. Bui,* 2022 WL 475002 (11th Cir. Feb. 16, 2022) (distinguishing *Harris;* purchase of drugs with proceeds of a prior offense is money laundering); *United States v. Gross*, 661 Fed. Appx. 1007 (11th Cir. 2016) (same);

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

- inducing a victim to wire money to 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);

- *United States v. Fallon,* 61 F.4th 95 (3rd Cir. 2023)(a money laundering offense cannot occur before the defendant has obtained the criminal proceeds; accordingly, a transaction in which the defendant receives commingled criminal proceeds and untainted funds at the same time cannot be a money laundering offense; but a downstream transaction occurring thereafter can be a money laundering offense);

— 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. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (explaining *Johnson*);

— there has to be a temporal sequence: crime occurs that generates proceeds; defendant conducts transaction that launders the proceeds

— so, a two-step transaction -- victim sends check to defendant, defendant deposits check – could be 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. Chavez,* 951 F.3d 349 (6th Cir. 2020) (the proceeds element requires proof that “some other crime has already been committed (though not necessarily completed);” fraudulently-obtained check is proceeds of health care fraud as soon as it is issued; deposit of the check involves SUA proceeds);

— Same for 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. Silveira,* 997 F.3d 911 (11th Cir. 2021) (where defendant acted as conduit between bettors in a sports betting scheme and the bookmakers, the bets became proceeds of a § 1955 offense when defendant received them; his subsequent transfer of the money to the bookmakers as the next step in the scheme was therefore a transaction involving SUA proceeds);

- *United States v. Diggles,* 928 F.3d 380, 389 n.3 (7th Cir. 2019) (where defendant’s fraud involved receiving hurricane-relief funds in account of Foundation he controlled and then moving that money to the account of a church where he was

pastor, "the fraud got the money into the Foundation's account; the money laundering got it into the church's");

- *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);

The requirement that the money be SUA proceeds *at the time the financial transaction occurs* is a problem in bribery cases:

- property defendant intends to use to commit offense is not proceeds if the offense has not yet been committed

- so, arguably, paying a bribe cannot be a money laundering offense because there are no bribery proceeds until the bribe is paid

- but courts have upheld money laundering convictions in bribery cases where the bribe is paid in two steps

  - *Aronshtein v. United States,* 2023 WL 2770145 (2nd Cir. Apr. 4, 2023) (unpub) (when a bribe is paid in two steps, with the money going first from defendant to an intermediary, and then from the intermediary to the bribe recipient, the money becomes proceeds when the first step is complete, and the second step therefore constitutes money laundering);

  - *United States v. Sidoo,* 468 F. Supp.3d 428 (D. Mass. 2020) (paying a bribe may constitute a money laundering offense without violating the merger rule if the bribe is paid in two steps: the first step constitutes a phase of the bribe scheme that generates proceeds, and the second step is a money laundering offense involving those proceeds; following *Castellini*);

  - *United States v. Capacho*, 2018 WL 1334812 (S.D. Tex. Mar. 15, 2018) (if a kickback is paid in two steps, the second step involves SUA proceeds and may be charged as a money laundering offense; denying motion to dismiss the indictment);

  - *United States v. Reagan*, 725 F.3d 471, 484 (5th Cir. 2013) (bribery offense was complete when defendant solicited bribe, so payment to third party at defendant's direction involved SUA proceeds);

Gross v. Net Proceeds

In *United States v. Santos,* 553 U.S. 507 (2008), the Supreme Court held that "proceeds" meant "net profits"

- This caused all kinds of disruption in the case law
- But happily, Congress fixed the problem by defining "proceeds" to mean "gross receipts" for offenses committed after May 20, 2009
  - 18 U.S.C. § 1956(c)(9), Pub. L. 111-21, 123 Stat. 1617 (2009)
  - *United States v. Gibson,* 875 F.3d 179 (5th Cir. 2017) ("Congress effectively overruled *Santos* by amending the statute to define "proceeds" more broadly, and that law took effect on May 20, 2009;" in proving a conspiracy that straddles that date, the Government may rely on the new definition);

Specific Intent

At the time of the financial transaction, the defendant must have the *mens rea* to satisfy one of the four conditions of the statute

1. Promotion money laundering

Section 1956(a)(1)(A)(i) is called the "promotion money laundering" offense.

- the intent to promote is part of the *mens rea* for the money laundering offense.
  - *United States v. Roy*, 375 F.3d 21 (1st Cir. 2004) (intent to promote is part of the *mens rea*, not the *actus reus* of the offense);
- to prove promotion money laundering, you only have to prove that the defendant intended to promote an SUA
- this can be the same SUA that generated the proceeds or an entirely separate crime
- you *do 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. Azmat*, 805 F.3d 1018 (11th Cir. 2015) (using proceeds of pill-mill to pay rent, salaries and overhead expenses (cable TV) is promotion money laundering; such reinvestment allows the defendants to continue seeing "pill-seeking patients" and to "enrich themselves by dispensing controlled substances");

- *United States v. Agundiz-Montes,* 679 Fed. Appx. 380 (6th Cir. 2017) (using drug proceeds to buy more drugs and to pay rent on storage facility is promotion money laundering);

— 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);

- *United States v. McGahee*, 257 F.3d 520, 527 (6th Cir. 2001) (following *Brown*; paying home mortgage and other household expenses did not promote fraud scheme even though defendant conducted scheme from his residence because purpose of payments was primarily to maintain property as a residence and not to perpetuate the fraud);

– distributing proceeds:

- *United States v. Matthews,* 31 F.4th 436 (6th Cir. 2022) (intent to promote shown by defendant's role in distributing payments from Sinaloa cartel for transporting drug proceeds to co-conspirators, meeting them at the airport, and "picking up the tab" for the jet fuel);

- *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. 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. Tolliver*, 949 F.3d 244 (6th Cir. 2020) (using drug proceeds to buy more drugs promotes the drug offense by allowing it to continue or grow, just as reinvesting stock dividends does);

- *United States v. Segura-Corro*, 2022 WL 985818 (6th Cir. Apr. 1, 2022) (using proceeds to buy more drugs is the paradigmatic example of promotion money laundering; but in addition using drug proceeds to pay someone to bring in new customers is promotion money laundering as well);

- *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. 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 promotion money laundering);

- *United States v. Gibson,* 875 F.3d 179 (5th Cir. 2017) (using proceeds of Medicare fraud to pay kickbacks to recruiters to bring in more patients promote the continuation of the scheme by providing opportunities to submit new fraudulent bills);

– 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);

- United States v. Manafort, 318 F.Supp.3d 1 (D.D.C. 2018) (moving money through layers of international transactions by corporate entities may promote a violation of FARA by concealing the relationship between the defendant and his foreign clients);

There is no "merger" issue: the same financial transaction may constitute the money laundering offense and the SUA being promoted:

- *United States v. Wilkinson*, 137 F.3d 214, 221 (4th Cir. 1998) (same transaction may constitute money laundering offense and next step in overall fraud scheme; there is no merger problem with the promotion prong of the offense; distinguishing *Heaps*, *infra*);

- *United States v. Piervinanzi*, 23 F.3d 670, 679-81 (2d Cir. 1994) (wiring money out of bank to an overseas account to commit bank fraud is an act intended to promote the bank fraud of which the wire transfer is a part);

- *United States v. Root,* 777 Fed. Appx. 536 (2nd Cir. 2019) (§ 1956(a)(2)(A) contains no requirement that the money laundering offense be "analytically distinct" from the offense being promoted; following *Piervinanzi*);

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. Williamson,* 656 Fed. Appx. 175, 184 (6th Cir. 2016) (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, after *Santos*, the Department wants prosecutors to treat very carefully.

2. Evasion of income taxes

Because income tax evasion is not an SUA, Congress had to enact a subsection of § 1956 that deals specifically with the promotion of a tax offense

- This section is rarely used because it requires the approval of the Tax Division, but there are a few cases

    - *United States v. Christy,* 916 F.3d 814 (10th Cir. 2019) (§ 1956(a)(1)(A)(ii) is a specific intent crime; the Government must show that the defendant conducted the financial transaction for the purpose of evading taxes or filing a false return; simply using a portion of $400,000 in embezzled funds to pay off personal loans is "money spending" not money laundering; that the defendant used such income to engage in financial transactions is not enough to show that the purpose of the transactions was to make it easier to file a false return in violation of § 7206; conviction reversed);

    - *United States v. Zanghi*, 189 F.3d 71 (1st Cir. 1999) (transferring fraud proceeds in manner designed to make it appear to be a loan repayment instead of income violates (a)(1)(A)(ii); defendant does not have to know his conduct violates the tax laws; intentionally engaging in conduct that in fact violates § 7201 is sufficient (citing legislative history);

    - *United States v. Shellef,* 732 F. Supp.2d 42, 74 n. 48, 75 (E.D.N.Y. 2010) (*Cuellar* applies to § 1956(a)(1)(A)(ii); Government must prove that the *purpose* of the transaction was to evade taxes; failure to pay taxes is not, by itself, dispositive; but failure to pay taxes combined with defendant's failure to tell his tax accountant that he'd transferred funds to domestic and foreign bank accounts was sufficient to prove his purpose);

3. Concealment money laundering

Section 1956(a)(1)(B)(i) 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 SUA proceeds.

- This is the "concealment money laundering" offense

    - *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. Gonzalez,* 918 F.3d 808 (10th Cir. 2019) (creating the appearance of legitimate wealth is one way to commit concealment money laundering but it is not necessary; concealing any of the attributes will suffice);

Defendant who is not the perpetrator of the SUA need not intend to conceal or disguise, but need only be aware that perpetrator's intent is to conceal or disguise:

— Contrast this with promotion money laundering where the Government must show that the defendant intended to promote

- *United States v. Farrell,* 921 F.3d 116, 140 (4th Cir. 2019) (following *Campbell*; lawyer who knows that drug dealer is giving him money to hire lawyers for other members of the drug organization, instead of hiring them himself, is doing so to disguise the source of the money, knows that the transaction was designed to conceal or disguise, even though he concealed nothing himself);

- *United States v. Campbell*, 977 F.2d 854, 859 (4th Cir. 1992) (real estate agent aware that client's purpose is to conceal or disguise drug money);

- *United States v. White*, 718 Fed. Appx. 353 (6th Cir. 2017) (sister of drug dealer was at least "tacitly aware" that she was engaging in transactions designed to conceal the ownership and control of criminal proceeds when she agreed to buy and sell cars in her name, using her brother's property);

When the defendant is someone who is laundering money at someone else's direction, the defendant's knowledge that the purpose of the transaction was to conceal or disguise almost always has to be shown by circumstantial evidence:

- *United States v. Fallon,* 61 F.4th 95 (3rd Cir. 2023) (listing examples of evidence of concealment money laundering: unusual secrecy; structuring; depositing money in account of legitimate business; conducting highly irregular transactions; using third parties; and expert testimony on the practices of criminals);

- *United States v. Brown,* 730 Fed. Appx. 638 (10th Cir. 2018) (circumstantial evidence of concealment includes unusual secrecy, structuring, use of third parties, unusual transactions and expert testimony on the practices of criminals), quoting *United States v. Shepard,* 396 F.3d 1116, 1121 (10th Cir. 2005);

- *United States v. Prevezon Holdings, Ltd.,* 251 F.Supp.3d 684 (S.D.N.Y. 2017) ("Use of circumstantial evidence, particularly in complex financial cases . . ., is perhaps the only way to prove money laundering. … [H]amstringing a party's use of circumstantial evidence to prove the design to conceal or disguise the nature, location, source, ownership, or control of a multi-layered money laundering scheme would immunize money launderers sophisticated enough to use shell companies that regularly flush their accounts");

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

- *United States v. Oloyede,* 933 F.3d 302 (4th Cir. 2019) (evidence of concealment included the use of other people's bank accounts, instructions to a co-conspirator to structure cash transactions in amounts under $10,000, writing himself 11 checks totaling $70,000 to move money from one account to another, and engaging in a pattern of maxing out ATM withdrawals);

- *United States v. Pendleton,* 761 Fed. Appx. 339 (5th Cir. 2019) (unusual financial moves suggest transaction was designed to conceal; accepting cash from drug dealer in exchange for cashier's check that he could use to show legitimate source for down payment was evidence of concealment);

- *United States v. Agundiz-Montes*, 679 Fed. Appx. 380 (6th Cir. 2017) (depositing funds in amounts under $10,000 into six bank accounts and shuffling the money between business and personal accounts is concealment money laundering);

- *United States v. Allen,* 2013 WL 593925, *7 (E.D. Tenn. Feb. 15, 2013) (indictment alleging deposit of numerous checks from investors into account in third party's name, followed immediately by withdrawal of cashier's checks sufficiently alleged concealment money laundering to withstand motion to dismiss), *aff'g* magistrate's report and recommendation, 2012 WL 7150022, *10 (E.D. Tenn. Dec. 6, 2012);

- *United States v. Nasher-Alneam,* 2019 WL 2618189 (S.D. W.Va. Jun. 26, 2019) (that medical doctor transferred fraud proceeds from his business account to his personal account before transferring the money to family members overseas does not, by itself, establish that the purpose of the transaction was to conceal or disguise);

- *But see United States v. Fallon,* 61 F.4th 95 (3rd Cir. 2023)(transactions consistent with ordinary business activity, including a corporation's use of multiple bank accounts – is insufficient evidence of concealment);

— Structuring cash transactions:

- *United States v. Garbacz,* 33 F.4th 459 (8th Cir. 2022) (withdrawing $50,000 in cash in nine separate transactions while searching the internet for information on how to avoid informing the Government, all shortly before attempting to flee the

country, is circumstantial evidence that the purpose of the transactions was concealment);

- *United States v. Walton,* 745 Fed. Appx. 15 (9th Cir. 2018) (funneling is "a method typically employed by money launderers to conceal the source of funds");

— using shell companies, duplicate bank accounts, third party's name, or name of legitimate business

- *United States v. Chavez,* 951 F.3d 349 (6th Cir. 2020) (creating duplicate set of business entities with parallel set of bank accounts used to receive fraud proceeds constituted concealment);

- *United States v. Patel,* 651 Fed. Appx. 468 (6th Cir. 2016) (use of two shell companies to move Medicare fraud proceeds from one coconspirator to another shows that at least one purpose of the transaction was concealment);

- *United States v. Raymundi-Hernandez,* 984 F.3d 127 (1st Cir. 2020) (evidence sufficient to prove that defendant, who used money from a drug organization to purchase a luxury vehicle, title it in the name of his own business, but did not take possession of it, knew that he was acting as a straw purchaser for the leader of the drug organization);

- *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. Banks,* 884 F.3d 998 (10th Cir. 2018) (drug dealer's use of third parties to buy blank money orders instead of doing it himself, and directing them to send them to a third party associated with his co-defendant, showed intent to conceal the source of the money);

— Use of cryptocurrency:

- *United States v. Decker*, 832 Fed. Appx. 639 (11th Cir. 2020) (using bitcoin to conduct financial transactions does not by itself establish the concealment element of a money laundering offense, but conducting such transactions through dark web sites that afford anonymity to drug dealers is sufficient to show an intent to conceal);

— commingling dirty money and clean money

- *United States v. Cessa,* 861 F.3d 121 (5th Cir. 2017) ("Evidence that the defendant commingled illegal proceeds with legitimate business funds is sufficient to support a conviction under § 1956");

- *United States v. Stewart,* 854 F.3d 472 (8th Cir. 2017) (evidence that defendant deposited drug proceeds in account held in the name of a band, and commingled the money with the legitimate proceeds of a glass pipe business, sufficient to show concealment);

— use of codes; unusual secrecy:

- *United States v. Jaimez,* 45 F.4th 1118 (9th Cir. 2022) (that defendants used coded language to conceal the source of laundered funds is evidence that they knew the purpose of the money laundering conspiracy and intended to join it);

- *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 violation of (a)(1)(B)(i); Section 1956 is not a "money spending" statute);

- *United States v. Stoddard,* 892 F.3d 1203 (D.C. Cir. 2018) (where drug dealer and his cousin went together to car dealership to buy car in cousin's name with drug dealer's money and for drug dealer's exclusive use, there was insufficient evidence purpose of the transaction was to conceal the ownership or source of the money);

— but the defendant's attempt to invoke *Sanders* and claim that he was just spending money will not succeed if you can show that he conducted the transaction in an unusual way, or made false representations in doing so

- *United States v. Millender,* 970 F.3d 523 (4th Cir. 2020) (defendants were not merely spending investors' money on their lifestyle when they represented the money as "something it was not" – *viz.* repayment of a loan; in doing so they committed concealment money laundering);

- *United States v. Sainz Navarrete,* 955 F.3d 713 (8th Cir. 2020) (buying a Corvette with drug proceeds in a series of cash transactions, and titling it in girlfriend's name without her knowledge, was concealment money laundering);

- *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);

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. Bikundi,* 926 F.3d 761 (D.D.C. 2019) (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);

- *United States v. Gonzalez,* 918 F.3d 808 (10th Cir. 2019) (that use of safe deposit box held in defendant's name did not conceal his identity was irrelevant; concealing location or control of SUA proceeds is sufficient);

- *United States v. Stewart,* 902 F.3d 664 (7th Cir. 2018) (creating a business and opening a business account solely to make deposited drug proceeds appear to be legitimate business revenue was sufficient to show intent to conceal even though defendant made no effort to conceal his identity as the business owner);

- *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. Odiase,* 2018 WL 2926626 (S.D.N.Y. Jun. 12, 2018) (defendant's transferring money between accounts in her own name does not mean she was not trying to conceal its source; she may have been attempting to "elongate the trail" between the money and the source; that she might have been more "cunning" is not a defense);

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. Bikundi,* 926 F.3d 761 (D. C. Cir. 2019) (that defendant's scheme was "vulnerable to dogged investigation" by a Government agent who traced defendants' fraud proceeds from one bank account to another doesn't mean that in moving tens of millions of dollars through sham companies they weren't trying to conceal the source of their money; distinguishing *Adefehinti*);

- *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");

Applying *Cuellar*

Fifteen years after it was decided, courts are still struggling with how to apply the Supreme Court's decision in *Cuellar*

- decided the same day as *Santos*, this case has caused its own share of confusion

In *Cuellar*, the defendant was transporting currency hidden in his VW Beetle as he drove toward the Mexican border

- he was charged with concealment money laundering under the international money laundering statute, 18 U.S.C. § 1956(a)(2)

- the Government argued, and the Fifth Circuit held (*en banc)* that the concealment of the money in the vehicle while transporting it across the border was enough to satisfy the concealment element

- but the Supreme Court disagreed

- what the Government has to show is not that the defendant concealed the money in order to transport it, but that he transported the money in order to conceal it

- that Cuellar hid the money under the seats of his vehicle tells us something about *the manner* in which he transported the money, but doesn't tell us about *his purpose* in transporting the money

    - *Cuellar v. United States*, 553 U.S. 550, 563-68 (2008) (conviction reversed because the evidence showed only that defendant transported the $81,000 in currency in a secretive or clandestine way—wrapped in bundles in a secret compartment covered with goat hair; there was no evidence that the purpose of the transportation was to conceal or disguise);

So, in concealment cases, the Government's proof must focus on the *reason* the defendant did what he did, not the manner in which he did it

- *United States v. Rodriguez*, 727 Fed. Appx. 24 (2nd Cir. 2018).(following *Garcia*; delivering drug proceeds to an undercover agent, ostensibly to buy more drugs, is

not concealment money laundering, even if conducted in a secretive way; it is the *purpose* not the manner of the transaction that must conceal or disguise);

- for example, in *Cuellar* the Government might have called a witness to say moving drug money to Mexico helps to conceal it because it's harder for U.S. law enforcement to find it, or because Mexico has lax currency reporting laws

  - *Cuellar v. United States*, 553 U.S. 550 (2008) (Government could have shown that the purpose of courier's transportation of cash to Mexico was to conceal or disguise by showing that he knew that once the money was in Mexico it would be harder for U.S. law enforcement to find, to link to drugs, or to establish ownership or control);

- Or you can show that the way the defendant conducted the transaction made the transaction unnecessarily difficult or complicated, indicating that his *purpose* in doing it that way was to conceal or disguise

  - *United States v. Singh,* 995 F.3d 1069 (9th Cir. 2021) (using a hawala instead of more traditional means of sending money, and taking additional steps to ensure secrecy such as talking in codes and using burner phone, is sufficient to show that the purpose of the transactions was to conceal or disguise drug proceeds and not merely to pay the Mexican suppliers; collecting cases distinguishing *Cuellar*);

Knowledge that the purpose of the transaction was to conceal or disguise may be shown through willful blindness:

- *United States v. Stern,* 2017 WL 4676660 (S.D.N.Y. Oct. 17, 2017) (like the knowledge that property is illegally derived, the defendant's knowledge that the purpose of the transaction was to conceal or disguise may be shown by willful blindness);

4. Transaction reporting requirement

Conducting a transaction with the intent to evade the CTR, CMIR or Form 8300 currency reporting requirements is an offense under § 1956(a)(1)(B)(ii)

- *United States v. Calmes,* 574 Fed. Appx. 295, 301 (5th Cir. 2014) (motorcycle dealer convicted of § 1956(a)(1)(B)(i) and (ii) for selling vehicles to drug dealers with the intention of not filing Form 8300s);

- *United States v. Delgado,* 653 F.3d 729, 737-38 (8th Cir. 2011) (using cash to buy two cashier's checks, each for less than $10,000, at different banks on the same day, violated § 1956(a)(1)(B)(ii));

- *United States v. Bronzino*, 598 F.3d 276, 280 (6th Cir. 2010) (structuring the cashing of casino chips received in satisfaction of an illegal gambling debt violated § 1956(a)(1)(B)(ii));

V. International Money Laundering Offenses Under Section 1956(a)(2)

Section 1956(a)(2) is the international money laundering statute;

— it applies when property is moved into or out of the United States

Like § 1956(a)(1), it has multiple parts

— it has a “promotion” prong in § 1956(a)(2)(A)

— a concealment prong in § 1956(a)(2)(B)(i)

— and a currency reporting avoidance prong in § 1956(a)(2)(B)(ii)

— it *does not* have a tax evasion prong

For each of the three prongs of § 1956(a)(2), the elements are the same as they are for their counterparts, with two important exceptions

— 1) instead of a "financial transaction," you need to show transportation, transfer or transmission of proceeds in or out of the U.S.

— 2) 1956(a)(2)(A) does not contain the "proceeds" element

— it’s the second point that’s important

Promotion money laundering under § 1956(a)(2)(A)

It is a violation of § 1956(a)(2)(A) to send money into or out of the U.S. for the purpose of promoting an SUA offense *regardless of the source of the money*

— there is no proceeds element

— thus, a person can violate § 1956(a)(2)(A) by sending “clean” money into or out of the United States *as long as the intent was to promote an SUA*

- so, sending money from the U.S. to another country to pay for drugs, or to buy an airplane to transport drugs, is an international money laundering offense

    - *United States v. Cornelio-Legarda,* 381 Fed. Appx. 835, 841-42 (10th Cir. 2010) (wiring $500 to Mexico to buy methamphetamine is a violation of § 1956(a)(2)(A); there is no requirement that the money be SUA proceeds);

- Sending money from the U.S. to another country to bribe a contracting officer in violation of the Foreign Corrupt Practices Act is a money laundering offense

    - *United States v. Harder*, 2016 WL 807942, *10 (E.D. Pa. Mar. 2, 2016) (paying a bribe to a foreign official is a violation of § 1956(a)(2)(A) that does not merge with the FCPA offense being promoted);

- Sending money into or out of the United States in violation of international sanctions – against Iran, North Korea, Russia, etc. – is a money laundering offense because violating the sanctions is a violation of IEEPA, which is an SUA

- And sending the money promotes the violation of IEEPA

    - *United States v. Tajideen,* 319 F. Supp.3d 445 (D.D.C. 2018) (following *Piervinanzi;* same transaction can be a money laundering offense under § 1956(a)(2)(A) and the IEEPA offense being promoted);

Notice that because there is no requirement that the money be criminal proceeds when the offense occurs, there is no there is no “merger” problem

- Sending the money out of the country to facilitate a scheme to defraud, for example, can be charged as both a money laundering offense and as part of the fraud

    - *United States v. Piervinanzi*, 23 F.3d 670, 679-83 (2d Cir. 1994) (because § 1956(a)(2)(A) contains no proceeds requirement, there is no merger problem when the defendant wires money out of the United States to promote fraud against bank and the wire transfer constitutes both the money laundering offense and the bank fraud);

    - *United States v. Inniss*, 2022 WL 5061706 (2nd Cir. Oct. 5, 2022) (following *Piervinanzi*: wire transfer into U.S. can constitute both a violation of § 1956(a)(2)(A) and the foreign bribery offense being promoted);

- Or sending money from the U.S. to Iran can be charged as both a money laundering offense and as a violation of IEEPA

    - *United States v. Anvari-Hamedani*, 378 F. Supp. 2d 821, 832-33 (N.D. Ohio 2005) (wiring money from United States to Iran is both a § 1956(a)(2)(A) offense and an IEEPA offense; there is no merger, multiplicity, or double jeopardy problem; following *Piervinanzi*);

The civil forfeiture cases based on sanctions violations typically allege that the property is forfeitable

- because it was involved in the international promotional money laundering offense that occurred when the money was sent into or out of a correspondent account in New York in furtherance of an IEEPA violation

    - *In the Matter of the Seizure and Search of the Motor Yacht Tango,* 597 F. Supp.3d 149 (D.D.C. 2022) (finding probable cause that a yacht is forfeitable as property involved in money laundering when a sanctioned person sent money from the US to a foreign country to pay for maintenance in violation of 1956(a)(2)(A), bank fraud and IEEPA);

    - *United States v. $6,999,925.00 of Funds Associated with Velmur Management PTE Ltd,* 2019 WL 1317336 (D.D.C. Mar. 22, 2019) ($5 million sent into US in violation of § 1956(a)(2)(A) as part of scheme to use front company to buy gasoil for N Korea in violation of IEEPA forfeitable under § 981(a)(1)(A) and 981(a)(1)(C));

    - *United States v. $4,083,935.00 of Funds Associated with Dandong Chengtai Trading, Ltd.,* 2018 WL 8108633 (D.D.C. Sep. 17, 2018) (entering default judgment under § 981(a)(1)(A) against funds sent to correspondent account of Chinese bank in New York destined for Chinese company acting as front for North Korean company selling coal; sending funds into US was violation of N. Korea sanctions and IEEPA and hence § 1956(a)(2)(A));

    - *United States v. $156,000,000 in U.S. Currency,* 2016 WL 659670 (D.D.C. Feb. 18, 2016) (entering default judgment under § 981(a)(1)(A) against $156 million bank conspired to send into U.S. in violation of IEEPA);

VI. Section 1957

Finally, we need to talk about Section 1957, which is the transactional money laundering statute

- It was designed to freeze criminal proceeds out of the banking system and to make the criminals proceeds worthless

- *United States v. Hatcher*, 132 Fed. Appx. 468, 477 n.3 (4th Cir. 2005) ("Section 1957 is designed to make the drug dealer's money worthless"), quoting legislative history;

-- it makes it an offense for anyone to conduct a financial transaction with more than $10,000 in criminal proceeds

- *United States v. Kratt*, 579 F.3d 558, 561 (6th Cir. 2009) ("Section 1956 criminalizes classic money laundering, while § 1957 criminalizes moving around at least $10,000 in criminal proceeds for any purpose through a financial institution");

- *United States v. Allen*, 129 F.3d 1159 (10th Cir. 1997) (Congress's primary concern in enacting § 1957 may have been with third parties who give criminals opportunity to spend ill-gotten gains, but the statute nevertheless reaches conduct of wrongdoers who conduct transactions with fruits of their own criminal acts);

So, a banker cannot knowingly accept $10,000 in criminal proceeds for deposit, and a car dealer cannot knowingly accept $10,000 in proceeds in payment for a car

- *United States v. Johnson*, 971 F.2d 562, 568 (10th Cir. 1992) (the statute criminalizes the actions of third parties who have aided drug dealers by allowing them to dispose of drug proceeds but whose conduct is not covered by conspiracy law);

The "knowledge" and "proceeds" elements are the same as they are for § 1956

— the defendant must conduct a monetary transaction involving more than $10,000 in SUA proceeds, and must know that the property represents the proceeds of some form of criminal activity.

- *United States v. Kratt*, 579 F.3d 558, 560-61 (6th Cir. 2009) ("proceeds" means the same thing in §§ 1956 and 1957);

- *United States v. Savage*, 67 F.3d 1435, 1442 (9th Cir. 1995) (criminally derived property means the same thing as proceeds under section 1956); *United States v. Castellini*, 392 F.3d 35, 44 n.7 (1st Cir. 2004) (same);

- *United States v. Campbell*, 977 F.2d 854, 858-60 (4th Cir. 1992) (merchant doing business with drug dealer can be convicted under section 1957 if he or she knows of, or is willfully blind to, customer's source of funds);

— what's different is that there is no specific intent element:

— it's enough that the defendant simply spent or moved the criminally derived money knowing that it was criminally derived

- *United States v. Sterling,* 2021 WL 3271596 (M.D. La. July 29, 2021) (§ 1957 does not require proof of the defendant's motive for conducting a financial transaction; it is sufficient to show that the defendant conducted the transaction knowing that it involved more than $10,000 in criminal proceeds);

- *United States v. Huber*, 404 F.3d 1407, 1057 (8th Cir. 2005) (section 1956 differs from section 1957 with respect to the specific intent element; "no intent to promote or knowledge of a design to conceal is required, but the transaction must consist of property with a value greater than $10,000");

- *United States v. Nickolas*, 2014 WL 5811127, *1 (D. Ariz. Nov. 10, 2014) (§ 1957 requires no *mens rea* greater than the defendant's knowledge that he engaged in a monetary transaction involving criminally derived property);

Accordingly, many otherwise routine transactions involving criminal proceeds may be charged as § 1957 offenses:

- *United States v. Ruan,* 966 F.3d 1101 (11th Cir. 2020) (explaining that because unlike § 1956, § 1957 does not require an intent to conceal or to promote, it "prohibits a wider range of activity than money laundering as traditionally understood;" affirming conviction for spending $110,000 in proceeds to buy a Lamborghini);

- *United States v. Igbokwe*, 518 F.3d 550, 552 (8th Cir. 2008) (simple wire transfer in excess of $10,000 from account containing Medicare fraud proceeds is a section 1957 violation);

- *United States v. Diamond*, 378 F.3d 720, 729 (7th Cir. 2004) (purchase of cashier's check with fraud proceeds is a section 1957 offense);

- *United States v. McClendon*, 195 F.3d 598, 599 (11th Cir. 1999) (transferring proceeds of health care fraud offense to personal bank account violated section 1957);

- *United States v. Ramirez*, 196 F.3d 895, 897 (9th Cir. 1999) (using fraud proceeds to make extravagant personal expenditures);

- *United States v. Caldwell*, 302 F.3d 399, 407 (5th Cir. 2002) (simple deposit of check representing fraud proceeds was a section 1957 violation);

But the transaction must involve 1) more than $10,000, and 2) a financial institution

Financial institution

The cases illustrate the wide variety of transactions involving financial institutions that qualify as § 1957 offenses:

- *United States v. Masino,* 2021 WL 3235301 (11th Cir. July 30, 2021) (unpub.) (depositing proceeds of illegal gambling operation into accounts at financial institutions is a violation of § 1957);
- *United States v. Huff*, 641 F.3d 1228, 1230 (10th Cir. 2011)(depositing a check is a monetary transaction);
- *United States v. Pizano,* 421 F.3d 707, 713 (8th Cir. 2005) (making down payments on real property with check and wire transfer were monetary transactions);
- *United States v. Deason,* 622 Fed. Appx. 350 (5th Cir. 2015) (purchasing a cashier's check is a monetary transaction affecting interstate commerce because it constitutes a transfer of funds by a financial institution and the use of a financial institution);
- *United States v. Wright,* 341 Fed. Appx. 709, 713 (2d Cir. 2009) (because a car dealer is a financial institution under 31 U.S.C. 5312(a)(2)(T), leasing a car is a monetary transaction);
- *United States v. Hawkey*, 148 F.3d 920, 924-25 (8th Cir. 1998) (use of funds misappropriated from charitable organization to buy vehicles for personal use constituted section 1957 violation);

$10,000 Requirement

Unlike § 1956 which has no dollar threshold, there is no § 1957 offense unless the monetary transaction involved more than $10,000 in SUA proceeds

- *United States v. Wright*, 651 F.3d 764, 770-72 (7th Cir. 2011) (the transaction must have involved more than $10,000 in SUA proceeds at the time the transaction occurred; using $8,000 in proceeds to buy real property is not a § 1957 violation even though the property later appreciated in value);
- *United States v. Adams*, 74 F.3d 1093, 1101 (11th Cir. 1996) (at least $10,000 of the property involved in the monetary transaction must be traceable to SUA proceeds);

-- one issue is whether several transactions can be aggregated to satisfy the $10,000 requirement

-- generally, the answer is no, but if the transactions are installments on a single purchase, it may be possible to aggregate them

- *United States v. George*, 363 F.3d 666, 674-75 (7th Cir. 2004) (purchasing car with cash in two installments of $6,000 and $9,000 satisfies the $10,000 requirement);

- *United States v. Caldwell*, 302 F.3d 399, 406 (5th Cir. 2002) (noting that district court set aside jury's verdict on one section 1957 count on ground that amount could not be aggregated; no Government appeal);

- *United States v. Wright,* 341 Fed. Appx. 709, 713 (2nd Cir. 2009) (initial deposit and monthly payments to lease a car aggregated to satisfy the $10,000 requirement);

The other issue is whether the $10,000 requirement is satisfied if the bank account in question contains commingled funds

-- the Fifth and Ninth Circuits apply a proceeds in / last out rule, which means that the total of all withdrawals from an account must exceed the value of the tainted funds by more than $10,000 before there can be a § 1957 offense

- *United States v. Rutgard*, 108 F.3d 1041 (9th Cir. 1997) (withdrawal of commingled money does not meet $10,000 threshold if the remaining balance exceeds the amount of the tainted funds; dirty money is presumed to be "last out"; characterizing *United States v. Moore*, 27 F.3d 969 (4th Cir. 1994), as creating a presumption that transfer from commingled account involves proceeds and declining to follow it);

- *United States v. Loe*, 248 F.3d 449, 467 n.81 (5th Cir. 2001) (because aggregate of withdrawals from commingled account was less than amount of clean funds, Government failed to establish $10,000 threshold);

- *But see United States v. Martinez,* 921 F.3d 452 (5th Cir. 2019) (because aggregate of all withdrawals was more than $10,000 greater than clean funds in the account, any withdrawal of more than $10,000 involved more than $10,000 in tainted funds);

- on the other hand, the Tenth Circuit says that any $10,000 withdrawal from a commingled account containing at least $10,000 in SUA proceeds is good enough

  - *United States v. Johnson*, 971 F.2d 562, 570 (10th Cir. 1992) (in the context of a withdrawal, the Government is not required to prove that no untainted funds were commingled with the unlawful proceeds for section 1957 purposes);

- cases continue to go both ways, but the recent cases follow *Johnson*

  - *United States v. Silver,* 864 F.3d 102 (2nd Cir. 2017) (collecting cases and following the majority rule; "The Government is not required to trace criminal funds that are commingled with legitimate funds to prove a violation of Section 1957;" such a rule would allow defendants to defeat money laundering by commingling);

  - *United States v. Vladimirov,* 2023 WL 2535263 (4th Cir. March 16, 2023) (following *Moore*; the pattern of transactions involving the purchase of stolen goods for sale on eBay and the transfer of the proceeds to defendant's bank account was sufficient, in combination with the absence of evidence that defendant sold any lawfully acquired goods and relied on eBay sales for his livelihood to satisfy the $10,000 requirement);

  - *United States v. Green,* 818 F.3d 1258 (11th Cir. 2016) (to satisfy the $10,000 threshold requirement for a conviction under Section 1957, the Government may rely on the ratio of tainted to untainted funds in a bank account, and assume that the same ratio applies to the commingled funds involved in the Section 1957 transaction);

  - *United States v. Moore*, 27 F.3d 969, 976-77 (4th Cir. 1994) (because money is fungible, it may be presumed in section 1957 cases that transacted funds, up to the amount of criminal proceeds in an account, constitute such proceeds);

  - *United States v. Mithavayani,* 2019 WL 2125833, *7 n.11 (E.D. Ky. May 15, 2019) (following *Silver* in the absence of Sixth Circuit authority);

When would the Government use Section 1957:

- When it can prove that the defendant knowingly moved tainted money but cannot establish his motive

- When it wants to illustrate to the jury what happened to the defendant's criminal proceeds.

Conspiracy

We don't have time to talk about it, but it is an offense under Section 1956(h) to conspire to commit any of the money laundering offenses in Sections 1956 and 1957

- *United States v. Fallon,* 61 F.4th 95 (3rd Cir. 2023)(to prove a conspiracy to commit concealment money laundering, the Government must prove that there was an agreement that if completed, would satisfy the elements of the underlying substantive offense; so to prove conspiracy to commit concealment money laundering, it must prove defendants conspiracy to conduct financial transactions involving SUA proceeds, knowing that the transaction involved criminal proceeds and that it was designed to conceal or disguise);

- *United States v. Jaimez,* 45 F.4th 1118 (9th Cir. 2022) (to prove a violation of § 1956(h), the Government must prove that there was an agreement to commit money laundering, that defendant knew the object of the agreement, and that he joined it with the intent to further its purpose);

- *United States v. Iriele,* 977 F.3d 1155 (11th Cir. 2020) (to convict the defendant of a money laundering conspiracy, the Government need only that there was an agreement to comment a money laundering offense, and that the defendant knowingly and voluntarily agreed to participate in that agreement; but noting that the court must also instruct the jury on the elements of money laundering);

- *United States v. Tolliver,* 949 F.3d 244 (6th Cir. 2020) (Government must prove that the defendant knowingly and voluntarily joined an agreed to commit each of the elements – *i.e.,* to conduct a financial transaction involving SUA proceeds, knowing that the money was criminally derived, and intending to promote an SUA);