A Practitioner's Guide to the Federal Money Laundering Statutes

I. INTRODUCTION

In the last few years, reports of money laundering have become increasingly pervasive. Recent high profile money laundering prosecutions have targeted the former Majority Leader of the U.S. House of Representatives, the wife of golfer John Daly, and executives at HealthSouth and Enron. Perpetrators in one money laundering scheme uncovered last year are accused of laundering more than one billion dollars. As the U.S. Department of Justice (DOJ) concluded recently, “[t]he volume of dirty money circulating through the United States is undeniably vast and criminals are enjoying new advantages with globalization and the advent of new financial services.”

It is not surprising, then, that the DOJ has made investigating and prosecuting money laundering a priority, and encourages federal agents and prosecutors to “follow the money” and to stay one step ahead of the increasingly complex methods by which individuals attempt to launder money. In fact, not only has the government criminalized certain conduct as money laundering, it now requires some businesses to implement detailed anti-money laundering compliance programs.

The widespread use of money laundering statutes by federal prosecutors requires an understanding of the broad array of conduct prohibited by these provisions. Indeed, the threat of prosecution for money laundering can affect almost any business or individual. The federal statutes not only cover the classic money laundering scenario where an individual takes steps to make illegally earned assets appear legitimate, they also affect a far broader range of conduct that many would not consider “laundering” money.

This article is intended to serve as a general overview of the main issues involved in prosecuting and defending money laundering cases. There are two main money laundering statutes: 18 U.S.C. §§ 1956 and 1957. Section 1956 addresses specific intent money laundering, and generally requires the government to establish that a defendant had one of four enumerated purposes when the defendant engaged in the financial transaction. On the other hand, § 1957 criminalizes a broader range of conduct, including certain monetary transactions in criminally derived funds. Wherever possible, we cite to Eighth Circuit cases in order to assist Missouri practitioners.

II. SPECIFIC INTENT MONEY LAUNDERING - § 1956

Section 1956 contains four different money laundering crimes. First, it covers financial transactions that involve illegally earned funds and that the defendant conducted for one of four specific purposes. Second, it contains a sting provision, which applies to undercover operations used to determine if the defendant engaged in the financial transaction. On the other hand, § 1957 criminalizes a broader range of conduct, including certain monetary transactions in criminally derived funds. Wherever possible, we cite to Eighth Circuit cases in order to assist Missouri practitioners.
individual is involved in or is willing to engage in money laundering. Third, it includes a conspiracy provision that applies to situations where two or more people agree to violate any of the substantive money laundering crimes. Fourth, it prohibits the transportation of currency or monetary instruments in or out of the United States with illegal intent; the provisions concerning international transportation of currency and monetary instruments are beyond the scope of this article.

A. Elements of § 1956(a)(1)

In order to obtain a conviction pursuant to § 1956(a)(1), the government must prove four elements: (1) someone engaged in a specified unlawful activity that generates property as proceeds of the crime; (2) the defendant knows that the property is proceeds of an unlawful activity; (3) the defendant conducts a financial transaction with the property or attempts to conduct a financial transaction; and (4) the defendant has one of four specific intents or purposes. In analyzing these elements, it is helpful to remember that the purpose of § 1956 is to punish individuals who engage in financial transactions with illegally earned funds and have a specific intent described in the statute.

1. Unlawful Activity, Specified in the Statute, Generates Proceeds

The first element requires that the funds involved in the alleged money laundering transaction are proceeds of unlawful activity. In a chronological analysis of a money laundering crime, the first event is criminal activity that generates money or some other form of property. The crime must fall within a category of prohibited acts listed in the statute called “specified unlawful activity” (SUA). SUA includes crimes that constitute predicate acts under the federal racketeering statute, and a number of other crimes as well. Most federal felonies and many state crimes constitute SUA, with the notable exception of tax crimes, including tax evasion.

2. Defendant Knows that the Property is the Proceeds of Unlawful Activity

The second element is the knowledge element: a defendant must realize that the funds involved are the “proceeds from some form” of illegal activity. The defendant must know that the funds “represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law.” Although the unlawful activity must be a felony, the government need not prove that the defendant actually knew it was a felony (as opposed to a misdemeanor), provided the defendant knew the proceeds were the result of some crime.

Importantly, defendants do not have to be involved in the SUA or know that the crime was an SUA. In United States v. Awada, a recent Eighth Circuit case, the court affirmed the money laundering conviction of a defendant who was acquitted of charges related to the SUA, illegal gambling. According to the court, “[m]oney laundering is a financial transaction crime involving the proceeds of some other crime; there is absolutely no requirement that a money laundering defendant also be involved in the underlying crime.”

The knowledge element provides a helpful distinction between the two types of money launderers. The first, which we call “direct launderers,” are those who are involved both in the SUA, the underlying criminal act, and the laundering transaction. If prosecutors can establish the involvement of the launderers in the SUA, it is usually not difficult to show that...
the launderer had knowledge of the illegal source of the funds. We call the other type “facilitating launderers.” These are individuals who become involved after the SUA-produced proceeds and assist the criminal actors in accomplishing certain tasks with the funds. Prosecutors and agents often have more difficulty proving that the facilitating launderers knew the source of the funds was unlawful activity.

3. Defendant Conducts a Financial Transaction

The third element requires a financial transaction with the proceeds of the SUA. It is usually—although not always—relatively easy to determine if a financial transaction occurred. The term “transaction” is defined broadly and “includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition.”18 For a transaction to qualify as a financial transaction, it must involve either (1) “the movement of funds by wire or other means;”19 (2) “the use of a monetary instrument;”20 (3) “the transfer of title to any real property, vehicle, vessel, or aircraft;”21 or (4) “the use of a financial institution.”22

The statute requires that transactions falling within the first three categories affect interstate commerce. If a financial institution is involved, it is sufficient that the institution is engaged in interstate commerce. The Eighth Circuit has not ruled on the issue of whether the indictment must allege that the financial transaction affects interstate commerce, but the comments to the Eighth Circuit model criminal instructions advise prosecutors to include the interstate nexus language in all indictments.23 Therefore, defendants may be able to prevail on a motion to dismiss an indictment if the charging document does not allege that the transaction affects interstate commerce. The financial transaction charged as money laundering must be distinct from the SUA.24 When the financial transaction or series of transactions that form part of the SUA cannot be separated from the transaction charged as money laundering, the doctrine of double jeopardy bars prosecution.25 Defense counsel should make sure that the financial transaction charged in the indictment is not the same transaction that the government is relying on to establish the SUA element.

In addition, generally, the SUA must be completed before the money laundering financial transaction occurs. Such is the case with most SUA, including narcotics trafficking, terrorism, bank fraud, and usually wire and mail fraud.26 Mail and wire fraud, however, may produce proceeds at some point before the actual mailing or wire.27 If a defendant conducts a financial transaction with these proceeds that otherwise violates § 1956 (or § 1957, described below), a legal question arises concerning whether the proceeds were indeed produced by an SUA, since the SUA had not been completed when the financial transaction occurred.

In United States v. Mankarious, a Seventh Circuit case, the defendants engaged in a financial transaction with proceeds of a fraud scheme before the mailings occurred.28 The defendants argued that there could be no financial transaction involving proceeds of the scheme until the mailings occurred.29 The court held that the money laundering transaction could occur after the fraud scheme generated proceeds, but before the required mailing, explaining that it refused to “suspend the operation of the money laundering laws between the time or fraud scheme [generated] proceeds” and the mailing.30

Recently, in United States v. Thomas, the Eighth Circuit followed Mankarious, holding in a § 1957 case that a money laundering transaction could occur before the wire or mailing, as long as it occurred after the scheme generated proceeds.31 Another line of cases, however, including the Tenth Circuit decisions in United States v. Johnson and United States v. Kennedy, and a Western District of Missouri district court decision, United States v. LaBrunerie, suggests that there may be a question concerning whether other circuits will follow the holdings in Mankarious and Thomas.32

18 18 U.S.C. § 1956(c). Almost any use of a financial institution qualifies as a transaction. Specifically included are any “deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.” 18 U.S.C. § 1956(c)(3).
20 “Monetary instruments” include “coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, and money orders or . . . investment securities or negotiable instruments in bearer form.” 18 U.S.C. § 1956(c)(5).
22 Id. The term financial institution is broadly defined to include insured banks, “a commercial bank or trust company,” credit unions, broker/dealer in securities, currency exchanges, pawnbrokers, travel agencies and a number of other types of entities. 31 U.S.C. § 5312(a)(2).
24 United States v. Awada, 425 F.3d 522, 524 (8th Cir. 2005).
25 Id. at 524 (citing United States v. Christo, 129 F.3d 578 (11th Cir. 1997)).
28 151 F.3d 694 (7th Cir. 1998).
29 Id. at 705.
30 Id.
31 451 F.3d 543 (8th Cir. 2006).
32 Johnson, 971 F.2d at 569; United States v. Kennedy, 64 F.3d 1465, 1478 (10th Cir. 1995) (explaining that the monetary transaction must involve proceeds from a mailing that is both “discrete” from and “earlier” than the monetary transaction); United States v. LaBrunerie, 914 F. Supp. 340, 342 (W.D. Mo. 1995) (explaining that the monetary transaction must involve proceeds from a mailing that is both “separate” from and “prior” to the monetary transaction).
4. Defendant Has One of Four Specific Purposes When Conducting the Financial Transaction

Even if someone has engaged in a financial transaction with property that is proceeds of an SUA, and that he or she knows is proceeds of some unlawful activity, § 1956(a)(1) does not apply unless the intent element is satisfied. The intent element requires that a defendant conduct the financial transaction with at least one of four different purposes. These include (a) “the intent to promote the carrying on of specified unlawful activity” (promotion);33 (b) the “intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code” (tax evasion);34 (c) knowledge “that the transaction is designed . . . to conceal or evade a financial reporting requirement” (concealment);35 or (d) knowledge “that the transaction is designed . . . to avoid a financial reporting requirement” (reporting requirement).36

Although the specific purposes are discussed in more detail below, there is an important distinction among them. In cases where the government relies upon either of the first two intent prongs, promotion and tax evasion, it must prove that the defendant actually had the intent either to promote the SUA or to evade taxes. With regard to the other two prongs, concealment and transaction reporting, however, the government need only establish that the defendant knew that the transaction was designed “in whole or in part” to conceal the source of the funds or to avoid a financial reporting requirement.37 In other words, knowledge that the purpose of the transaction is concealment or avoiding reporting requirements satisfies this element—regardless of the reason that the defendant is involved. Therefore, in the context of the concealment and reporting requirement prongs, this element is actually an additional knowledge requirement rather than a true intent requirement.

a. Promotion

The first purpose, the promotion prong, requires that the defendant engaged in the financial transaction in order to continue the crime that produced the funds involved in the money laundering transaction.38 In order for the government to prevail in a promotion case, it must establish a nexus between the proceeds involved in the financial transaction and the SUA.39

Conduct prosecuted under the promotion prong is often called reinvestment money laundering because proceeds earned as a result of the SUA are used to further its purposes.40 For example, in United States v. Parker, the defendant sold automotive part distributorships that marketed and sold the defendant’s products to garages that serviced vehicles.41 The defendant committed an SUA (mail fraud) by making misrepresentations concerning the profitability of the distributorships and other related issues in order to convince victims of the scheme to purchase distributorships.42 The government charged payments to auto parts manufacturers, for parts that had been used to resupply the distributors, as money laundering transactions.43 On appeal, the Eighth Circuit held that these payments constituted promotion of the SUA because they were reinvestments of profits earned by the scheme that allowed the scheme to continue.44 The court explained that “[w]ithout the resupply of inventory, [defendant] would have been unable to continue his scheme to defraud new and existing distributors.”45

b. Tax Evasion

The second prohibited purpose, the tax evasion prong, involves the intent to commit tax fraud and does not ordinarily arise in standard money laundering prosecutions.46 Prosecutions that rely primarily upon the tax evasion prong must be approved by the tax division at the DOJ,47 a process that can be time-consuming and complex. These complications often discourage federal prosecutors and agents from pursuing a case based solely on this prong. Instead, tax evasion cases are usually part of tax fraud prosecutions initiated by the Internal Revenue Service (IRS).

39 United States v. Parker, 364 F.3d 934, 949 (8th Cir. 2004).
40 United States v. Green, 225 F.3d 955, 959 (8th Cir. 2000).
41 364 F.3d 934, 938 (8th Cir. 2004).
42 Id.
43 Id. at 950.
44 Id.
45 364 F.3d at 950; see also United States v. Ross, 210 F.3d 916 (8th Cir. 2000) (defendant convicted of engaging in scheme where his company charged a fee for efforts to obtain financing for individuals and businesses, but did not intend to follow through on assisting the fraud victims in obtaining the financing; defendant promoted the SUA by earning the fees illegally, depositing them in bank accounts, and using them to fund employee travel and other expenses); United States v. Hildebrand, 152 F.3d 756, 761-62 (8th Cir. 1998) (case cited by the Ross court, in which defendants’ conviction for promotion of money laundering was affirmed because they engaged in a scheme to fraudulently collect fees from persons who thought they were entering into a class action law suit. Defendants deposited proceeds into a bank account, and then used the funds to pay business expenses).
If a case is brought pursuant to the tax evasion prong, a defendant will be entitled to a jury instruction that explains that a defendant’s belief that the funds did not constitute income is a defense to tax fraud charges. 48 Such an instruction is warranted unless the defendant is challenging the validity of the tax laws. 49

c. Concealment

The third intent prong is often referred to as “concealment money laundering” and is arguably the most common intent alleged in money laundering cases. 50 Concealment money laundering involves the stereotypical money laundering scheme.

A defendant with the concealment intent has knowledge that the purpose of the transaction, in whole or in part, is to hide the source of funds from the government. 51 Proof of such knowledge is often circumstantial. 52 Common schemes involve use of false names, shell corporations, or straw parties to distance the funds from individuals or organizations involved in the criminal acts. 53 Concealment schemes may also involve “the comingling of illegal proceeds with the identity or the funds of a legitimate” business. 54

When defendants fail to take steps designed to conceal, however, the Eighth Circuit has not hesitated to reverse money laundering convictions based upon this prong. 55 It has stressed that § 1956 is not a money-spending statute, meaning that it does not punish the use or transfer of illegal proceeds without a showing of a specific intent. 56

d. Avoiding Reporting Requirements

The reporting requirement prong requires knowledge that the purpose of the transaction, in whole or in part, is to avoid [ ] transaction reporting requirement[s] under State or Federal law. 57 The government must also prove that the defendant knew about the reporting requirement. 58

There are three main federal financial reporting requirements. First, financial institutions must file a currency transaction report for all cash transactions in excess of $10,000. 59 Second, persons who receive more than $10,000 in a single transaction in connection with a trade or business must file a form 8300 that contains identifying information about the transaction. 60 Third, individuals leaving or entering the United States with more than $10,000 in currency or any monetary instrument worth more than $10,000 must file a currency and monetary instrument report with the Bureau of Immigration and Customs Enforcement (ICE) (formerly the U.S. Customs Service). 61

Individuals engaged in illegal conduct or those acting on their behalf often do not want the IRS or ICE to be aware that they are involved in transactions involving thousands of dollars. One common method of engaging in financial transactions to avoid reporting requirements is known as structuring. Structuring involves breaking “up a single transaction above the reporting threshold into two or more separate transactions – for the purpose of evading a financial institution’s reporting requirement.” 62 If the government can prove that the defendant had knowledge of the reporting requirement, this conduct can support a § 1956(a)(1) charge and also violates the separate provisions of 31 U.S.C. § 5324, regardless of whether the defendant knew the conduct was unlawful. 63


49 Id.

50 United States v. Green, 225 F.3d 955, 959 (8th Cir. 2000).


52 Awada, 425 F.3d at 525 (circumstantial proof of concealment sufficient when government established that defendant knew that funds he received were from a bookmaker and “cashed a number of $5,000 checks” for the bookmaker, “all of which were from an unknown third party, made out to ‘cash,’ and not endorsed” by the bookmaker).

53 See, e.g., United States v. Pianico, 421 F.3d 707, 717 (8th Cir. 2005) (purchase of condominiums in nominee name); United States v. Ryder, 414 F.3d 908, 912 (8th Cir. 2005) (bankruptcy fraud case where defendant purchased property while posing as his brother and forged signatures on deposit checks); United States v. Frank, 354 F.3d 910, 919 (8th Cir. 2004) (concealment prong met when government proved that defendant and associate “received five $3,000 cashier’s checks in exchange for the Corvette” and “separately cashed [the checks] at different banks;” sale of the Corvette was part of wire fraud scheme and handling of proceeds demonstrated concealment); United States v. Vanhorn, 296 F.3d 713, 717-18 (8th Cir. 2002) (defendant “obtained approximately $44,000 in fraudulent employment benefit[s]” and “[a]lthough acquiring the proceeds, he deposited them into several bank accounts that he opened in the names of fictitious businesses and transferred these funds among the accounts”); United States v. Covey, 232 F.3d 641, 643 (8th Cir. 2001) (defendant CPA made loan to known drug dealer in exchange for cash so that drug dealer could purchase a motorcycle repair shop; drug dealer sought to avoid having to “use more than $10,000 in cash to buy inventory for the shop.”)


55 United States v. Herron, 97 F.3d 234, 237 (8th Cir. 1996) (concealment based conviction reversed where defendants used their own names and signatures to wire drug proceeds) (citing United States v. Rockelman, 49 F.3d 418, 422 (8th Cir. 1995)).

56 Herron, 97 F.3d at 237.


58 United States v. Bowman, 235 F.3d 1113, 1118 (8th Cir. 2000) (case decided on stipulated facts where none of the stipulations addressed defendant’s knowledge of the “federal transaction reporting requirements.”). For other cases discussing the reporting requirement intent prong, see United States v. Walcott, 61 F.3d 635, 636 n. 3, 638 (8th Cir. 1995); United States v. Goff, 20 F.3d 918, 920 (8th Cir. 1994); and United States v. Patino-Rojas, 974 F.2d 94, 95 (8th Cir. 1992).

59 31 U.S.C. §§ 5313; 31 C.F.R. § 103.22(b)(1). Casinos are covered under § 103.22(b)(2).

60 26 U.S.C. § 6050I.


63 In 1994, the Supreme Court decided Ratzlaf v. United States, 510 U.S. 135 (1994). At the time Ratzlaf was decided, the relevant statutory structuring provision stated that “[a] person willfully violating” § 5324 is subject to criminal penalties (emphasis added). Id. at 136. In Ratzlaf, the Court held that because of the “willfulness” requirement, it was not sufficient for a defendant charged with structuring to have knowledge of the CTR reporting requirement. Instead, the government must also prove that the defendant knew about the CTR requirements and also knew that it was illegal to break up transactions to avoid the requirement. Id. at 149. Congress responded quickly to the Court’s holding in Ratzlaf by enacting new legislation that eliminated the willfulness requirement in structuring prosecutions. 31 U.S.C. § 5324(d), Pub. L. 103-325, § 411(c)(1), 108 Stat. 2160, 2253 (1994); see also United States v. MacPherson, 424 F.3d 183, 189 (2nd Cir. 2005).
5. Willful Blindness

Finally, to prove knowledge generally in the § 1956 context, the government may proceed under a willful blindness or a deliberate ignorance theory if there is evidence that the defendant chose to ignore obvious indicia of criminal activity.\(^{64}\) Defense attorneys, however, should carefully consider the trial testimony and evidence relating to deliberate ignorance, and will most likely want to object to such an instruction because the government must establish that the defendant made an effort to avoid learning about the criminal nature of the funds or unlawful intent of others.\(^{65}\)

C. The Sting Provision - § 1956(a)(3)

The elements of the sting provision, § 1956(a)(3), are very similar to those contained in § 1956(a)(1). The sting provision requires the government to establish three elements: (1) there is property that a government agent or cooperator represents as proceeds of an SUA; (2) the defendant conducts a financial transaction with the property; and (3) the defendant intends either (A) to promote the SUA (really the represented SUA because, in this situation, the government is making one up); (“B) to conceal or disguise the nature, location, source, ownership, or control of [the proceeds of] property believed to be the proceeds of specified unlawful activity; or (C) to avoid a transaction reporting requirement.”\(^{66}\)

Although many of the same issues apply to §§ 1956(a)(1) and § 1956(a)(3), the main difference between them is the direct involvement in the sting scenario of a government agent or cooperator who informs a target of a fictitious SUA. Although the Eighth Circuit has not considered the issue of what constitutes a sufficient government representation, its model instructions cite to United States v. Kaufmann, a Seventh Circuit case.\(^{67}\) Kaufmann held that the representation is sufficient if the agent or cooperator “made the defendant aware of circumstances from which a reasonable person would infer that the property” was the proceeds of an SUA.\(^{68}\)

Under the promotion and reporting requirement intent prongs, the government must prove that the agent or cooperator heard the representation and conducted a financial transaction with one of these purposes.\(^{69}\) Under the concealment prong, the government must prove that the defendant intended to conceal the nature or source of the funds that the defendant believed to be proceeds of SUA.\(^{70}\) Because the defendant’s subjective belief is at issue, analysis of sting provision cases brought pursuant to the concealment prong often involve careful consideration of the agent or cooperator’s representations and the target’s reaction to these representations.\(^{71}\)

Because sting provision prosecutions necessarily involve the use of a government agent or cooperator, defendants might be able to avail themselves of an entrapment defense, depending upon the facts of the case. In order to prevail on such a defense, a defendant must show “government inducement of the crime and . . . lack of predisposition to engage in the criminal conduct.”\(^{72}\)

D. The Conspiracy Provision

The conspiracy provision, § 1956(h), makes it a crime to conspire to violate any of the crimes contained within §§ 1956 or 1957. “[T]he government must show an agreement between at least two people, and that the agreement’s objective was a violation of the law” to prove a conspiracy.\(^{73}\)

Prior to the enactment of this provision, money laundering conspiracies could only be charged under 18 U.S.C. § 371, the general federal conspiracy statute. Section 371 involves a five-year maximum term of imprisonment. Upon conviction for violating § 1956(h), however, a defendant faces the same penalties for substantive violations of §§ 1956 or 1957, which, as discussed below, are significant. Recently, in Whitfield v. United States, the Supreme Court held that the government does not need to charge or prove an overt act to obtain a conviction under the conspiracy provision.\(^{74}\)

E. Venue

Section 1956(i) provides that money laundering charges may be brought in the district where either: the defendant engaged in the financial transaction; or the SUA occurred “if the defendant participated in the transfer of the proceeds.”\(^{75}\)

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\(^{64}\) Manual of Model Criminal Jury Instructions for the District Court of the Eighth Circuit 443 (2000), § 7.04 (definition of deliberate ignorance; see also United States v. Lailey, 257 F.3d 751, 755-56 (8th Cir. 2001) (knowledge of concealment intent established because witness testified that defendant said he “didn’t want to hear no more” when told about the source of the funds); United States v. Long, 977 F.2d 1264, 1271-72 (8th Cir. 1992) (deliberate ignorance instruction was appropriate in money laundering prosecution because there was evidence that defendant told someone that he “didn’t want to know” about certain transactions).

\(^{65}\) Id.

\(^{66}\) Note that the “evading taxes” specific intent prong included in § 1956(a)(1) is not included in the sting provision.

\(^{67}\) Id. at 893.

\(^{68}\) Id. at 893.

\(^{69}\) Id. §§ 1956(a)(3)(A) and (C).


\(^{71}\) See, e.g., Kaufmann, 985 F.2d at 893-94 (suspicious statements made to defendant by government cooperator sufficient to establish that defendant believed that the funds involved in the transaction were from drug dealing); United States v. Wolny, 133 F.3d 758, 760 (10th Cir. 1998) (existence of certain factors such as “unusual secrecy surrounding the transaction,” “structuring,” “irregular features,” use of straw parties, and “series of unusual financial moves” indicates that defendant intended to conceal and believed source of funds was illegal) (citing United States v. Contreras, 108 F.3d 1255 (10th Cir. 1997)).


\(^{73}\) United States v. Cuervo, 354 F.3d 969, 985 (8th Cir. 2004) (citing United States v. Fitz, 317 F.3d 878, 881 (8th Cir. 2003)).

\(^{74}\) 543 U.S. 209 (2005); see also United States v. Huber, 404 F.3d 1047, 1056 (8th Cir. 2005).
from the district where the SUA occurred to the district where the financial transaction occurred78 (emphasis added). If the financial transaction occurred outside of the district where the SUA occurred, and the defendant was not involved in the transfer of funds from district to district, charges can only be brought in the district where the financial transaction occurred.76

Venue in conspiracy cases is broader. In conspiracy cases, venue will lie in any district where “an act in furtherance of the attempt or conspiracy took place.”77 Accordingly, in cases where substantive money laundering charges are brought, but the indictment does not include a conspiracy charge, defense counsel should examine whether there has been an effort to establish venue in a district that is not closely connected to the financial transaction. If the only connection to the money laundering charges is the SUA, then a defendant may prevail on a motion to dismiss the indictment.

F. Sentencing Issues

A conviction for violation of §§ 1956(a)(1) or (a)(3) carries a maximum term of imprisonment of 25 years and a fine of up to “$500,000 or twice the value of the property involved in the transaction, whichever is greater.”78 The United States Sentencing Commission guidelines manual, commonly referred to as the sentencing guidelines, provides sentencing recommendations for federal crimes. While the sentencing guidelines are no longer binding upon federal judges, they usually dictate where both judges and lawyers begin their analysis of an appropriate sentence.79

Under the sentencing guidelines, recommended sentences are determined pursuant to a sentencing table that uses the offense level (determined based upon the crime committed) and the criminal history (determined based upon prior criminal conduct).80 Money laundering sentences are governed by § 2S1.1 of the sentencing guidelines. If a defendant is a direct launderer (involved in the SUA), the offense level applicable to this underlying crime applies to the defendant.81 If the defendant was a facilitating launderer, the offense level is determined by the value of the laundered funds.82 In this situation, the guideline level that corresponds to the value of the laundered funds is fixed by the table in § 2B1.1, which applies to a variety of financial crimes.83

For example, according to § 2B1.1(b)(1), if the amount of the laundered funds was more than $400,000, but less than $1,000,000, the guideline level is 14.84 Pursuant to § 2S1.1(a)(2), eight levels are added to this number to form the base offense level of 22. For all violations of § 1956, § 2S1.1 adds two levels.85 As an example, for a defendant with little or no criminal history and a guideline level of 24, the sentencing guidelines recommend a sentence of 51–63 months.86 Section 2S1.1 also contains additional enhancements that apply if the court determines that a defendant was in the business of laundering funds, the offense involved sophisticated money laundering (i.e. a shell corporation or fictitious entities), or if the defendant knew the SUA involved certain serious crimes.87 The sentencing guidelines also contain additional general enhancements that also may apply in money laundering cases.88

III. General Intent Money Laundering under § 1957

Section 1957 prohibits a broad range of ostensibly innocent financial transactions if the individual involved in the transaction knows that the property was previously acquired through criminal activity.89 Although many considerations outlined above regarding § 1956 — such as venue and sentencing — also apply to § 1957.

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75 18 U.S.C. §§ 1956(e)(1)(A) and (B). This provision essentially codifies the Supreme Court decision in United States v. Cabrales. 524 U.S. 1 (1998). Prior to Cabrales, it was clear that money laundering prosecutions could be brought in any district where the financial transaction occurred. There was a circuit split, however, concerning the issue of whether venue was proper where the SUA occurred when the financial transaction took place in a separate district. Id. at 5–6. In Cabrales, the Court held that at least in cases where the defendant was not involved in the transfer of the funds from the district where the SUA occurred to the district where the financial transaction occurred, venue would lie only where the financial transaction occurred. Id. at 9–10.


77 18 U.S.C. § 1956(i)(2). In Cabrales, the Court distinguished venue for conspiracy charges from the more limited venue for substantive money laundering charges. 524 U.S. at 7.


80 U.S. SENTENCING GUIDELINES MANUAL Chap. 5, Pt. A.


83 Id. The guidelines commission enacted significant amendments to § 2S1.1 in 2001. See United States v. Frank, 354 F.3d 910, 926 (8th Cir. 2004) (discussion of the amendments). While a complete discussion of the amendments is beyond the scope of this article, practitioners dealing with cases involving conduct alleged to have occurred in 2000 and 2001 should consult the earlier versions of § 2S1.1.


85 U.S. SENTENCING GUIDELINES MANUAL § 2S1.1(b)(2)(B) (2005). Narcotics practitioners should pay careful attention to this provision because when a direct launderer in a narcotics case was involved in the SUA (drug trafficking), two guideline levels are added to the guideline level applicable to the narcotics crime. Therefore, a narcotics defendant may receive a more severe sentence for the money laundering offense than the narcotics offense.

86 For defendants who enter a timely plea, two or three levels are normally subtracted pursuant to § 3E1.1, depending upon the applicable guideline level. A defendant who pleads guilty under the circumstances described above would have a total offense level of 21 and a recommended sentence of 37–46 months if no other adjustments apply. The sentencing guidelines recommend harsher sentences for defendants with prior convictions. See, e.g., U.S. SENTENCING GUIDELINES MANUAL Chap. 4 (2005).

87 U.S. SENTENCING GUIDELINES MANUAL §§ 2S1.1(b)(1), 2S1.1(b)(2)(C), 2S1.1(b)(3) and 2S1.1, comment. (n. 5(A) (2005)). For a helpful discussion of these issues, see United States v. Pizano, 421 F.3d 707 (8th Cir. 2005).

88 See U.S. SENTENCING GUIDELINES MANUAL Chap. 3.

89 18 U.S.C. § 1957(a) (prohibiting “a monetary transaction in criminally derived property”); see United States v. Rutgard, 116 F.3d 1270, 1291 (9th Cir. 1997) (Section 1957 “does not speak to the attempt to cleanse dirty money by putting it in a clean form and so disguising it. This statute applies to the most open, above-board transaction.”); United States v. Wynm, 61 F.3d 921, 927 (D.C. Cir. 1995) (“[S]ection 1957 prohibits a wider range of activity than money ‘laundering’ as traditionally understood.”).
the knowledge and intent requirements are much less stringent than in § 1956 cases. Accordingly, the government is often able to bring charges under § 1957 in situations where § 1956 charges would certainly fail. This sometimes harsh reality aligns with Congress’s intent for § 1957 to deter individuals from engaging in monetary transactions involving property they suspect was criminally derived or involving individuals they suspect of criminal activity. This section outlines the four basic elements the government must prove under § 1957, as well as some of the differences between §§ 1956 and 1957.

A. Elements of § 1957

Section 1957 requires the government to prove four basic elements: (1) “property [is] derived from specified unlawful activity;” 90 (2) the defendant knew that the . . . property was [criminally] derived;” 91 (3) the defendant knowingly “engage[d] in a monetary transaction [involving the] criminally derived property;” 92 and (4) the “criminally derived property[s] . . . value [is] greater than $10,000.” 93

1. Derived Property from a Specified Unlawful Activity

The first element requires that someone derived property from an SUA. In other words, the government must prove both that someone committed an SUA and that property was derived from the SUA. The SUA requirement is similar to § 1956 cases. Importantly, the defendant need not have been involved in the SUA to be charged with laundering the money derived from the underlying crime. Property derived from the SUA is called “criminally derived property,” and the statute defines it as “any property constituting, or derived from, proceeds obtained from a criminal offense.” Courts have interpreted the phrase “derived from specified unlawful activity,” used in § 1957, and “proceeds of specified unlawful activity,” used in § 1956, in a similar fashion. 107

2. Defendant Has Knowledge that Property was Criminally Derived

Second, the government must establish that the defendant knew that the property involved was criminally derived. The government need not establish that the defendant knew the specific crime involved was an SUA, that the monetary transaction was illegal, or knew of a design to conceal the transaction. Therefore, a defendant may be convicted under § 1957 even if he thought that the monetary transaction was legal — so long as the defendant knew that the money involved in the transaction had been derived from criminal activity. 108

As explored more fully above, the Eighth Circuit has held that a defendant may be convicted of money laundering for either actual knowledge or for willful blindness. Thus, where a reasonable jury could infer that the defendant was deliberately ignorant regarding criminal activities, the defendant may be found guilty under § 1957. 109

3. Defendant Engaged in a Monetary Transaction

Third, the government must establish that the defendant engaged in a monetary transaction. The statute defines “monetary transaction” as including any “deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument . . . by, through, or to a financial institution . . . .” Unlike the phrase financial transaction that is applicable in § 1956 prosecutions, monetary transactions must involve a financial institution. This requirement, however, still covers a broad range of conduct. In fact, a defendant who simply deposits or withdraws money from his bank incurs criminal liability if the money deposited or withdrawn was criminally derived and the defendant has the requisite

90 See United States v. Huber, 404 F.3d 1047, 1057 (8th Cir. 2005).
91 See United States v. Allen, 129 F.3d 1159, 1165 (10th Cir. 1997) (noting that § 1957 “does not require that the defendant know of a design to conceal aspects of the transaction or that anyone have such a design”); G. Richard Strafer, Money Laundering: The Crime of the ‘90’s, 27 AM. CRIM. L. REV. 149, 161 (1989) (noting that § 1957 is much broader than § 1956). But see United States v. Huber, 404 F.3d 1047, 1058 n.7 (8th Cir. 2005) (noting that “the scope of the corpus may be somewhat narrower under section 1957, than it is under section 1956.”).
96 Id. United States v. Pizzo, 421 F.3d 707, 722 (8th Cir. 2005). The Eighth Circuit has also acknowledged that the government must establish an interstate commerce nexus to prove a violation of § 1957. United States v. Wadena, 152 F.3d 831, 853 (8th Cir. 1998); United States v. Van Brocklin, 115 F.3d 587, 599 (8th Cir. 1997). Proving an interstate nexus is ordinarily not difficult because the government need only establish “that the transaction in question was in interstate commerce or utilized the instrumentalities of interstate commerce.” Wadena, 152 F.3d at 853.
97 18 U.S.C. § 1957(f)(3) (defining “specified unlawful activity” as having the meaning given in § 1956); see also United States v. Hare, 49 F.3d 447, 451 (8th Cir. 1995) (discussing the relationship).
98 United States v. Hawkey, 148 F.3d 920, 925 (8th Cir. 1998).
100 United States v. Savage, 67 F.3d 1435, 1442 (9th Cir. 1995) (terms are equivalent); United States v. LaBrumerie, 914 F. Supp. 340, 345 n. 2 (W.D. Mo. 1995).
101 United States v. Pizzo, 421 F.3d 707, 723 (8th Cir. 2005).
102 18 U.S.C. § 1957(c); Hawkey, 148 F.3d at 925 (8th Cir. 1998); U.S. v. Hemmingston, 157 F.3d 347, 355 (5th Cir. 1998); United States v. Allen, 129 F.3d 1159, 1165 (10th Cir. 1997).
103 United States v. Turman, 122 F.3d 1167, 1169 (9th Cir. 1997); United States v. Sokolow, 91 F.3d 396, 397 (3rd Cir. 1996).
104 United States v. Hildebrand, 152 F.3d 756, 765 (8th Cir. 1998).
The federal statutes not only cover the classic money laundering scenario . . . they also affect a far broader range of conduct that many would not consider 'laundering' money."

knowledge. Also, some courts have held that simply delivering a criminally derived check to another individual can constitute a prohibited monetary transaction. Similar to § 1956 cases, the transaction charged by the government must be separate from the conduct that gave rise to the underlying offense or SUA. The monetary transaction may, however, occur long after someone derives property from the SUA. For example, a monetary transaction that occurs after the statute of limitations on the underlying crime has passed can still be prosecuted because, as previously explained, the government need not obtain a conviction for the underlying crime to convict the defendant of engaging in a monetary transaction with property derived from that crime.

4. The Transaction Involved More than $10,000 of Property

The fourth and final element requires that the monetary transaction involve more than $10,000 of criminally derived property. When a defendant has commingled funds — in, for example, a bank account — the government need not trace funds from the criminal source through the monetary transaction. The Eighth Circuit has held that in these situations, requiring the government to trace funds would subvert the purpose of the statute by permitting money launderers to escape prosecution by simply commingling funds. Accordingly, a jury may convict a defendant even where the defendant had sufficient legitimate funds in his bank account to cover the withdrawals, as long as criminally derived funds were deposited into that account.

B. Sentencing

A defendant convicted under § 1957 faces a 10-year maximum sentence of imprisonment and a fine of not more than twice the value of the property involved. As with § 1956, sentencing under § 1957 is covered by § 2S1.1 of the sentencing guidelines. The discussion of § 2S1.1 described above in the § 1956 context also applies to § 1957 convictions. The only exception is that § 2S1.1 provides for a one offense level enhancement in § 1957 cases, as opposed to a two-level enhancement in § 1956 cases.

IV. Conclusion

In this article, we attempted to provide a general overview of the two federal money laundering statutes. As should be clear, §§ 1956 and 1957 criminalize not only the conventional money laundering schemes, but also cover a broad array of conduct that many would not consider "laundering" money. Section 1956 addresses specific intent money laundering, requiring the government to establish that the defendant had one of the enumerated purposes when they engaged in the financial transaction. On the other hand, § 1957 criminalizes almost any monetary transaction in criminally derived funds if the defendant has the requisite knowledge.

Although the statutes are similar in many respects, they differ in others. Both statutes require that the defendant know that the funds were criminally derived, but § 1956 also requires proof of specific intent whereas § 1957 does not include an intent requirement. Both statutes apply to transactions in criminally derived funds, but § 1957 is limited to transactions by and through financial institutions. Section 1957 only applies to transactions involving more than $10,000 and has a 10-year maximum sentence, compared to no monetary threshold and a 20-year maximum sentence in § 1956 prosecutions.

These two statutes are powerful tools in the hands of federal prosecutors. Hopefully this article has provided you with the necessary background to analyze issues that arise in money laundering investigations and prosecutions.