THE FEDERAL MONEY LAUNDERING STATUTES:

&

RELATED FORFEITURE STATUTES
18 U.S.C. §§ 981 & 982

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Importance of Prosecuting ML
Overview of §§ 1956 & 1957
Elements of §§ 1956 & 1957
Forfeiture Statutes §§ 981 & 982
I. Importance of Prosecuting Money Laundering
Criminals need to hide, spend and reuse criminal proceeds
Cuts across all categories of criminal activity – drugs, fraud, smuggling, public corruption, terrorist financing....
Penalties
Asset Forfeiture potential
Evils of Money Laundering:

- Hiding money from the Government and victims
- Making crimes harder to detect by concealing proceeds
- Third parties acting as professional money launderers (e.g., BMPE)
- Merchants knowingly accepting crime proceeds as payment for goods/services
- Criminals bringing money into U.S. to promote criminal activity here
Money laundering is any transaction that seeks to conceal or disguise proceeds of illegal activities
II. Overview of Sections 1956 and 1957
Statutes:

18 U.S.C. § 1956
(a)(1) Basic Money Laundering
   (A)(i) Promotion
   (A)(ii) Evade Taxes
   (B)(i) Concealment
   (B)(ii) Avoid Transaction Reporting Requirements
(a)(2) International
(a)(3) Sting
(h) Conspiracy

18 U.S.C. § 1957 Spending Statute
§ 1956

- (a)(1) “Basic/Domestic ML” – cannot conduct financial transactions involving proceeds of a SUA if you have certain specific intent
- (a)(2) “International ML” – cannot transport money IN or OUT of the U. S. if you have certain specific intent
- (a)(3) “Sting” - cannot conduct financial transactions involving property represented to be proceeds of a SUA if you have certain specific intent
- (h) ML Conspiracy
§1957 “Spending Statute”

- cannot knowingly engage in a monetary transaction exceeding $10,000 if the funds are criminally derived from SUA
III. Section 1956(a)(1)
The Basic Money Laundering Statute
Four Elements of § 1956(a)(1)

• Financial Transaction
• Proceeds of an SUA
• Knowledge that money is dirty
• Intending to:
  - Promote the SUA, § 1956(a)(1)(A)(i)
  - Evade Taxes, § 1956(a)(1)(A)(ii)
  - Conceal or Disguise, § 1956(a)(1)(B)(i)
  - Avoid Transaction Reporting Requirements, § 1956(a)(1)(B)(ii)
Element #1: Financial Transaction

Broadly defined under § 1956(c)(4): any transaction that affects interstate commerce involving:

- movement of funds through wires or other means
- involving one or more monetary instruments
- transfer of title to real property, vehicle, vessel, aircraft; or
- use of a financial institution and affecting interstate commerce (deposits, withdrawals, transfers between accounts, use of safety deposit boxes)
Element #1: Financial Transaction (cont.)

Examples of Financial Transactions:

• Delivery of cash from drug dealer to money launderer

• Wire transfer through Western Union

• Transferring title to real property

• Buying a vehicle
Element #1: Financial Transaction (cont.)
Importance of Choosing the Financial Transaction

• Most courts hold that the financial transaction is the *unit of prosecution* so each transaction constitutes a separate offense and must be charged separately (except in the 2nd Circuit)
• Fixes time at which other elements apply
• Establishes venue
• Statute of Limitations runs from the date of the financial transaction, not the date the SUA committed
Element # 2: Proceeds

Property involved in F/T must, in fact, be proceeds of an SUA (Specified Unlawful Activity)

- Laundry list of offenses in § 1956(c)(7)
- RICO predicates in 1961(1)
- Certain violations of foreign law
- Not Title 31 offenses
Element # 2: *Proceeds* (cont.)

**Merger Problem:**
property must be SUA proceeds at the time the financial transaction takes place; arises if the financial transaction constituting the underlying crime & the ML offense occurred simultaneously.

Are “proceeds” receipts or profits?

- 4 Justices say gross proceeds
- 4 Justices say profits
- 1 Justice says that it depends upon crime being charged
Element # 2:  
**Proceeds (cont.)**


**Good News:**

Legislative fix on May 20, 2009, reversing *Santos*

So, any offense that occurs after May 20, 2009, or conspiracy that straddles May 20, 2009, is not affected by *Santos*
Bad News:

Not retroactive to crimes that occurred before 5/20/2009

5th Circuit: definition of proceeds depends on crime; Court uses a two part test to determine definition of proceeds
Element #3: Knowledge

Knowledge that property represents proceeds of “some form of unlawful activity”
Element #4: Specific Intent

Defendant acted with intent to:

• Promote the SUA, § 1956(a)(1)(A)(i)

• Evade Taxes, § 1956(a)(1)(A)(ii)

• Conceal or Disguise, § 1956(a)(1)(B)(i)

• Avoid transaction reporting requirements, § 1956(a)(1)(B)(ii)
Element #4: Specific Intent (cont.)

Intent to Promote

“Promotion Money Laundering”

Conduct or attempt to conduct F/T of SUA proceeds with “intent to promote the carrying on of specified unlawful activity”

Element #4: Specific Intent (cont.)

Intent to Promote

Examples of Promotion ML:

• Ponzi schemer uses proceeds from new investors to pay earlier investors, or to pay commissions to persons who lure more victims

• Reinvesting proceeds to cover advertising, printing, and mailing expenses

• Drug dealer uses the proceeds of narcotics sales to buy more drugs to sell
Using crime proceeds to keep the crime going (“Promotion Money Laundering”)

U.S. v. Bernie Madoff

Shockwaves felt around the world after $50bn Ponzi

By Dave Goldiner and Rich Schapiro
Daily News Staff Writers

Sunday, December 14th 2008, 1:50 AM

From a small local pension fund to deep-pocketed investors and banks across Europe and Asia, the roster of victims of Bernie Madoff’s breathtaking Ponzi scheme continued to tick up Saturday.

As analysts questioned how the Wall Street titan could have fooled so many for so long, Madoff’s stunning $50 billion swindle left investors - big and small and from across the globe - scrambling to assess the damage.

Officials in Fairfield, Conn., said it may have lost $42 million - nearly 15% of its retiree pension fund’s total value - that was in Madoff’s hands.
Element #4: Specific Intent

Intent to Promote

U.S. v. YCL Corp. (Gateway Hotel)
Element #4: Specific Intent (cont.):
Intent to Evade Income Taxes

Conduct or attempt to conduct F/T of SUA proceeds with intent to evade income taxes
Element #4: Specific Intent (cont.): Intent to Conceal or Disguise

“Concealment Money Laundering”

Conduct or attempt to conduct F/T of SUA proceeds knowing that F/T is designed to “conceal or disguise the nature, location, source, ownership, or control of SUA proceeds”

Element #4: Specific Intent (cont.): Intent to Conceal/Disguise

Example:

• Putting criminal proceeds into family member’s name

• Moving dirty money through otherwise legitimate business in order to conceal it

• Commingling dirty money with clean money in order to conceal it
Element #4: Specific Intent (cont.): Intent to Conceal/Disguise

Usually will have to be shown circumstantially

• Unusual or convoluted transactions
• Use of third party names or shell companies
• Commingling of funds
Element #4: Specific Intent (cont.): Intent to Conceal/Disguise


case reference

Depositing proceeds into geographically distant bank account, sending proceeds (commingled w/ clean funds) to a mail drop address, and trying to convert all of the proceeds to cash as investigators closed in, showed intent to conceal.
Moving money to conceal/disguise its source (“Concealment Money Laundering”)

Car-lot raids tied to Juárez drug cartel

by Daniel Borunda | El Paso Times
Posted: 02/11/2011 12:00:00 AM MST

Operation White Shamrock
CONCEALMENT ML - PURCHASING PROPERTY IN SOMEONE ELSE’S NAME

U.S. vs. 10 Kings Health, San Antonio, Texas
(Dominion property valued at $425,000.00)
(Quarter Horses valued at $8 Million)
Intent to Avoid Reporting Requirement

Conduct or attempt to conduct F/T of SUA proceeds knowing that F/T is designed to avoid a federal or state reporting requirement

Example: Buying several $9K cashier’s checks in order to buy $30K boat, in order to avoid CTR and Form 8300
IV. Commingling Funds
COMMINGLING FUNDS

Basic Violations:
Money Laundering
Structuring
Drugs

General Principles:
• Merely pooling tainted and untainted funds in an account does *not*, without more, render that account subject to forfeiture

• There are no hard and fast rules, i.e., the Circuit Courts look at all the facts of the case, including circumstantial evidence
US v. Tencer, 107 F.3d 1120 (5th Cir. 1997)

- Medicaid Fraud case with money laundering and mail fraud
- Tencer and employee charged with submitting false claims to three health insurance companies from 1988 to 1992
- Some legitimate services were provided by Defendants
- Defendant conducted a number of convoluted transactions openly and argued there was no evidence of concealment

The Fifth Circuit found:

- Merely pooling tainted and untainted funds in an account does not, without more, render the entire account subject to forfeiture;

- That the jury could infer from the different transactions that Tencer was attempting to conceal the nature of the funds and facilitate their laundering;

- Limiting the forfeiture of the funds under these circumstances as to the initial fraudulent activity would effectively undermine the purpose of the forfeiture statute and that all funds were subject to forfeiture;

- Criminal activity such as money laundering largely depends on the use of legitimate funds to advance or facilitate the scheme
V. Sections 1956(a)(2) & (a)(3)
Question:

What if someone in Iran sends money to U.S. in order to finance a terrorist attack here, and money is not SUA proceeds?
“International ML”: § 1956(a)(2)

Elements:
• Transportation, transfer, or transmission of funds or monetary instruments into or out of the U.S., with either:

(1) Intent to promote an SUA (funds do not need to be SUA proceeds) [§ 1956(a)(2)(A)], or

(2) Knowledge that funds are proceeds of unlawful activity and knowledge that such transportation/transfer/transmission is designed to conceal nature/location/source/ownership/control of SUA proceeds or avoid transaction reporting requirement [§ 1956(a)(2)(B)]
Example:

- Foreign cartel sending clean money into U.S. for purpose of providing capital to expand cartel’s U.S.-based drug business
In a case under § 1956(a)(2)(B), the Government must prove that the purpose of the transportation was to conceal or disguise the money.

It was not enough to show that the money was transported in a secretive or clandestine manner.
Question:

What if property involved in F/T is not SUA proceeds, but undercover officer tells target that it’s proceeds?
“Sting Provision”: § 1956(a)(3)

- Property represented to be SUA proceeds – usually the issue: representation must fairly convey circumstances that would make a reasonable person aware that the property is criminal proceeds

- Belief of SUA proceeds

- Financial Transaction

- With intent to:
  - Promote an SUA
  - Conceal or Disguise
  - Avoid transaction reporting requirement
VI. Section 1956(h)
Money Laundering Conspiracy § 1956(h):

- Time frame within conspiracy – usually several years; may allow for more expansive forfeiture
- Also, can forfeit all money defendant *conspired* to money launder, (even transaction(s) not charged), not just from substantive count(s)
VII. Section 1957
Section 1957: The so-called “Spending Statute”

Makes it an offense for anyone to conduct a monetary transaction with more than $10,000 in crime proceeds

So, it is a crime to simply spend more than $10,000 of crime proceeds to buy a car, jewelry, etc.
ELEMENTS OF § 1957

- Property valued at > $10,000
- Knowledge that property was derived from unlawful activity
- Monetary transaction in or affecting interstate or foreign commerce by, through, or to a financial institution
- (Financial institution includes car/boat/plane dealerships, pawn shops, real estate closings – see 31 U.S.C. section 5312)
§ 1957 CONTINUED

- Cannot knowingly engage in a monetary transaction exceeding $10,000, if it is criminally derived property from an SUA.
- Trying to make the money worthless by making it an offense for a merchant or other person to accept the criminal’s money as part of a financial transaction.
Comparison of Sections 1956 & 1957

**Section 1956**
- 20 year felony
- Financial transaction (interstate or foreign commence)
- Knows some form of unlawful conduct
- No dollar threshold
- Sting
- Specific intent
- No Sixth Amendment exclusion

**Section 1957**
- 10 year felony
- Monetary transaction (requires use of financial institution)
- Knows criminally derived property
- Greater than $10,000
- No sting
- No specific intent
- Excludes transaction necessary to protect Sixth Amendment rights
VIII. FORFEITURE STATUTES RELATED TO MONEY LAUNDERING OFFENSES
Criminal: 18 § 982 (a)(1) &
Civil: 18 § 981(a)(1)(c)

Both sections authorize civil and criminal forfeiture of all property *involved in* a violation of §1956 or §1957.
Any property involved in a transaction in violation of 18 U.S.C. §§ 1956, 1957, or 1960 or any property traceable to such property can be forfeited.
What property is involved in a violation of §1956 or §1957?

"property involved in" should be read broadly and includes:

- actual money or other property being laundered;
- any property used to facilitate the money laundering offense;

- **In re 650 Fifth Avenue and Related Props.,** 777 F. Supp. 2d 529, 563 (S.D.N.Y. 2011) (collecting cases holding that property used to facilitate the money laundering offense is ‘involved in’ the offense);

- **United States v. Nicolo,** 597 F. Supp. 2d 342, 347-48 (W.D.N.Y. 2009) (“The term ‘involved in’ has consistently been interpreted broadly by courts to include any property involved in, used to commit, or used to facilitate the money laundering offense”);
Four Theories of Money Laundering Forfeiture

1. The proceeds of the SUA offense.

2. The subject matter of the transaction:
   a. Section 1956(a)(2)(A) property.
   b. Property obtained in a sale or exchange.
   c. “Commingled” property.

3. Facilitating property.

4. Property involved in or used to commit the SUA.
Proceeds of the SUA offense are forfeitable

- *United States v. Huber*, 404 F.3d 1047 (8th Cir. 2005) (the fraud proceeds obtained by third parties as part of the scheme, and then transferred to defendant as part of money laundering offense, were forfeitable as part of the corpus of the offense);

- *In re 650 Fifth Ave. and Related Props.*, 777 F. Supp. 2d 529, 570 (S.D.N.Y. 2011) (Property involved in or “traceable to” money laundering includes the funds laundered.)
Subject matter of the transaction — *Commimgled Property is forfeitable*

- It is not necessary for all of the money involved in the money laundering transaction to be dirty, if the money laundering transaction involves commingled money, the clean money along with the dirty money can be forfeited

- *United States v. Real Prop. Known as 1700 Duncanville Rd.*, 90 F. Supp. 2d 737, 741 (N.D. Tex. 2000), aff’d, 250 F.3d 738 (5th Cir. 2001) (where less than half of money used to buy real property was proceeds of food stamp fraud, property was forfeitable in its entirety because the purchase was a violation of section 1957);
Facilitating property is something that is not part of the subject matter of the money laundering transaction itself, but not something that is so removed from the transaction that it fails the “substantial connection” test.

**Example:** bank accounts with commingled funds - the reason the clean money is forfeitable is because it is in the account when the money laundering offense occurs and is used to facilitate the money laundering offense (concealing or disguising it)
Bank accounts:

- *United States v. Tencer*, 107 F.3d 1120, 1135 (5th Cir. 1997) (entire bank account balance is forfeitable even though less than half the balance was criminal proceeds if the purpose of the deposit was to conceal or disguise proceeds among legitimate funds; distinguishing cases where commingling of SUA proceeds with untainted funds was merely fortuitous);

- *United States v. Coffman*, 859 F. Supp. 2d 871, 879 (E.D. Ky. 2012) (when some of the commingled funds are removed from a bank account, the commingled funds that are left behind are forfeitable not as the subject of a money laundering transaction but as facilitating property because they concealed or disguised the source and nature of the tainted funds)
Defendant plead guilty to 4 counts of superseding indictment, including counts of ML/ML conspiracy from a scheme involving the theft of credit card records from San Antonio’s Emily Morgan Hotel. These records were used to create counterfeit credit cards & these credit cards were used to buy merchandise which was either sold or used in Defendant’s “business”, RD&N Hauling, LLC, which was in his fiancee’s name. He was sentenced to 120 months.
Thank you for your time and attention!!!

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Resources:

Asset Forfeiture & Money Laundering Section (AFMLS) website

Publications include:

Federal Money Laundering Cases (2013)
Asset Forfeiture & Money Laundering Statutes (2013)
USA Bulletin (September 2007)