MONEY LAUNDERING:

A PRACTICE MANUAL FOR STATE PROSECUTORS

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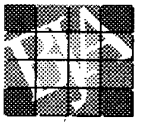

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MONEY LAUNDERING:

A PRACTICE MANUAL FOR STATE PROSECUTORS

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The National Association of Attorneys General was founded in 1907 to help Attorneys General fulfill the responsibilities of their office and to assist in the delivery of high quality legal services to the state and territorial jurisdictions. The Association fosters interstate cooperation on legal and law enforcement issues, conducts policy research and analysis of issues, and facilitates communication between the states' chief legal officers and all levels of government.

The Association's members are the Attorneys General of the 50 states and the chief legal officers of the District of Columbia, the Northern Mariana Islands, Puerto Rico, American Samoa, Guam, and the Virgin Islands. The United States Attorney General is an honorary member.

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PREFACE

This practice manual for state prosecutors is the second manual produced by the National Association of Attorneys General aimed at assisting states in the area of money laundering prosecution. The first manual "A State and Local Response to Money Laundering: A Program Manual" proposed a legislative response to the blight of money laundering and outlined how Attorneys General and local prosecutors could take the lead in setting up units to prosecute money launderers.

The prototype units described in the first manual became the basis of three prosecution demonstration projects funded by the Bureau of Justice Assistance of the United States Department of Justice. Demonstration sites were funded in the Offices of the Attorneys General of Texas and Arizona and the District Attorney's Office in San Diego, California. The success of these demonstration sites has proven that State and local prosecutors have an important role to play in the battle with money launderers and those who assist criminal organizations to enjoy the fruits of their illegal enterprises.

This new manual is designed to assist state prosecutors in their battle against dirty money by providing prosecutors with tools to aid in the investigation and prosecution of money laundering offenses.

The manual is the culmination of a 12 month collaborative effort of a Working Group consisting of Deputy and Assistant Attorneys General and local prosecutors, along with staff members from NAAG. Special thanks and recognition is given to our Working Group members for their encouragement and contributions to this manual. The Working Group members are: Gilda Mariani, Assistant District Attorney, Chief Crimes Against Revenue Unit, New York County (Manhattan); James D. Dutton, Supervising Deputy Attorney General, Money Laundering Program, California; Cameron Holmes, Assistant Attorney General, Chief Financial Remedies Unit, Arizona; Bart Cox, Assistant Attorney General, Chief Counsel Financial Investigations and Money Laundering Unit Virginia, (formerly, Texas); Roseanna DeMaria, formerly Assistant District Attorney New York County (Manhattan); Julie Korsmeyer, Deputy District Attorney, San Diego, California; Alfredo Mendez,Assistant Attorney General, Chief, Crimes Against Revenue, New York; Christopher Romano, Assistant Attorney General, Chief Criminal Investigations Division, Maryland; Reid Rubin, Chief, Major Crimes Division, States Attorney's Office, Miami Florida; Tom Watkins, Deputy Attorney General in Charge of Complex Prosecutions, Idaho; Rick Schwind, Assistant Attorney General, Chief, Criminal Prosecutions, Illinois. We offer our sincere thanks to all members of the Working Group and to their Attorneys General and District Attorneys who generously allowed their talented staff the time to participate in this effort.

We trust this manual will be a valuble resouce to Attorneys General and local prosecutors who seek new and effective means to attack criminal organizations.

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INTRODUCTION

This manual is designed to aid state prosecutors in the investigation and prosecution of money laundering violations and related crimes by familiarizing them with the process and techniques usec in detecting and investigating such crimes. Although not designed as a training manual for investigators it does provide tools for the prosecutor, such as forms, checklists and protocols, that may be adapted to each investigation and prosecution. Just as money laundering is a criminal specialty, prosecution of money laundering is a specialty with its own issues, language and expertise.

In money laundering investigations, as in other complex criminal investigations, it is important that the prosecutor be involved from the beginning. These investigation almost inevitably will require some form of judicial action, such as the issuance of search warrants or grand jury subpoenas, to obtain the evidence needed for effective and successful investigation and prosecution of the case. Furthermore, because of the paper-intensive nature of a money laundering case, it is essential that the material produced through discovery be organized, from the beginning, with prosecution needs in mind, It is the prosecutor who will bring the investigator's effort to fruition in the courtroom. Therefore, it is the prosecutor who must shape the investigation, manage the work product and prepare the case for prosecution.

The team approach to investigation of money laundering is essential for a successful prosecution in this complex and technical field. Although, unfortunately, traditional thinking as to the respective tools of prosecutors and investigators still abounds in nontraditional areas of law enforcement, a cooperative approach between prosecutor and investigator enhances the opportunity for a successful case. When the investigator court presentation and the prosecutor is exposed to the investigatorial task of evidence gathering, each side of the equation gains a respect for the strengths each bring to a case; this will reap benefits in the courtroom

Thus, separation of this manual into investigation and prosecution sections is not an indication of the separate nature of the efforts but, rather, an attempt to achieve clarity. The two functions are integral to the whole and must be viewed in that light. The separation of the elements of a successful prosecution into discrete sections is also intended to help the prosecutor focus on a particular area of concern, not to indicate that one area has significance over the other. The prosecutor's function is made of may sub-functions, all of which converge at the point of a successful verdict.

PART I

INTRODUCTION TO MONEY LAUNDERING

CHAPTER ONE — MONEY LAUNDERING: OVERVIEW OF THE PROBLEM[1]

What is money laundering? Why is it a crime? What harm does it do? The following material is intended to introduce the line prosecutor to the crime of money laundering, how it is committed, how it relates to and supports other criminal activity and how it affects on society.

A. WHAT IS "MONEY LAUNDERING"?

"Money laundering" is the knowing participation in the finances of crime. It includes the various means by which criminal organizations, such as drug trafficking networks, sanitize ill-gotten gains and convert them into apparently "clean" assets. It also includes provision of money or other property knowing that it is intended for use to facilitate criminal conduct. Without a money laundering capability, criminal organizations would be unable to sustain and expand their illegal activities, unable to sustain the personal benefits of the participants, and unable to invest in and corrupt legitimate businesses or government.

The form of money laundering that involves concealment of the illegitimate source of funds begins with crime that generates proceeds. Sophisticated criminal organizations use these proceeds to expand their operations, wealth and influence. To do this successfully, they employ a variety of artifices and purchase the assistance of apparently reputable business people and professionals to conceal the origin and true ownership of the tainted proceeds.

Typically, this form of money laundering is effected in three stages. First is **placement** of the ill-gotten proceeds. This entails concealment of the illegal source of the proceeds or conversion of the cash to another medium that is more convenient or less suspicious for purposes of exchange, *e.g.*, negotiable instruments in bearer form, such as cashiers' checks, travellers' checks or money orders made payable to "cash"; precious objects, such as antiques, gems, oriental carpets or metals; motorized vehicles such as automobiles, boats or airplanes; or bank accounts and other funds deposited in financial institutions.

[1] This chapter was prepared by Cameron H. Holmes, Assistant Attorney General, State of Arizona.

Placement is followed by **layering**, the concealing of illicit financial activity under layers of ostensibly legitimate ones, such as the commingling of criminal proceeds with legitimate funds. Layering provides the criminal enterprise with the cover of a substantial, legitimate source of income, a ruse to deflect the scrutiny of tax auditors and law enforcement agencies. It may be accomplished by funneling the illicit proceeds through businesses that are cash-intensive, such as restaurants, bars, vending machines and race tracks. Other convenient laundering vehicles include businesses that trade in assets which appreciate in value, such as jewelry or real estate; that have high markups, such as imports; or that entail big-ticket, quickly depleted inventories, such as car dealerships and computer stores.

Finally, the funds are **integrated** back into the criminal enterprise or are otherwise spent or invested to expand the base of its criminal activities. At the most elementary level, integration can be accomplished with cash or by barter. A more sophisticated criminal enterprise would have numerous options. For example, it could maintain an account in a commercial bank in the name of an apparently innocent nominee, thereby operating in an apparently aboveboard manner and availing itself of the advantages of anonymous and instantaneous electronic funds transfer.

A second form of money laundering that involves provision of property knowing that it is intended for an illegal use is generally associated with otherwise legitimate sellers or lessors of property of particular strategic value to ongoing criminal conduct. For example, a seller of "cigarette" boats, a lessor of secluded property in an area in which storage of drugs is common, a seller of planes suitable for use in smuggling, or a lessor of real property for use by gambling or prostitution businesses. After realizing that they are in a position to make money by assisting the ongoing criminal conduct, a business person may alter the business to make it even more attractive to criminals, becoming a provider of necessary goods or services for the continuation of the ongoing criminal conduct.

The following real-life cases illustrate money laundering methods designed to allow personal enjoyment of the proceeds of criminal activity:[2]

[2] *Illegal Money Laundering: A Strategy and Resource Guide for Law Enforcement Agencies* (Police Executive Research Forum, April 1988), at pp.25-26, and Karchmer and Ruch, *STATE AND LOCAL MONEY LAUNDERING CONTROL STRATEGIES* (National Institute of Justice October 1992).

Both tyes of money laundering illustrate how essential it is for the full enjoyment of the fruits of a criminal undertaking. Thus, a strategic law enforcement perspective, the effective suppression of money laundering chokes the profit out of criminal organizations, denying criminals access to "the good life."

The following cases illustrate how money laundering makes ongoing criminal conduct possible:[3]

Example 1. The Supplier of Equipment

Hilario Ortiz quickly recognized the profit potential in selling high-powered weaponry to drug smugglers on the Southwest Border. He parlayed a $5,000 investment into an inventory worth $750,000 and a cash horde of over $65,000 in a two-year period by specializing in automatic and semi-automatic military assault weapons, night vision goggles and high-powered sidearms attractive to the drug runners of Nogales, Arizona, a bordertown. He made his business attractive to drug smugglers by routinely falsifying federal firearms forms to omit the names of his real purchasers. As he explained to undercover officers prior to the forfeiture of his entire business, his weapons were well suited for knocking police helicopters from the sky and for protecting cocaine loads and fields of marijuana.

Example 2. The Professional Service Provider

Margarita Diaz is now a fugitive from justice. For four years she was the personal real estate advisor for the largest volume drug importer in Arizona, Jose Luis Somoza. A young real estate agent who moved from Texas to Arizona with nothing but ambition, she was living in a new mansion in Nogales when search and seizure warrants were served four years later. She had been acquiring real property for use as stash houses and investment and for personal use by enterprise members all over the state and had assisted the enterprise in its acquisition of businesses useful in drug smuggling, including a car dealership, and a mobile phone business, and various other retail businesses useful in money laundering.

[3] These examples are based on cases prosecuted by agencies represented on the NAAG Financial Investigation of Money Laundering Working Group.

Example 3. Real Estate Broker

John Ruffin is a real estate broker who helps a narcotic trafficker launder his illicit proceeds through the purchase of real estate. The trafficker periodically delivers large sums of money to Ruffin for use as down-payments on various real estate purchases. Ruffin purports to accept the currency on a daily basis in amounts less than $10,000 in an attempt to avoid IRS Form 8300 reporting requirements (reports required of trades or businesses on cash received in excess of $10,000). Ruffin places title to the real estate in the names of family members of the trafficker. Whenever one of the properties is sold, Ruffin arranges for the traffickers' purchases of high-priced luxury items (*e.g.*, jewelry, oriental rugs) to be paid out of escrow funds, thsu avoiding filing a Form 8300 or having a traceable a name on a payment instrument.

Example 4. Laundering of Fraudulent Proceeds

Joe Rodgers defrauded hundreds of investors in a Ponzi scheme based on false representations concerning returns on investments in the junk bond market. The victims each deposited thousands of dollars in an escrow account controlled by Rodgers' corporation. Rodgers then violated money laundering statutes by wire-transferring most of the victims' funds from the escrow account to his personal account. Rodgers promoted the underlying criminal activity and committed further money laundering violations by investing the remaining portion of the victims' funds from the escrow account into a junk bond trading account to be recycled to "early stage" investors as returns on their capital.

Example 5. Facilitation/Promotion of Underlying Specified Unlawful Activity

Laurie Wesson owned a legitimate clothing manufacturing business where she employed 80 persons, 40 being illegal immigrants. Every payday Wesson withdrew large amounts of cash from her business account to pay the salaries of her illegal immigrant employees. No taxes or workers' compensation insurance were withheld or paid on the illegal immigrants' salaries. Wesson violated her state's money laundering law by the cash withdrawals because her state statute made it a crime

to engage in transactions with legitimate money with the intent to promote/facilitate a felony activity (*e.g.*, tax fraud, workers' compensation insurance fraud).

B. Money Laundering Distorts the Economy and Corrupts Society

Whether cloaked in the gold chains of a drug dealer or the white collar of a banker, one who transacts dirty money contributes to the corruption of the economy and enhances the capability of organized criminals to continue their illegal ways and enjoy lifestyles that others would wish to emulate. A money launderer need not have direct contact with the underlying criminal activity that generates illicit proceeds. In fact, the more the laundering function is insulated from the underlying crime, the more attractive it is to the launderer and the more difficult it is to detect.

By facilitating drug traffickers, extortion, fraud, illegal gambling, loan sharking and other organized criminal activity, money laundering inflicts many harms on society. It enables criminal organizations to meet payroll; acquire or control the property needed to continue and expand operations, such as real property, vehicles, communications equipment and guns; pay off witnesses; bribe public officials; and otherwise grow rich off the victimization of others and the corruption of society.

Money laundering also distorts the economy. Honest businesses lose out to those bankrolled by organized crime. As a member of the Italian parliament and former prosecutor observed, "How would you like to be a company competing against [businesses taking dirty money] when you have to carry a debt load of 25 percent and your competition has zero?"[4] With such a competitive advantage, it is no wonder that dirty money quickly penetrates and dominates entire industries. According to the Treasury Department's Financial Crimes Enforcement Network ("FinCEN"), the

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[4] Washington Post, Oct. 5, 1992, at A12. Of course, in another scenario, organized crime may impose extortionate interest rates on hard pressed borrowers.

[5] Money Laundering Threat Assessment - Washington State, 80-81 (FinCEN 1992)

[6] Money Laundering Threat Assessment - New York City Metropolitan Area, 12 (FinCEN 1992)

fishing industry in Washington state[5] and the Diamond District in New York[6] are overwhelmed with dirty money. Recent press reports note that the same is true for the wholesale jewelry industry in Los Angeles[7] and that dirty money was assertedly behind the scenes in the savings and loan crisis as well.[8]

Equally troubling, money laundering tears at the social fabric by promoting negative role models, drug trafficking and criminality. It enables even small-time drug pushers to parade themselves as success stories, thereby posing as industrious examples in communities already sundered by poverty and hopelessness. Tragically, the violence that is endemic to the outlaw culture of drug dealers is taking on a life of its own. On any given day in the United States, some 135,000 students bring guns to school.[9]

In two of the cities first hit by the crack epidemic — Miami and Los Angeles — enrollment of three- to five-year olds in special education has doubled since the onset of the epidemic in 1986. Twenty cities are spending $150 million more per year for special education since the crack craze began.[10] A twelve-city survey found that 72 public and private hospitals are caring for more than 7,000 "boarder babies" a year at an annual cost of $34 million. Because these babies lack medical insurance, their care is financed by taxpayers and the limited private resources available to the hospitals.[11]

In New York City, officials estimate that at least half of the intravenous drug users are HIV positive and that 61 percent of the city's female AIDS cases and 37 percent of male cases stem from using infected needles. The lifetime cost of treating an AIDS patient in the United States is now $102,000.[12]

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[7] *Los Angeles Times*, Aug. 22, 1991, at B1.

[8] *Wall Street Journal*, Apr. 18, 1991 at B6(E).

[9] Children's Defense Fund, *Children 1990: A Report Card, Briefing Book and Action Primer,* 1990, quoted in Richard N. Ostling, *Has It Worked?*, TIME (Nov. 20, 1989).

[10] *Id.* at 112

[11] *New York Times*, July 26, 1992 at A16.

[12] *New York Times*, July 23, 1992, at B8

C. Money Laundering Strategy

Money is the motive for economic crime. If there were no financial reward for such crime, the crime itself would not occur. Money is also the medium for all ongoing criminal industries. Without money to pay for necessary goods and services, no industry could continue, criminal or otherwise. The "blood money" that motivates individual participants of racket-based crime is also the "life blood" of the organizational structure of the racket.

Therefore, the process of strategy development used in this discussion is simple. First, identify the ultimate goals of the strategy; second, describe the realities that presently block realization of the ultimate goals; third, propose action that will produce maximum changes toward the realization of the goals consistent with the problem, available resources, legal authority and considered values.

D. The Realities of Ongoing Illegal Networks

Ongoing crime is business activity. Its participants engage in it for profit on a continuous basis. Its continuity means that it has some form of structure, some way in which its participants interact over time. An observer may discern its structure by noting relationships formed by its participants in their repetitive dealings and may also learn important facts relating to the business's vulnerabilities. An accurate view of the organizational structure of such businesses may lead to new and more successful strategies of control.

1. Organizational Models

Ongoing criminal activity is characterized by an absence of formal corporate or military style organization. The form of organization it employs is described here as **network organization**. Network organization is a structure that naturally arises among people carrying on continuous long term activity that requires numerous participants.

2. Legitimate Organizational Example

Network organization is not inherently illegitimate. A number of legitimate industries offer examples of networks in operation. The real estate development industry in any given locality is a familiar example of business activity that uses network organization. It is typified by a network of people interacting at various levels of dominance with no single person in charge. This extended group of participants is generally gathered from contacts, acquaintances, past business associates and known resources. They generally are recruited for a role they have performed before, such as financier, prime contractor, subcontractor, and sales. They retain substantial discretion and autonomy in performing their role; if they do not agree with the method of operation, or believe it to be unprofitable to them, they may decline the invitation to join or may discontinue their association. Participants are rewarded for effective performance of their role within a given venture, generally from the proceeds of the venture itself. Participants often fulfill their own roles by further networking. For example, a building contractor taps his own network of subcontractors for certain tasks, a financier approaches financial sources, and so forth. The assets needed for the venture are those of the participants, not owned by the venture itself, as a separate entity. Opportunities developed by participants during the venture are generally their own to pursue; indeed, the hope of developing and pursuing derivative opportunities is often a major incentive for joining the venture. This structure of organization is ideally suited to take full advantage of new opportunities rapidly. Fluid formation of projects and partnerships is the norm. Participants, even dominant ones, often do not know the actual identities of all or even most of the other participants in a given venture and have only a general idea of each role being filled. Knowledge of others' activities is complicated by the fact that participants in the venture bring shifting sub-networks into the network and deal with non-members in their own names and capacities rather than as representatives of the venture *per se*.

3. The Ongoing Criminal Activity Model

Ongoing criminal activity is structured on the network model; it is primarily a network structure containing more or less dominant figures in the various roles. Like the real estate industry, with its roles of financing, developing, construction, and sales, members of any ongoing criminal activity also tend to play definable roles. Cocaine trafficking, for example, requires

production, processing, transportation, distribution, and money laundering. Other cocaine industry participants work closely with people carrying on criminal activities necessary to generate the money needed by purchasers, such as fencing and fraud. The cocaine industry generates support service businesses, just as the real estate industry generates support service business roles such as specialized legal and financial advice, contract law, tax specialists and experts in licensing and regulation. The cocaine industry's support service businesses include in-house criminal defense lawyers, specialized money launderers, and financial advisers. The cocaine industry is not able to rely exclusively on contract law as an enforcement mechanism. It relies instead on enforcement dependent on violence. The analogue to real estate's experts in licensing and regulation are the cocaine industry's "fixers," negotiators for territories, and providers of political protection. This form of organization is very resistant to enforcement efforts because it does not respond to the elimination of individual members.

4. Attacking the Financial Facilitation Component

Otherwise legitmate businessmen who engage in money laundering are the financial facilitators for a criminal enterprise. They are a valuable resource to criminal networks, runlike the lower level operatives whose places get so easily and rapidly filled that his removal is not even noticed. The facilitator is much harder to replace.

When facilitators become witnesses for the state they are likely to be valuable and effective. On the witness stand they tend to be a distinct contrast to the usual low level operative defendant or co-conspirator. They are likely to be educated, articulate, sophisticated, clean-cut and well-mannered. They generally have unblemished criminal records, stable personal lives and other indicia of credibility. In short, they are more luikely to win the respect and confidence of judges and jurors. Their testimony is also likely to be corroborated by plentiful records and documents, such as financial records, phone toll records, calendars, phone books, and the like.

Finally, the same records that make facilitators solid witnesses make them and their clients vulnerable to investigation generally. Unlike the scarce, closely guarded and heavily coded

records of dealers in illegal goods and services, the records of facilitators such as money launderers and suppliers of necessary property must interface with those of legitimate business. They tend to have detailed records of many of their activities, becoming proportionately more vulnerable as a result.

Observers of racket activity recognize that the core participants in rackets rely heavily on the help of less directly involved facilitators, those who knowingly assist criminal conduct but do not themselves share the goals or the direct benefits of the conspiracy or criminal enterprise. Over the past twenty years, law enforcement has realized the critical importance of deterring these racket facilitators. Investigators and prosecutors have developed some familiarity with civil and administrative remedies partly because non-criminal remedies can be applied to such facilitation. The strategy here is to drive up the financial risk of facilitation to offset the financial advantages of cozy involvement with racketeers. Balancing the risk of loss with the possibility of extra gain, the facilitators will be driven away from the racket, leaving the core participants unassisted and unable to conduct rackets that are efficient and secure from investigation.

In addition, facilitators can often be deterred by less drastic measures. Prosecution, even civil prosecution alone, will address the social harms that result from facilitating. For example, willful failure by car dealerships to file IRS Form 8300 reports on cash sales over $10,000 may be regarded as innocent avoidance of paperwork until the requirements and their underlying utility are made clear to car dealers. Real estate professionals, bankers, financial advisors and other similarly situated potential facilitators may respond to threat of criminal or civil prosecution or to civil prosecution. These groups may also be relied on to spread knowledge of enforcement action taken against one of their members, multiplying the deterrent impact of isolated enforcement.

Finally, investigation of the facilitator leads to the core participant. A person who provides goods or services to one criminal enterprise will do so for another. In fact, they are often encouraged to do so by the people they deal with because their willingness to act as a facilitator is spread by word of mouth among those in the same illegal industry.

Each of the above observations point to an investigative strategy known as **spiraling.** Spiraling is the conscious attempt to turn each investigation of underlying criminal conduct immediately toward the sources of property or services that have facilitated the conduct. The investigator then uses the leads developed from these sources to locate more significant targets within the underlying activity. This strategy is called spiraling because it moves out of the core activity (such as drug sales, for example) to facilitation (such as money laundering) and then back into the core activity at a higher level. It takes advantage of thorough financial investigation to locate the facilitators, whether they are closely associated with the enterprise or merely suppliers of some property or service that was used by the enterprise. If they are involved in supplying the property or service with knowledge of the criminal purpose, they are excellent potential sources of leads to other, different criminal enterprises. Money launderers are a key link in the criminal enterprise because they know the most critical information — how its money is spent. "Following the money" leads law enforcement to more dominant members of the criminal network; it identifies other entities of the criminal enterprise; and it points to forfeitable assets controlled by the enterprise. The spiraling strategy focuses on the elimination of facilitators both as an end in itself, in the pursuit of collapse of the underlying conduct for lack of support and as a means to the control of the core activity, by seeking leads to other criminal groups. Of course, for all of the reasons that facilitators are the key to ongoing criminal enterprises, money launderers are the most significant facilitators.

Two examples will illustrate the success of this strategy. The investigation of Hilario Ortiz, the supplier of high-powered weaponry ot Southwest drug smugglers, was initiated by a money laundering unit investigating non-bank financial institutions. A drug-oriented informant in that investigation provided information about the weapons violations. The focus of the facilitator case on Ortiz was to eliminate the source of weapons. Which was accomplished through the seizure of Oritz's entire store for forfeiture at the time of his arrest because of the money laundering activity. The Margarita Diaz investigation also began with information about her financial facilitation activities. It progressed by tracking her real estate dealings, a primary source of information about the ongoing enterprise. Information developed in the financial investigation merged with other

investigation opportunities, leading directly to a wiretap that brought down the entire organization and led to the forfeiture of all of its significant assets.

E. Conclusion

The objectives of money laundering are to make illegally obtained money safe to use by making it appear to have been derived from legitimate sources and to conceal the control of property and people for criminal purposes. The money laundering control strikes at the root of criminal activity. Money is the primary motive for financial crime. If the money cannot be enjoyed, then it is not worth the effort and risk necessary to obtain it. Furthermore, ongoing criminal conduct requires the movement of people and property. Payments must be made in clandestine or indirect ways to avoid triggering suspicion. The more difficult and dangerous it becomes for a criminal enterprise to conduct essential financial operations, the more likely it is that the enterprise will be strangled.

Money and property are the lifeblood of criminal enterprises. By sanitizing dirty money and concealing the control of property, money laundering enables criminal organizations to institutionalize, grow, infiltrate, and undermine legitimate business and government. Whereas federal anti-money laundering efforts have increased in number and effectiveness in recent years, the scale of the problem far exceeds federal capabilities. States need legislative authority to investigate and prosecute money laundering schemes in their jurisdictions, and to regulate their non-bank financial institutions. "Following the money" offers states a practical, cost-effective means of detecting and crippling organized crime.

CHAPTER TWO — ELEMENTS OF THE OFFENSE

CHAPTER TWO: ELEMENTS OF THE OFFENSE[1]

A. INTRODUCTION

Twenty-seven states have enacted money laundering related statutes, and several others are contemplating the enactment of such legislation or are lobbying for amendments. (See the listing at the end of this chapter.) These statutes are very diverse[2] — Some are patterned quite closely after the federal money laundering statutes, 18 U.S.C. §§ 1956 and 1957, others are more restrictive than their federal counterpart and a few appear to be broader.

The first state money laundering statute was enacted by Arizona in 1985,[3] a year before Congress enacted the federal statute, in an effort to address this criminal issue directly.[4] Despite the fact that the federal statutes were strengthened over the years by various legislative enactments, it became abundantly clear that the federal authorities were unable to prosecute all the money laundering activities pervading a state's jurisdiction. Limited resources, priorities, and lack of manpower resulted in fewer illegal operations that could be targeted and prosecuted. Therefore, states had to tackel this problem themselves.

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[1] This chapter was prepared by Jill Mariani, Assistant District Attorney, New York County, New York, with assistance from James Dutton, Assistant Attorney General, State of California, and Thomas Judd, Special Counsel, Criminal Justice Project, National Association of Attorneys General, Washington, D.C.

[2] However, it should be noted that there are striking similarities between:

a. the California money laundering statute contained in its Penal Code and the Hawaii money laundering statute, which was enacted a year after the California law;

b. the Connecticut money laundering law statute and the New York statute, which was enacted a year after the Connecticut statute;

c. the federal 18 U.S.C. § 1956 and the money laundering statutes of Florida and Nevada; and,

d. the Maryland money laundering statutes and the statutes of Colorado, Oklahoma, and Louisiana (as revised), all of which were enacted or revised after the Maryland statute.

[3] California followed in 1986; Connecticut, Florida and Hawaii enacted statutes in 1987; New York and Illinois in 1988; Georgia, Louisiana, Minnesota, Pennsylvania, Utah, and Virginia, in 1989; Maryland, Oklahoma, and South Carolina in 1990; Nevada and Rhode Island in 1991; Colorado, Idaho, Kansas, Missouri and Washington in 1992; Arkansas and Texas in 1993; and Michigan and New Jersey in 1994.

[4] 18 U.S.C. §§ 1956 and 1957, two federal money laundering offenses, were created by the Money Laundering Control Act of 1986. These statutes became effective on October 27, 1986. The statutes were later amended by the Anti-Drug Abuse Act of 1988, the Crime Control Act of 1990, the Annunzio-Wylie Anti-Money Laundering Act of 1992, and the Money Laundering Suppression Act of 1994 increasing their scope.

This chapter is designed to provide guidance to prosecutors in understanding the general principles of the money laundering statutes. Although it is not possible to provide model pleadings that can be made applicable to all 27 statutes, this section seeks to help prosecutors draw pleadings from their own statutes. The elements of the money laundering statutes are analyzed in three categories: (a) intent, or *mens rea;* (b) conduct, or *actus reus;* and, (c) factual predicates. In discussing these elements, attention is paid to the various defenses that may be raised by opposing counsel.

B. INTENT OR *MENS REA*

Mens rea in money laundering statutes is defined either in the form of knowledge or specific intent. It is the most difficult element that a prosecutor must prove in a money laundering case. Consequently, the most frequently raised, and usually the most viable, defense in a money laundering prosecution is that the defendant does not have the requisite criminal intent. All 27 state money laundering statutes have a "knowledge" component. Some of these statutes require that the defendant have knowledge that the property is derived from some type of criminal activity;[6] other statutes require that the defendant have knowledge that the property is derived from "specified unlawful activity."[7]

Some statutes also require that the prosecutor prove the defendant's knowledge that the proscribed activity is "designed in whole or in part to conceal or disguise the nature, location,

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[5] The Missouri statute never uses the word "knowledge," but contains the language "conducts or attempts to conduct with the purpose to..." MO. ANN. STAT. § 574.105(2). The use of the phrase "with the purpose to" can encompass either "knowledge" or "intent."

[6] *See, e.g.,* 1994 New Jersey Laws 121; California, CAL. PENAL CODE 186.10(a). It should be noted that this particular knowledge component is distinct from the element that the qualifying property, in fact, be the proceeds of specified unlawful activity, found in several statutes. For example, in Florida, FLA. STAT. ANN. § 896.101, it is required that the property in fact be the proceeds of "specified unlawful activity" but that the defendant know that the property was the proceeds of "some unlawful activity," not necessarily the "specified unlawful activity."

[7] *See, e.g.,* Kansas (controlled substances), Idaho (racketeering).

source, ownership or control of the property derived from the illegal activity[8] or the defendant's knowledge that the proscribed activity "avoids a currency reporting requirement."[9]

Most state money laundering statutes have a "specific intent" component, either in addition to knowledge[10] or in lieu of knowledge.[11] Some statutes require proof that the defendant intends "to promote specified unlawful activity,"[12] others that the defendant intends to promote any "unlawful activity."[13] Alternatively, some statutes may require proof that the defendant intends "to aid himself or another person to commit criminal conduct or to profit or benefit from" specified criminal activity[14] or intends to "conceal or disguise the nature, source, location, ownership, or control" of the subject property[15] or intends to "avoid a transaction reporting requirement."[16]

Thus, it is important to determine for pleading purposes whether the money laundering statute has a single intent or multiple intent component.

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[8] *See, e.g.*, Illinois, ILL. ANN. STAT. ch. 38 § 29B-1(a).

[9] *See, e.g.*, Louisiana, 1994 La. Act. 78.

[10] *See, e.g.*, Arkansas, ARK. STAT. ANN. § 5-42-204(a) and (a)(1).

[11] *See, e.g.*, Oklahoma, OKLA. STAT. tit 63 § 2-503-1(A), (B), (C), or (D), and Idaho, IDAHO CODE § 18-8201 (1), (2), or (3), which reads, in pertinent part, that "it is unlawful for any person to knowingly or intentionally. . ."

[12] *See, e.g.*, Rhode Island, R.I. GEN. LAWS § 11-9.1-15 (1).

[13] *See, e.g.*, Nevada, NEV. REV. STAT. § 207-195 (a)(1).

[14] *See, e.g.*, Connecticut, CONN. GEN. STAT. §§ 53a-276 to 53a-279; and New York, N.Y. PENAL LAW §§ 470.10 to 470.15.

[15] *See, e.g.*, Maryland, MD. ANN. CODE Art. 27 § 297 B(b)(1).

[16] *See, e.g.*, Arkansas, ARK. STAT. ANN. § 5-42-204(a)(1)(B); and Michigan, MICH. COMP. LAWS § 750.411k(1) (b)(ii).

1. Knowledge

A prosecutor may establish through direct or circumstantial evidence that a defendant possesses actual knowledge or that a defendant consciously disregards the fact that the subject property was derived from the qualifying illegal activity. If the person charged with a money laundering crime is the perpetrator of the underlying offense (e.g., drug trafficker, gambler) and therefore launders the proceeds of his own illegal activity, knowledge can be proven by the defendant's direct participation in the illegal activity. Knowledge can also be established by a "net worth" or a "source and application of funds" analysis.[17] Further proof can be developed from statements or admissions by the defendant obtained through consensual tape recordings or court ordered electronic surveillance.[18]

It is more difficult to prove knowledge of a person who is assisting another in the laundering of proceeds — commonly referred to as a "facilitator." A facilitator may be a member of the perpetrator's family, a friend or a business associate. The facilitator will raise the defense that he had no idea that the subject property is derived from unlawful activity.

A facilitator's knowledge may be established by one or more of the following:

- a "net worth" or "source and application of funds" analysis of the facilitator and the perpetrator of the underlying offense to show that the currency in question was not derived from legitimate sources;
- interviews of family members, friends, neighbors, and associates to place the perpetrator of the underlying offense and the facilitator together as much as possible;
- analysis of the peculiar nature of, and circumstances surrounding, the financial transactions entered into between the facilitator and/or the perpetrator of the underlying offense and/or any financial institution; or
- use of an expert witness to testify that the facts of the case are consistent with a money laundering scheme.

[17] See discussion of these terms in Part II, Chapter 3, *infra.*

[18] However, several states' statutes do not enumerate money laundering crimes as a predicate crime for purposes of its state's wiretap statute. *See, e.g.,* California, CAL. PENAL CODE § 629 and Maryland, Md. Ann. Code, § 10-402 et seq.; in New York there is a qualified use of the money laundering statute. *See,* N.Y.C.P.L. § 700.05(8)(o).

Where the state statute does not provide such a provision a prosecutor can, in effect, continue to intercept the conversation if conspiracy to commit the substantive crimes is a permissible predicate for the wiretap statute.

Most of the Federal Circuits allow a finding of "knowledge" in drug cases where the defendant acted with "willful blindness," or "deliberate ignorance" or "conscious avoidance." "Willful blindness" has been applied to the knowledge requirements of 18 U.S.C. § 1956(a)(1) in federal "financial transaction" money laundering prosecutions.[19]

An innovative state prosecutor can apply a "willful blindness" analysis in a state money laundering case where there is evidence that a defendant, particularly a facilitator, made a conscious effort to disregard the fact that the subject property was derived from the qualifying illegal activity.[20]

Most state money laundering statutes do not define the term "knowledge." Therefore, it can be argued that knowledge need not be actual knowledge. There may be support for this proposition in the legislative history of the respective state statute. A few state statutes have qualified the knowledge component. For example, the Illinois statute reads "knows or reasonably should know that the financial transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership or the control of the criminally derived property."[21] The Arizona and Minnesota statutes read in pertinent part, "knowing or having reason to know" with respect to establishing concealment.[22]

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[19] United States v. Kaufman, 985 F.2d 884, 896, 897 n. 6(7th Cir. 1993) (willful blindness or conscious avoidance is the legal equivalent of knowledge); United States v. Long, 977 F.2d 1264, 1271 (8th Cir. 1992) (auto dealer facilitator); United States v. Campbell, 977 F.2d 854, 859 (4th Cir. 1992) (real estate agent facilitator).

[20] In a leading case, United States v. Jewell, 532 F.2d 697, 700 (9th Cir. 1976), the defendant was convicted of importing marijuana into the United States. He had accepted the offer of a stranger to drive a car across the border for $100 and had observed a secret compartment in the trunk, but declined to investigate further. The Ninth Circuit, affirming the conviction, held that deliberate ignorance and positive knowledge were equally culpable.

[21] ILL. ANN. STAT. ch. 38 § 29B-1(a)

[22] Arizona, ARIZ. REV. STAT. § 13-2317(A)(3). And, *see* Minnesota, MINN. STAT. ANN. §§ 609.496(subd. 1 and 2), which contains language that defendant "knows or has reason to know that the monetary instrument or instruments represent the proceeds of, or are derived from, the proceeds of" specified felonies.

The Michigan statute contains a provision defining "knowledge" on the part of a corporation,[23] it also contains an express qualification as to "prior actual knowledge" in establishing certain facts.[24] The New Jersey statute permits proof of knowledge by inference.[25]

2. Specific Intent

a. Promoting a Specified Unlawful Activity

Several state money laundering statutes require the prosecution to prove that the defendant intended to promote a specified unlawful activity[26] (which is comparable to language contained in the federal money laundering statute)[27] or promote any criminal activity.[28] By applying the holdings in federal case law, a state prosecutor may argue that a defendant has satisfied the promotion requirement where the defendant advances such unlawful conduct openly and without any form of concealment. Moreover, the illegal activities promoted need not be activities in which the defendant is personally involved. It is sufficient for a defendant to act with intent to facilitate *(i.e.,* promote) the qualifying unlawful act perpetrated by another person.[29] The defendant's intent may relate to the promotion of past, present or future offenses.[30] As held by federal law, it may

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[23] MICH. COMP. LAWS §750.411j(b). Note that the statutes of Florida, FLA. STAT. ANN. § 896.101; Georgia, GA. CODE ANN. §§ 7-1-911(7); and Utah, UTAH CODE ANN. §§ 76-10-1902(6), each contain a provision specifically defining the defendant's knowledge that the property represents the proceeds of some form of illegal activity.

[24] MICH. COMP. LAWS § 750.411j(b).

[25] The New Jersey statute, 1994 N.J. Laws 121(4), reads in pertinent part: "the requisite knowledge may be inferred where the property is transported or possessed in a fashion inconsistent with the ordinary or usual means of transportation or possession of such property and where the property is discovered in the absence of any documentation or other indicia of legitimate origin or right to such property."

[26] *See, e.g.,* Florida, FLA. STAT. ANN. § 896.101(2)(a)(1), and Idaho, IDAHO CODE § 18-8201.

[27] 18 U.S.C. § 1956(a)(1)(A)(i) and (a)(2)(A).

[28] *See, e.g.,* California, CAL. PENAL LAW § 186.10(a)(1), Illinois, ILL. ANN. STAT. ch. 38 § 29B-1(a), and Hawaii, HAW. REV. STAT. § 708-8120(a).

[29] United States v. Paramo, 998 F.2d 1212, 1215, 1218(3d Cir. 1993).

[30] *Paramo, supra* note 29 (past embezzlement); United States v. Winfield, 997 F.2d 1076 (4th Cir. 1993) (past drug sales); United States v. Munoz-Romo, 947 F.2d 170 (5th Cir. 1991) (future drug sales); United States v. Skinner, 946 F. 2d 176 (2d Cir. 1991) (present drug sales).

be argued that a defendant violates the state money laundering statutes whether or not the qualifying unlawful act being promoted is ever accomplished.[31]

Although expenditures to maintain the defendant's lifestyle do not satisfy the "intent to promote" requirement,[32] purchases of assets or expenditures for services that are used as part of the ongoing illegal activity can satisfy this requirement.[33]

b. Concealing or Disguising the Nature or Source of Proceeds

As stated earlier, there are several state statutes which contain the element that the defendant, either knowingly or intentionally, in whole or in part, concealed or disguised the nature, source, ownership or control of the proceeds of the qualifying illegal conduct. This is comparable to a provision in the federal money laundering statute.[34] Thus, federal case law provides guidance with regard to both the proof of this element, as well as to defenses which may be anticipated.

All the circumstances surrounding the particular money laundering transaction should be evaluated to determine whether a defendant has a viable defense based on insufficient evidence of an intent to conceal the nature or source of the proceeds.

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[31] *Munoz-Romo, supra* note 30.

[32] United States v. Jackson, 935 F.2d 832, 841 (7th Cir. 1991).

[33] *Id.* at 841 (purchase of a beeper used in the narcotic trafficking business qualifies while a purchase of a cellular phone not shown to be used in the narcotic trafficking business does not); United States v. Cruz, 993 F.2d 164, 167 (8th Cir. 1993) (transportation of drugs in a car six weeks after the car was purchased is sufficient to show that the purchase was made with the intent to promote the unlawful activity); United States v. Johnson, 971 F.2d 562, 566 (10th Cir. 1992) (payoff of a mortgage on home where fraudulent business is conducted promotes the unlawful activity as does the purchase of a Mercedes to give the business an aura of legitimacy).

[34] *See* 18 U.S.C. § 1956 (a)(1)(B)(i) and (a)(2)(B)(i), which reads, in pertinent part, "knowing that the [transaction or monetary instrument involved in the transportation] is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity."

Credible evidence concerning the existence of one or more of the following circumstances assists the prosecutor in meeting the burden of showing an intent to conceal or knowledge of concealment:[35]

- statements by defendant probative of an intent to conceal;
- unusual secrecy surrounding the transaction;
- structuring the transaction(s) to avoid currency transaction reporting requirements;
- commingling of illegal revenues with funds derived from a legitimate business in the business bank account;[36]
- using a nominee or third party to conceal the true ownership interests;[37]
- a series of convoluted transactions preceding, or as a part of, the charged transaction;
- expert testimony to explain that the characteristics of the charged money laundering transaction are consistent with a money laundering scheme; or
- engaging in any other practice that is unusual in the circumstances presented.[38]

A facilitator of a money laundering transaction (*e.g.*, auto dealer, real estate agent, courier) may assert that he cannot be guilty of money laundering because he did not participate in the transaction with the purpose of concealing the source of the proceeds but merely wanted to consummate the transaction to receive a commission. Federal Circuits have rejected this argument, finding that a defendant may be convicted of money laundering on the basis that he knew someone else designed the transaction in part to conceal the source of the proceeds. Therefore the facilitator's purpose for entering into the transaction is not relevant.[39]

The mere fact that a money launderer has placed title of an asset purchased with illegal proceeds in the name of a family member is not sufficient in itself to prove an intent to conceal.[40]

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[35] *See* United States v. Garcia-Emanuel, 14 F.3d 1469, 1474-77 (10th Cir. 1994) for a detailed analysis of circumstances which prove intent to conceal in various transactional contexts.

[36] United States v. Marin, 933 F.2d 609 (8th Cir. 1991).

[37] *Id.*

[38] United States v. Isabel, 945 F.2d 1193 (1st Cir. 1991); United States v. Massac, 867 F.2d 174 (3d Cir. 1989).

[39] United States v. Carr, 25 F.3d 1194, 1206 (3d Cir. 1994); United States v. Campbell, 977 F.2d 854, 857 (4th Cir. 1992).

[40] United States v. Lovett, 964 F.2d 1029, 1033, 1036 (10th Cir.), *cert. den.*, 113 S.Ct. 169 (1992) (car purchased in wife's name with both husband and wife using the car plus statements to dealer by defendant inferring that the purchase money came from a legitimate business — not a violation; purchase of a truck for defendant's brother to keep him quiet as to the illegal source of the money — a violation)); United States v. Saunders, 928 F.2d 940, 946 (10th Cir. 1991) (defendant's presence at purchase of vehicle which he placed in his daughter's name and *conspicuously* used as a family vehicle does not constitute money laundering under 18 U.S.C. § 1956 (a)(1)(B)(i)).

However, title placed in the name of an entity, or a fictitious person or third person to conceal ownership qualifies as a money laundering violation.[41]

There is a distinction recognized in some federal courts between the knowing use of illicit proceeds to purchase personal items for present gratification (e.g., horses, cars), which does not constitute money laundering violations, and business investments that are motivated by the desire to create the appearance of legitimate wealth, which do constitute money laundering violations.[42]

c. Avoiding Currency Transaction Requirements

A significant number of state statutes contain as an element that the defendant must specifically intend or know that the proscribed activity is designed in whole or in part to "avoid a transaction reporting requirement." Some statutes restrict the transaction reporting requirement to one required under its own state law,[43] others, to one required solely under federal law.[44] Several statutes are more broadly worded to include avoidance of a transaction reporting requirement under either the laws of its own state or federal law,[45] or, as in the case of one state statute, to avoid transaction reporting requirement under the laws of any state or federal law.[46] Here, again, federal law can be instructive.[47]

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[41] United States v. Santos, 20 F. 3d 280 (7th Cir. 1994); United States v. Turner, 975 F.2d 490, 497 (8th Cir. 1992); United States v. Beddow, 957 F.2d 1330, 1334-35 (6th Cir. 1992).

[42] *See* United States v. Dimeck, 24 F.3d 1239, 1245 (10th Cir. 1994); *Garcia Emanuel, supra* note 35, at 1474 (prosecution must show that the transaction was motivated significantly by the intent to conceal — more than a trivial motivation to conceal).

[43] *See, e.g,* Arizona, ARIZ. REV. STAT. ANN. § 13-2317(A)(1); Florida, HA. STAT. ANN. §§ 896.11(2)(b)(2)(b); Georgia, GA. CODE ANN. § 7-1-915(c)(2); Rhode Island, R.I. GEN. LAWS § 11-9.15(a)(4)(B); Utah, UTAH CODE ANN. §§ 76-10-1903(1)(b)(ii).

[44] *See, e.g.,* Missouri, MO. ANN. STAT. ch. 574, § 574.105(2)(3), and Washington, WASH. REV. CODE §§ 9A.83.020(1)(c).

[45] *See, e.g.,* Arkansas, ARK. STAT. ANN. § 5-42-201(4)(a)(1)(B); California, CAL. HEALTH SAFETY CODE § 11370.9(c); Colorado, COLO. REV. STAT. §§ 18-18-408(d); Idaho, IDAHO CODE § 188201(3); Louisiana, 1994 La. Acts. 78, ALS 78 § 230(B)(1); Michigan, MICH. COMP. LAWS § 750.411 (k)(2)(a)(ii) *et seq;* Nevada, NEV. REV. STAT. § 207-195(1)(a)(3); Oklahoma, OKLA STAT. TIT. 63 § 2-503.1(D); Pennsylvania, PA. STAT. ANN. tit. 18 § 5111(a)(2)(ii).

[46] *See,* 1994 N. J. Laws 121.

[47] 18 U.S.C. § 1956(a)(1)(B)(ii) and (a)(2)(B)(ii). *See generally* United States v. Kimball, 711 F. Supp. 1031, 1034 (D. Nev. 1989).

3. Charging Multiple Intents

Some state statutes make criminal the conduct of a defendant acting with any one of several different purposes. For example, the Florida money laundering statute provides that a person is guilty of money laundering if that person *"knowing* that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" (emphasis supplied), conducts or attempts to conduct such a financial transaction "which in fact involves the proceeds of specified unlawful activity" *with the added specific intent* "to promote the carrying on of specificized unlawful activity," or alternatively, *with the added knowledge* that the transaction is designed in whole or in part either "to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of the specified unlawful activity" or "to avoid a transaction reporting requirement under the state law."[48]

Thus, if the defendant exhibits several prohibited purposes, e.g., acts both with the intent to promote the specified activity *and* with knowledge that the transaction is designed to conceal the source of ownership of the property, the prosecution may have to decide whether to charge the defendant in one count, reciting both the specific intent and the knowledge purposes, or in two counts - one pertaining to the intent to promote and a specific count pertaining to knowledge of concealment.

If the prosecution charges the multiple purposes in one count it may be faced with a defense argument that the accusatory instrument charges multiple offenses or theories of liability in one count *(i.e.,* is duplicitous). If on the other hand, the prosecution charges two separate offenses, it may face a defense argument that the accusatory instrument charges one offense in multiple counts (i.e., is multiplicitous). The proper manner in which to handle this will depend upon the pleading practices in your state and the precise wording of your statute.[49]

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[48] FLA. STAT. ANN. § 896.101(2)(a). *See, e.g., Paramo, supra* note 29.

[49] Under federal law, it appears that the prevailing practice is to charge a single money laundering count for a single transaction conducted by a defendant with several of the prohibited intentions alleged alternatively in the conjunctive. See FED. R. CRIM.P. 7(c); *See generally,* Schad v. Arizona, 111 S. Ct. 2491 *reh. den.,* 112 S. Ct. 28 (1991) and *see,* United States v. Hardy, 762 F. Supp. 1403, 1408 (D. Haw. 1991).

C. CONDUCT OR *ACTUS REUS*

1. Types of Money Laundering

The proscribed "conduct" is the *"actus reus"* component of the statute. Although the money laundering activities prohibited by state money laundering statutes are very different from each other, there are several definable categories.

This section will touch on six of the most prevalent classifications: (1) "Financial transaction" money laundering; (2) "transportation" money laundering; (3) "receiving, acquiring, or maintaining an interest"; (4) "facilitation" money laundering; (5) "the business of" money laundering; and (6) "financial institution" money laundering.

a. "Financial Transaction" Money Laundering

The first and most prevalent category is "financial transaction" or simply "transaction" money laundering.[50] Under this prohibition, as defined in most of the state statutes, a defendant conducts a transaction with property knowing that such property constitutes the proceeds of some form of unlawful activity.[51] In some statutes, this is the only form of money laundering banned by statute.[52]

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[50] This is one of the three types of Federal money laundering crimes. *See* 18 U.S.C. § 1956(a)(1). Transaction money laundering is also prohibited under sections of the Model Money Laundering Act (MMLA) which reads, in pertinent part in subdivision (a)(1): "[I]t is unlawful for any person who knows that the property involved is the proceeds of some form of unlawful activity, to knowingly ... conduct a transaction involving the property when in fact the property is the proceeds of specified unlawful activity," and subdivision (a) (3) which reads, in pertinent part: "[I]t is unlawful for any person to conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the intent to conceal or disguise the nature, location, source, ownership, or control of the property or the intent to avoid a transaction reporting requirement under the federal law."

[51] *See, e.g.,* Arkansas, ARK. CODE ANNO. § 5-42-204(a); Connecticut, CONN. GEN. STAT §§ 53a-276 to a-279; Georgia, GA. CODE ANNO. § 7-1-915; Illinois, ILL. ANNO. STAT. ch. 38 para. 29 B-1(a); Missouri, MO. ANN. STAT. § 574.105(2); New York, N.Y. PENAL LAW §§ 470.05 to 470.15; Pennsylvania, PA. STAT. ANN. tit. 18 § 5111(a); Rhode Island, R.I. GEN. LAWS § 119.1-15(a); Virginia, VA. CODE ANN. § 18-2-248.7; Washington, WASH. REV. CODE §§ 9A.83.020.

[52] *See, e.g.,* Connecticut, CONN. GEN. STAT §§ 53a-276 to a-279; Illinois, ILL. ANN. STAT. ch. 38 para. 29 B-1(a); Missouri, MO. STAT. ANN. § 574.105; New York, N.Y. PENAL LAW §§ 470.05 to 470.15; Virginia, VA. CODE ANN. § 18-2-248.7; Washington, WASH. REV. CODE §§ 9A.83.020.

A defendant can commit "transaction" money laundering with various intents. The most common intents are the following: (a) promoting or carrying out a qualifying crime; (b) concealing or disguising the source, ownership, location, control, or nature of the tainted money; or (c) avoiding a transaction reporting requirement.

A prosecutor must focus on the definitions of "transaction" and "financial transaction" (which in some instances are directly related to the definition of a "transaction"). Statutory guidance in this area is erratic. The statutes range from an absence of any statutory definition of "financial transaction" and "transaction" to expressly defining one or both of these terms.[53]

Some statutes define the term "transaction" very broadly as a purchase, sale, loan, pledge,[54] gift, investment, transfer, transmission or delivery. It also has been defined to further include deposit, withdrawal, payment, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any financial instrument, stock, bond, certificate of deposit (or other monetary instrument) or any delivery by or through a financial institution by whatever means effected.[55] The Arkansas statute specifically states that the definition of "transaction" does not contain "an exclusive list."[56]

However expansive the statutory definition, it may not cover all activities corrected with the movement of the qualifying monetary instruments or property. For example, the definition would not necessarily define for "the placing of currency in a safe deposit box" as a transaction. There does not appear to be a state statute which expressly includes this activity in its statutory definitions.[57] In California, where the statutory definition of "transaction" includes a

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[53] Both terms are defined in 18 U.S.C. § 1956 in subdivisions (c)(3) and (c)(4).

[54] "Pledging" can be construed to include the posting of a certificate of deposit or stock certificate as collateral for a loan.

[55] *See, e.g.*, Rhode Island, R.I. GEN. LAWS § 11-9.1-15(d)(3); and South Carolina, S.C. CODE ANN. § 44-53-475(C)(2).

[56] ARK. STAT. ANN. § 5-42-203(f).

[57] Section 4(d) of the MMLA expressly contains the "use of a safe deposit box" in its definition of "transaction."

"bailment," the prosecution takes the position that " bailment" includes the placement of currency in a safe deposit box.[58]

The definition of "financial transaction" is often cross-referenced to "transaction." The most common definition of a "financial transaction" is a "transaction" which involves the "movement of funds" by "wire or other means."[59] Once again not every act involving the transfer of monies is a "financial transaction."[60]

A few state statutes mandate that the "transaction" be conducted through a financial institution.[61] This limitation precludes the statute from embracing transactions such as two drug dealers' exchanging large denominations between themselves for smaller denominations. Although such an exchange of currency can be regarded as a transaction because it is a "transfer" or "other disposition," it does not involve a financial institution.[62]

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[58] CAL. PENAL CODE §186.9(c); *see also* Hawaii, HAW. REV. STAT. § 708-8121 which also contains the word "bailment" in its definition of "transaction. "

The federal statute was changed by the Annunzio-Wylie Anti-Money Laundering Act of 1992 to add the use of a "safe-deposit box" to the definition of transaction. *See* 18 U.S.C. § 1956(c)(3). Prior to that the government argued that the use of safe-deposit box was covered by the federal definition of "transaction. " This argument was rejected by one circuit court which held that placement of currency in a safe-deposit box fell outside the statute. United States v. Bell, 936 F.2d 337, 342 (7th Cir. 1991).

[59] The Florida statute includes "a transaction involving the use of a financial institution which is engaged in, or the activities which affect commerce, in any way or degree." FLA. STAT. ANN. § 896.101(1)(d).

[60] *See* United States v. Samour, 9 F.3d 531 (6th Cir. 1993) (holding that the mere transportation of funds within the United States is not a financial transaction); United States v. Ramirez, 954 F.2d 1035 (5th Cir), *cert. den.*, 112 S. Ct. 3010 (1992) (holding that the mere possession by a drug co-conspirator of large amounts of cash does not amount to a financial transaction).

[61] *See, e.g.*, California, CAL. PENAL CODE § 186.9(c) as distinguished from California's other money laundering statutes, CAL. HEALTH & SAFETY CODE §§ 11370.6 and 11370.9; *see also,* Hawaii, HAW. REV. STAT. § 708-8120.

[62] *See* the following cases in which the federal courts have held that an act constitutes a financial transaction even though it does not involve a financial institution: United States v. Gallo, 927 F.2d 815 (5th Cir. 1991) (transfer of a box of currency from one individual to another is a financial transaction); United States v. Castano-Martinez, 859 F. 2d 925 (11th Cir. 1988) (financial transactions include various "transfers" of currency from the defendant's house to vehicles parked outside).

By contrast, the New York and Connecticut money laundering statutes define the proscribed activity not in terms of a "transaction" but in terms of "an exchange."[63] The Connecticut statute expressly states "an exchange," is "in addition to its ordinary meaning, means purchase, sale, loan, pledge, gift, transfer, delivery, deposit, withdrawal or extension of credit."[64] It is arguable that not every transaction is an exchange. Therefore, careful analysis is needed in charging activities under such statutes. For example, the transfer of a box of currency from one individual to another may be a transaction but it may not constitute "an exchange" because the property remains in the same form.

The prosecutor must determine whether a defendant who is engaged in multiple transactions should be charged with separate counts or charged in the aggregate in one count. For example, a defendant who obtains $100,000 in currency from engaging in a qualifying unlawful activity, deposits the $100,000 into a bank account under his control, later withdraws a portion of the proceeds, and then uses it to purchase a vehicle, may have committed three separate money laundering violations — one based on the deposit of the proceeds, a second based on the withdrawal of a portion of the proceeds and a third based on the purchase of a vehicle with the proceeds. The defense arguments of multiplicitious and duplicitous are applicable to this issue.

b. "Transportation "Money Laundering

"Transportation" money laundering is most commonly described as transporting, transmitting or transferring property[65] known to constitute proceeds of unlawful activity.[66] This prohibition is addressed to those persons who are in control of the movement of illicit monies, and many state money laundering statutes include this proscription.[67] Depending upon the wording of the statutes,

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[63] Connecticut, CONN. GEN. STAT. §§ 53a-276 to 53a-289 and NEW YORK PENAL LAW §470.05 to 470.15.

[64] CONN. GEN. STAT. § 53a-275 (4).

[65] The New Jersey statute, 1994 N.J. LAWS 121, includes the phrase "transports or possesses" in subdivision (3)(a).

[66] This is the second of three types of federal money laundering crimes. *See* 18 U.S.C. § 1956(a)(2).

[67] *See, e.g.*, Arizona, ARIZ. REV. STAT § 13-2317A(2); California, CAL. HEALTH & SAFETY CODE § 11370.9(b); Florida, FLA. STA. ANN. § 896.101(2)(b); Idaho, IDAHO CODE § 18-8201(i); Maryland, MD. ANN. CODE art. 27 § 297B(b)(iii); Nevada, NEV. REV. STAT. § 207.195(b); Oklahoma, OKLA. STAT. ANN. tit. 63 § 2-503.1B); South Carolina, S.C. CODE ANN. § 44-53475(A)(2); Texas, TEX. PENAL CODE tit. 7, § 34.02(a)(1); Utah, UTAH CODE ANN. §§ 76-10-1903; *see* MMLA § 5(a)(1) and (2).

"transportation money laundering" is carried out with an intent similar to that of "transaction money laundering, " by either (a) promoting or carrying out a qualifying crime,[68] (b) obfuscating, concealing or disguising the source, nature, location, ownership or control of the tainted money or (c) avoiding a transaction reporting requirement.

One of the three "transportation money laundering" theories contained in the Florida statute, which is virtually identical to its federal counterpart, does not require that the monetary instruments or funds be the product of unlawful activity or that the perpetrator acted with knowledge that the property involved proceeds of some form of unlawful activity. However, it does require that the defendant acted with the intent to promote the carrying on of specified unlawful activity.[69] Many of the other statutes, including the Model Act and one of the three transportation money laundering provisions of the Florida statute, require that the perpetrator know that the property is the proceeds of some form of unlawful activity and that the property is, in fact, the proceeds of specified unlawful activity.[70]

c. "Receives, Acquires or Maintains an Interest

Some statutes have a separate category of "receiving, acquiring or maintaining an interest" in property which is the proceeds of specified unlawful activity.[71] Under the Arizona statute, a person may be found guilty of money laundering solely by transporting the proceeds of a specified offense.[72]

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[68] 18 U.S.C. § 1956(a)(2)(A).

[69] FLA. STAT. ANN. § 896.101(2)(b)(1).

[70] MMLA § 5.(a)(2). However, a "transportation" money laundering theory involving an intent to avoid a transaction reporting requirement requires that the defendant know that the property represents the proceeds of some form of unlawful activity but not that the property was in fact the proceeds of specified unlawful activity.

[71] *See, e.g.*, Arizona, ARIZ. REV. STAT. § 13-2317(A)(1); California, CAL. HEALTH & SAFETY CODE §11370.(9.,(a); MMLA § 5(a)(1).

[72] ARIZ. REV. STAT. §13-2317(A)(1).

d. Furnishing the "Means"

This category of prohibited activity criminalizes the furnishing of the "means" to commit certain forms of money laundering. This prohibits one from providing a means to control dirty money, whether by transaction, transportation or otherwise. Therefore, this is principally a facilitating provision.[73]

Some statutes require that the monies be dirty monies while other statutes include the use of clean monies by the facilitator. The California and Hawaii statutes provide for the prosecution of a facilitator who uses clean monies provided that the person acts with the requisite specific intent to promote, manage, establish, carry on or facilitate the promotion, management or establishment or carrying on of any criminal activity. However, both statutes have the additional requirements that the property exceed $5,000 and that the conduct be a "financial transaction" occurring through a financial institution.[74]

The Arizona statute, which also includes the use of clean money, is much broader in its facilitation provision in that it criminalizes the conduct of a person who "makes property available to another by transaction, transportation, or otherwise knowing that it is intended to be used to facilitate racketeering," without a threshold amount and without the condition that it be conducted through a financial institution.[75] An example of the use of clean funds by a facilitator would be the use of legitimate monies to purchase a "load" vehicle for the transportation of controlled substances.

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[73] This form of money laundering is not specifically contained in the Federal money laundering, provision of 18 U.S.C. § 1956, but could be prosecuted through an aiding and abetting statute of the federal law.

[74] CAL. PENAL LAW § 186.10(a); HAW. REV. STAT. § 708-8120(1).

[75] ARIZ. REV. STAT. § 13-2317(A)(2). Arkansas and Colorado also permit the use of clean monies. The Arkansas statute prohibits a person from knowingly using or making available for use any property in which he has any ownership or lawful possessory interest to facilitate a predicate offense. ARK. STAT. ANN. § 5-42-204(a)(2). The Colorado statute prohibits a person from knowingly or intentionally giving, selling, transferring, trading, investing, concealing, transporting or otherwise making available anything of value which the person knows is intended to be used for the purpose of committing or furthering the commission of a qualifying criminal act. COLO. REV. STAT.§§ 18-18-408(1)(b).

e. "Business" of Money Laundering

The fifth category of prohibited activity targets the "business" of money laundering. In this category the defendant knows that the property involved is the proceeds of some form of unlawful activity and commits laundering by knowingly engaging in the business of conducting, directing, planning, organizing, initiating, financing, managing, supervising or facilitating a transaction involving property that is the proceeds of the specified conduct. This is intended to capture the launderer who operates under the veneer of legitimate business and who controls, yet scrupulously avoids touching, the dirty money. This is the broadest reach of any of the money laundering statutes.

Minnesota's statute specifically criminalizes the formation or operation of a business which has as its primary or secondary purpose the concealment of the proceeds of a specified criminal act.[76] The Arizona and Texas statutes are broad enough to cover the business of money laundering.[77] Although the defendant should have control over the money laundering activity, the statute does not always require that the defendant have direct contact or involvement with the money itself.[78]

f. "Financial Institution" Money Laundering

Another category of money laundering activity is "financial institution" money laundering.[79] This category prohibits one from knowingly engaging in a financial transaction in excess of a

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[76] MINN. STAT. ANN. § 609.497(1). The MMLA § 5(a)(4) provides, in pertinent part, that

> "It is unlawful for any person, knowing that the property involved in the transaction is the proceeds of some form of unlawful activity, to knowingly engage in the business of conducting, directing, planning, organizing, initiating, financing, managing, supervising or facilitating transactions involving property that, in fact, is the proceeds of specified unlawful activity.

[77] ARIZ. REV. STAT. §13-2317(B) makes it a crime to knowingly initiate, organize, plan, finance, direct, manage, supervise or *be in the business of money laundering*. This conduct is elevated to first degree money laundering, a class 2 felony. Texas has a similar provision; *see,* TEX. PENAL CODE ANN. § 34.02(a)(3). Although there is no comparable provision contained in the Federal money laundering statutes, it would appear that this conduct could be prosecuted under the federal RICO statutes.

[78] For example, Texas criminalizes the knowing supervision of a transaction, TEX. PENAL CODE ANN. § 34.02(a)(2). *See also* the MMLA § 5(a)(4).

[79] This is the third Federal money laundering category. 18 U.S.C. § 1957(a).

threshold amount from unlawful activity through a financial institution. In essence, this category makes it a crime to knowingly conduct a transaction at a bank or other defined "financial institution" with dirty money.

California's and Hawaii's "financial institution" statutes differ from the corresponding Federal statute in some significant respects.[80] The California statute, which has a lower threshold amount (in excess of $5,000), provides that the proceeds may be derived from any criminal activity (not restricted to "specified unlawful activity") and allows qualifying transactions within twenty-four hours to be aggregated. The Hawaii statute is similar but does not have the twenty-four hour aggregation provision. Both state statutes have a further requirement that certain monetary instruments (i.e., personal checks, cashiers checks) be in bearer form (e.g., made payable to cash) as compared to the Federal statute which allows the instruments to be in any form.

2. Conducts or Attempts to Conduct

The term "conducts" is specifically defined in some state statutes to include "initiating, concluding, or participating in initiating or concluding" a transaction.[81] This is comparable to the Federal definition.[82]

Whether a person who participates in one phase of a transaction is deemed to have conducted" a transaction depends upon statutory definition, if any, legislative history and case law in each state.

Several state statutes contain the language "conducts or *attempts* to conduct" the criminal activity proscribed in the statute. This clearly criminalizes an it attempt" to conduct proscribed

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[80] CAL. PENAL CODE § 186.10; HAW. REV. STAT. § 708-8120.

[81] *See, e.g.,* Arkansas, ARK. STAT. ANN. § 5-42-203(e); Florida, FLA. STAT. ANN. § 896.101(1)(b); Georgia, GA. CODE ANN. § 7-1-911(2); Missouri, MO. ANN. STAT. § 574-105(1); Pennsylvania, PA. STAT. ANN. tit. 18, § 5111(f); and Utah, UTAH CODE ANN. § 76-10-1902(2). California includes "participating in conducting, " CAL. PENAL LAW § 186.9(a). The Hawaii statute reads, "initiate, participate or conclude in conducting, initiating or concluding a transaction," HAW. REV. STAT. § 708-8121. Washington specifies "initiating, concluding, or participating in a financial transaction," WASH. REV. CODE § 9A.83.010(1).

[82] U.S.C. § 1956(c)(2).

activities at the same degree of severity as the completed crime.[83] Once again, this is comparable to the language in the Federal money laundering statute with respect to "transaction" and "transportation" money laundering.[84]

State and Federal money laundering statutes do not define what constitutes an "attempt" to conduct a transaction. Prosecutors are advised to turn to analogous case law for the meaning of "attempt." Generally, it is an activity or behavior necessary for the completion of the offense and must constitute a substantial step toward the commission of the offenses.

3. Some Defense Issues

a. Commingled Funds

Most state statutes require that the proceeds involved in the money laundering activity be derived from a qualifying unlawful activity. In some states it can be derived from "any criminal offense"; in other states it must be derived from "specified unlawful activity" as defined by the statute.

Frequently a defendant will commingle the proceeds of the qualifying unlawful activity with legally derived funds as in the situation where the defendant has deposited or transferred illicit proceeds into a bank account containing the proceeds of a legitimate business or proceeds from an unknown source. The defense will claim that the prosecutor has failed to establish that the charged transaction was made with funds traceable to a qualifying unlawful activity. The most conservative approach to avoiding this challenge is to charge those transactions that are solely comprised of proceeds derived from a qualifying illegal activity. For example, in the scenario where the predicate offense is fraud and the account is commingled with monies from unknown sources with deposits of money from victims of the fraudulent scheme, it is necessary to inspect the bank records to determine whether any portion of any of the withdrawals or transfers from the

[83] *See, e.g.*, Arkansas, ARK. STAT. ANN. § 5-42-204(a)(1); California, CAL. PENAL CODE § 186.10(a) Florida, FLA. STA. ANN. § 896.101(2)(a), (2)(b), and (2)(c); Hawaii, HAW. REV. STAT § 708-8120; Illinois, ILL. ANN. STAT. ch. 38 § 29 B-1; Missouri, MO. ANN. STAT. ch. 574 § 574.105; Nevada, NEV. REV. STAT. § 207.195(l); Rhode Island, R.I. GEN. LAWS § 11-9.1-15(a) and (b); South Carolina, S.C. CODE ANN. § 44-53-475(A)(1) and (2); Virginia, VA. CODE ANN. § 18-2-248.7; Washington, WASH. REV. CODE § 9A.83.020.

[84] 18 U.S.C. §§ 1956 (a)(1), (a)(2) and (a)(3).

account is solely derived from the qualifying illegal activity and charge money laundering counts accordingly. For example: day one — balance of account $50,000 from unknown sources; day two — deposit of $50,000 from victim of fraud; day three — $60,001 withdrawal; charge money laundering violation for withdrawal *in excess of $10,000* because at least $10,001 of the withdrawal had to be derived from the illegal activity.

Where it is impossible to prove that the money involved in a charged transaction was derived solely from the qualifying unlawful activity, prosecutors can turn to the Federal case law which supports an argument that the prosecution does not have to prove that all the funds used in the transaction were derived from a qualifying unlawful activity.[85] At least two Circuit Courts of Appeal allow the prosecutor this leeway because any other interpretation would allow individuals to avoid prosecution by simply commingling legitimate funds with proceeds of specified unlawful activity.[86]

Defense assertions that the prosecution must trace the money transacted in a charged money laundering count to particular narcotics transaction has been rejected by the Federal courts.

b. Merger

The doctrine of merger prohibits the same transaction being used as a basis for both the money laundering offense and the underlying crime that generated the proceeds being laundered. It is important to determine when the property becomes the proceeds of the underlying crime.[87]

This issue arises most frequently in complex white collar cases, like fraud, where the victim's transfer of funds to the defendant's bank account could arguably constitute the completion of the underlying crime of fraud and a money laundering transaction.[88] It can also occur in cases

[85] United States v. Jackson, 983 F.2d 757, 765 (7th Cir 1993); United States v. Johnson, 971 F.2d 562, 570 (10th Cir 1992); and United States v. Jackson, 935 F.2d 832, 838 (7th Cir. 1991).

[86] *Johnson, supra* note 79, at 570.

[87] United States v. Carr, 25 F.3d 1194, 1205 (3d Cir. 1994); United States v. Blackman, 904 F.2d 1250, 1257 (8th Cir. 1990).

[88] *See, e.g.,* United States v. Johnson, 971 F.2d 562 (1992). Therein a defendant, who was conducting a fraudulent currency exchange scheme, had his victims wire money directly to him. The act constituting the specified unlawful activity of wire fraud and the act constituting money laundering are identical.

involving narcotics proceeds. This issue arises in several ways, the most problematic scenario being where the underlying crime (the "specified unlawful activity") has not been completed.

A second scenario is where a participating "middleman" is involved in delivering the proceeds. The critical question is when the funds become proceeds. This apparently depends upon whether the "middleman" is acting for the defendant or a non-participant (e.g., a victim) in the crime. If the middleman is an agent of the defendant, the funds become proceeds upon receipt by the middleman and, therefore, the money laundering does not merge with the underlying crime. [89]

c. Sting Provisions

All state statutes that have a "financial transaction" or "transaction" money laundering provision require that the subject property be, in fact, proceeds of either "specified unlawful activity" or "any criminal activity."[90] Consequently, the use of "sting money" precludes the charging of a substantive count because the subject property introduced by law enforcement would not be "dirty."

There are three ways to pursue criminal charges in this situation. First, under the appropriate facts, such activity may be prosecuted using a charge of conspiracy to commit the substantive crime. However, in the penal law of some states, a conspiracy charge may substantially reduce the level of the crime.

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[89] *See,* United States v. Green, 964 F.2d 365 (1992). This was a prosecution involving the acceptance of a bribe by a Louisiana state insurance commissioner. The defendant's campaign for state Commissioner of Insurance was financed by principals of an insurance company. The financing was in the form of loans from intermediaries, two individuals and one corporation. The amounts of money to the defendant corresponded to the amount of loans made to intermediaries. The defendant received the bribe money through these intermediaries who were clearly acting as his agents. The funds become the proceeds on receipt by the intermediary before they ever reached the hands of the defendant.

[90] This is to be distinguished from those statutes which contain a facilitation money laundering crime permitting the use of clean monies.

Second, if all other elements of the statute are satisfied, the activity may arguably be prosecuted as "an attempt" to violate the money laundering statute.[91] Once again, in some states, an attempt may be a significantly less serious offense than the completed crime.[92]

The third alternative is to have a specific provision which provides for undercover sting operations. Money laundering statutes in eight states provide for criminal sanctions in the undercover "sting" situation. In these jurisdictions, the statutes permit the prosecution of money laundering activity committed solely as a product of an undercover "sting" operation if the defendant believes that the proceeds are derived from a qualifying unlawful activity because of a representation made by law enforcement officer or agent working under the his control.[93] Consequently, it is not necessary that the subject proceeds be the proceeds of unlawful activity, as in the other 20 states.[94] This permits undercover law enforcement officers to pose as drug dealers to obtain evidence necessary to convict money launderers.

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[91] There is no sting provision under California law. However, prosecutors have been advised to prosecute a defendant's receipt of purported drug money from an undercover officer and subsequent "laundering" of the money as attempted money laundering. In an analogous situation, California case law upholds the receipt of purported stolen property (pursuant to an undercover sting) as a felony attempt to receive stolen property. (Penal Code section 496.1). The cases focus on the guilty *mens rea* of the recipient (*e.g.*, belief that the property is stolen) and conclude that only an attempt has been committed because the transaction is impossible (e.g. can not have a transaction with stolen property where the property is not stolen). In this connection, *see,* People v. Rojas, 55 Cal.2d 252, 257-58 (1961); People v. Moss, *55* Cal. App. 3d 179 (2d Dist. 1976); People v. Meters, 213 Cal. App. 2d 518 (1st Dist. 1963).

[92] For example, the New York statutory structure provides for Money Laundering in the First Degree, a class D felony, Money Laundering in the Second Degree, a class E felony, and Money Laundering in the Third Degree, a class A misdemeanor. N.Y. Penal Law § § 470.05, 470.10 and 470.15, respectively. The use of the sting monies would necessitate charging the crime either as a "conspiracy," in which case the class "D" and "E" felonies would be reduced to class "A" misdemeanors and the class "A" misdemeanor would be reduced to class "B" misdemeanor. N.Y. PENAL LAW §§ 105.05 and 105.00, respectively. On the other hand an "attempt to commit a crime" drops the degree one level, in which case the "D" felony would be lowered to a class "E" felony and the class "E" felony would become a class "A" misdemeanor. N.Y. PENAL LAW § 110.05 (6),(7) and (8).

[93] Arkansas, ARK. STAT. ANN. § 5-42-204(a)(1); Florida, FLA. STAT. ANN. § 896.101(2)(c); Michigan, MICH. COMP. LAWS § 750.411p(1); Rhode Island, R.I. GEN. LAWS § 11-9.1-15(b)(1); South Carolina, S.C. CODE ANN. § 44-53-475(A)(3); Utah, UTAH CODE ANN. § 76-10-1903; Texas, TEX. PENAL CODE, § 34.02(b); and Washington, WASH. REV. CODE § 9A.83.010(4).

[94] This is comparable in theory to the sting provision in 18 U.S.C. § 1956(a)(3). Sting operations have always been viable under 1 U.S.C. § 1956(a)(2)(A), one form of the "transportation" money laundering offense, since there are no "knowledge" or "proceeds" requirements in that offense. However, there is no sting provision under 18 U.S.C. § 1957, "financial institution" money laundering or 18 U.S.C. § 1956(a)(2)(B)(i) and (ii), the other two forms of "transportation money laundering."

Under Federal case law, an ambiguous statement (as compared to an explicit representation) concerning the illegal derivation of the funds may be sufficient to establish the defendant's requisite knowledge.[95]

d. Entrapment and Outrageous Government Conduct

The "sting" is one of the richest sources of money laundering cases, but it has its pitfalls and the prosecutor must keep control of the operation to prevent the loss of the case through "entrapment" or 44 outrageous government conduct" defenses. Two cases are illustrative: *Jacobson v. United States,* 118 L.Ed. 2d 174, 112 S.Ct. 1535 (1992); and *United States v. Hollingsworth*, 27 F.3d 1196 (7th Cir. 1994).

In Jacobson, a pornography case, the U. S. Supreme Court held that 26 months was too long for the government to try to get the subject to commit the crime; even though he ultimately did so, the Court said, in effect, "enough is enough. " *In Hollingsworth,* the Seventh Circuit had the first opportunity to interpret *Jacobson* and did so by finding that, where the budding money launderers could not have accomplished anything but for the help of the government, they lacked "readiness" and would probably have done nothing except for the government's intervention.

Thus, while the sting remains a valuable investigative tool, its use is not unlimited; if, through impatience or inadvertence the government is the instrumentality that "pushes" the subject over the line, a defense is established. If the subject has not risen to the bait after a reasonable time, then the government must back off. How long is too long is not susceptible to easy definition; the prosecutor must be patient but watchfu;: if the subject has had "long enough" to commit the crime and has not done so, the matter should stop there. At no time should government agents "push" the subject over the line.

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[95] United States v. Castaneda-Cantu, 20 F.3d 1325 (5th Cir. 1994); United States v. Kaufman, 985 F.2d 884 (7th Cir 1993); United States v. Breque, 964 F.2d 381, *cert. den.*, 113 S.Ct. 1253 (1993); and *see* United States v. Stavroulakis, 952 F.2d 686 (2d Cir. 1992). Therein the court held that the defendants need not agree on which specified unlawful activity proceeds they are dealing with; one may think it narcotics, the other may think it gambling proceeds.

1. Threshold Amounts

Ten states have enacted threshold amounts for persons who conduct a transaction involving cash or specified monetary instruments. Thresholds span a broad range, *e.g.*, as low as $3,000[96]; in excess of $5, 000[97]; $10,000 or more[98]; or in excess of $25,000[99].

Threshold amounts can be restrictive; investigations in some jurisdictions demonstrate that money launderers are structuring financial transactions derived from drug sales in amounts as low as $1000. These multiple transactions are often seen in the cash purchase of money orders or moneygrams. For example, consecutively numbered moneygrams of $1,000 each are wired from New York to California in payment for drugs. Cash is also laundered through money exchange houses (casas de cambio) in $1,000 amounts to avoid Federal transaction recording regulations on amounts in excess of $1,000.[100]

Most state statutes permit an aggregation of transactions to reach the threshold amount, either by interpretation or specific legislation. However, California is alone in having the additional condition that, where a threshold amount is a requirement, the transactions must occur within a 24 hour period. The period of time for aggregating amounts is not defined by statute in other jurisdictions.

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[96] Louisiana, 1994 LA. ACT. 78, 1994 ALS 78, and Texas, TEX. PENAL CODE ANN. § 34.02(e).

[97] California, CAL. PENAL LAW § 186.10(a); Hawaii, HAW. REV. STAT. § 708-8120; and Minnesota, MINN. STAT. ANN. § 609.496(1).

[98] Connecticut, CONN. GEN. STAT. ANN. §§ 53a-276 to 53a-278; Maryland, MD. ANN. CODE, art. 27 § 297B(a)(5); Nevada, NEV. REV. STAT. ANN. § 207.195(B); and New York, N.Y. PENAL LAW §§ 470.05 to 470.15.

[99] *See,* California, CAL. HEALTH & SAFETY CODE § 11370.9(f).

[100] *See* 21 C.F.R. § 103.37(b)(3)

In the statutes with threshold amounts, some have graduated thresholds, increasing the level of the crime based on the dollar amount (*e.g.*, New York — if no threshold amount then it is a misdemeanor and not a felony). However, 17 of the 27 state statutes,[101] as well as the MMLA, do not contain a threshold amount. Similarly, 18 U.S.C. § 1956 is "transaction" and "transportation" money laundering does not have a threshold amount.[102]

2. Qualifying Crimes

While seven states restrict the qualifying crimes in their money laundering statutes to narcotic crimes,[103] the money laundering statutes of the remaining states are not so narrow. Money laundering concerns all forms of illegal proceeds. Analysts from various enforcement and intelligence agencies believe that a significant amount of the money being laundered today is derived from a long list of non-narcotic related criminal offenses, including gambling, smuggling, pornography, loan sharking, arms dealing, prostitution, white collar crime, tax evasion and even the illegal trafficking of animal hormones. It is estimated that non-drug proceeds may account for a third or even as much as one-half of the total illicit proceeds converted in or through U.S. financial institutions.[104]

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[101] Arizona, ARIZ. REV. STAT. ANN. § 13-2317; Arkansas, ARK. STAT. ANN. § 5-42-204; Colorado, COLO. REV. STAT. §§ 18-18-408; Florida, FLA. STAT. ANN. § 896.101; Georgia, GA. CODE ANN. § 7-1-915; Idaho, IDAHO CODE § 18-8201; Illinois, ILL. ANN. STAT. ch. 38, § 29B-1(a); Kansas, KAN. STAT. ANN. § 65.4142; Missouri, MO. ANN. STAT. § 574.105; New Jersey, 1994 N.J. LAWS 121 ; Oklahoma, OKLA. STAT. ANN. tit. 63, § 2-503.1; Pennsylvania, PA. STAT. ARM. tit. 18, § 5111; Rhode Island, R.I. GEN. LAWS § 11-9.1-15; South Carolina, S.C. CODE ANN. § 44-53-475; Utah, UTAH CODE ANN. §§ 76-10-1903; Virginia, VA. CODE ANN. § 18-2-248.7; Washington State, WASH. CODE ANN. § 9A.83.020; and *see* MMLA §5.

[102] However for "financial institution" money laundering under 18 U.S.C. § 1957 there is a threshold of $10,000.

[103] California, CAL. HEALTH & SAFETY CODE §§ 11370.6 and 11370.9; Colorado, COL. REV. STAT. § 1818-408; Kansas, KAN. STAT. ANN. § 65.4142; Maryland, MD. CODE ANN. art. 27 § 297B; Oklahoma, OKLA. STAT. ANN. tit. 63, § 2-503.1; South Carolina, S.C. CODE ANN. § 11-9.1-15; Virginia, VA. CODE ANN. § 18-2-248.7.

[104] BUREAU OF INTERNATIONAL NARCOTICS MATTERS, U.S. DEPARTMENT OF STATE, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT (Apr. 1994).
received in business).

Legislation of 21 states reflects the eclectic nature of the source of laundered money.[105] Of these jurisdictions, some states specify that the qualifying crimes for money laundering include all the offenses which are predicates of racketeer enterprise corruption acts, which often includes violations of the controlled substances statutes,[106] while, in several others, any felony is a predicate.[107] Included in this category is the Missouri statute, which extends the predicate act to any felony under the laws of Missouri or the United States.[108] In Arkansas, the statute provides that the predicate crime may be any violation of Arkansas law which is an act of violence or committed for pecuniary gain.[109]

3. Some Key Definitions

a. Financial Institution

A broad range of businesses qualify as financial institutions[110] such as banks, credit unions, savings and loan institutions, brokers or dealers in securities, currency dealers or exchangers, including check cashiers, money transmitters, telegraph companies, the Postal Service, casinos, or otherwise as defined in 31 U.S.C. § 5312(a)(2).[111] In certain states, auto dealers and travel agencies[112] and even card clubs[113] are defined as financial institutions.

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[105] This reflects the remaining 20 jurisdictions and the other California money laundering statute.

[106] *See, e.g.,* Arizona, ARIZ. REV. STAT. §§ 13-2317(A)(1) and (A)(2); Florida, FLA. STAT. ANN. § 896.101(2); Idaho, IDAHO CODE §§ 18-8201(1),(2) and (3); Nevada, NEV. REV. STAT. ANN. § 896.101(2); §§ 207.195(l) and (4)(c); New York, N.Y. PENAL LAW § 470.00(5).

[107] *See, e.g.,* California, CAL. PENAL CODE §§ 186.9(e) and 186.10; Connecticut, CONN. GEN. STAT. ANN. § 53a-275(3); Georgia, GA. CODE ANN. § 7-1-915(c); and Hawaii, HAW. REV. STAT. § 708-8121.

[108] MO. ANN. STAT. ch. 574, § 574.105.2(2).

[109] ARK. STAT. ANN. § 5-42-203(a). The Model Money Laundering Act defines "specified unlawful activity" as "any act, including any preparatory or completed offense, committed for financial gain that is punishable [as a felony] [by confinement for more than one year] under the laws of this state, or, if the act occurred outside this state, would be punishable [as a felony] [by confinement for more than one year] under the laws of the state in which it occurred and under the laws of this state."
MMLA § 4(c). *See also* New Jersey, 1994 N.J. LAWS 121(4); and Texas, TEX. PENAL CODE ANN. § 34.01(1).

[110] *See, e.g.,* Pennsylvania, PA. STAT. ANN., tit. 18 § 5111(f); and Utah, UTAH CODE ANN. § 76-101902, whose statutes each contain a broad range.

[111] 31 U.S.C. § 5312(a), includes, *inter alia,* operators of credit card systems; insurance companies; dealers in precious metals, stones or jewels; persons involved in real estate closings and settlement; and pawnbrokers. Rhode Island, R.I. GEN. LAWS § 11-9.1-15 (d)(6), and South Carolina, S.C. CODE ANN. § 44-53-475(c), adopt the Federal definition by reference.

[112] *See, e.g.*, New York, N.Y. PENAL LAW § 470.00(6)(b)(q), and (t).

[113] *See, e.g.,* California, CAL. PENAL LAW § 186.9(b).

b. Monetary Instruments

Another key definition is that of "monetary instrument." The prevailing definition, where it is expressly defined by statute, is that a monetary instrument includes coin and currency (foreign or domestic), travelers checks, personal checks, bank checks and money orders.[114]

Some statutes specify that checks are "monetary instruments" only if presented in "bearer form," i.e., made out to cash.[115] The statutes of Connecticut and New York provide for the substitution of "equivalent property" in lieu of a monetary instrument.[116]

c. Presumptions

Very few statutes contain presumptions. However, the Connecticut statute provides that under the following four circumstances there is a presumption that the defendant knew that the monetary instrument(s) is derived from criminal activity:[117]

> (1) if a person pays less than face value for one or more monetary instruments that are in fact derived from criminal activity; or,
>
> (2) if a person engages in a transaction involving one or more monetary instruments that are in fact derived from criminal activity, knowing or believing that the instruments or equivalent property exchanged for such criminally derived instruments, bear fictitious names; or,

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[114] The definition of "monetary instruments" includes gold and other precious metals and gems. One state statute limits "gems" to "diamonds, emeralds, rubies and sapphires." California, CAL. PENAL LAW § 186.9(d).

[115] California, CAL. PENAL CODE § 186.9(d); and *see* Illinois, ILL. ANN. STAT., ch. 38, § 29B(b)(3). Contrast this to the Federal definition based upon "travelers checks, personal checks, bank checks, and money orders" in such form that title passes upon delivery. 18 U.S.C. § 1956(c)(5).

[116] N.Y. PENAL LAW § 470.00(2) defines equivalent property as "precious metals, stones, or jewelry, airline tickets, stamps, or credit in an account in a financial institution; but shall not include personal services of any kind;" and *see* similar provisions in Connecticut, CONN. GEN. STAT. ANN. § 53a-275(2).

[117] CONN. GEN. STAT. ANN. § 53a-282.

(3) if a person fails to record or report a transaction involving one or more monetary instruments that are in fact derived from criminal activity, in circumstances under which such recording or reporting is either required by law or is in the ordinary course of business; or,

(4) if a person engages in a transaction involving one or more monetary instruments that are in fact derived from criminal activity, knowing that the physical condition or form of the monetary instruments makes it apparent that they are not the product of *bona fide* business or financial transactions.[118]

E. EXEMPTIONS

Several statutes provide an exemption for certain trades or businesses engaged in by the charged defendant. The most prevalent exemption pertains to transactions involving attorneys' fees.[119] This is in response to the legislative concern that there be no infringement of the

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[118] *See also,* Texas, TEX. PENAL CODE ANN. § 34.02(b) which provides, for purposes of one form of money laundering, that a person is presumed to believe that funds are proceeds of criminal activity if a peace officer or a person acting at the direction of a peace officer represents to the person that the funds are proceeds of a criminal activity. *See also* New Jersey, 1994 N.J. LAWS 121, § 4, pertaining to an inference with respect to "knowledge."

[119] Section 1957 was amended in 1988 to provide an express but limited exemption for "attorney fee" transactions, 18 U.S.C. § 1957 (f)(1), which appears more limited than the Department of Justice policy. The statute provides that a "monetary transaction" does not include "any transaction necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment of the Constitution."

The formal prosecution policy of the Department of Justice provides that prosecutions of defense attorneys under § 1957 for receipt of criminally derived funds as legal fees in a criminal case may be taken only with the approval of the Attorney General of the Criminal Division. The policy further provides that such approval will not be granted in any case in which the defense attorney received the tainted property as *bonafide* fees for representation of the client/payor in a criminal matter unless (1) the defense attorney had *actual* knowledge of the criminal derivation of the property; and, (2) the defense attorney acquired such actual knowledge from a source other than confidential attorney-client communications or his own efforts in providing effective representation for the client/payor in the criminal case.

defendant's Sixth Amendment right to counsel in a criminal case.[120] Another exemption provides for monies placed in escrow in the course of real estate transactions.[121] It would appear that, even where there is a statutory exemption, there can be a prosecution of defense attorneys who "knowingly" receive and deposit tainted funds either as a sham or fraudulent transaction or accept them as legal fees for representation of a client in any non-criminal matter.[122]

F. Civil Penalties

Prosecutors are wise to consult the civil asset forfeiture and civil or criminal racketeering statutes in their respective jurisdictions to determine what additional remedies are available in connection with money laundering crimes. However it should be noted that money laundering statutes in certain states include imposing civil penalties. The defendant may incur a civil penalty not in excess of double the value of the property of the monetary instruments involved in the transaction or $10,000,[123] or may even have to pay treble damages.[124] In at least one instance, the civil penalty contained in the money laundering statute provides for recovery of the costs of

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[120] *See, e.g.*, Illinois, Ill. Ann. Stat. ch. 38, § 29B-1(b)(1); Maryland, Md. Ann. Code, art. 27, § 297B(6)(1); and Nevada, Nev. Rev. Stat. Ann § 207.195(4)(b). Arizona b policy exempts *bona* fide purchasers which would include legal fees not intended to circumvent the statute. The California Penal Law statute requires an affirmative showing by the prosecution that the monetary instruments accepted as attorneys' fees are intended as other than *bona fide* representation, *i.e.*, with the intent to disguise or aid in disguising the source of the funds or the nature of the criminal activity, § 186.10(a). The Washington statute requires an affirmative showing of either intent to disguise and conceal the source, ownership, or control of the property or an intent to avoid a transaction reporting requirement under federal law. Wash. Rev. Code. § 9A.83.020(2).

[121] New York Penal Law §§ 470.05 and 470.10 provide that is it not unlawful to return funds held in escrow "(a) as a portion of a purchase price for real property pursuant to a contract sale; or (b) to satisfy the tax or other lawful obligations arising out of an administrative or judicial proceeding concerning the person who provided the escrow funds."

[122] This may not prevent the state from seeking forfeiture of the monies given as attorneys fees. The Supreme Court has ruled that there is no Sixth Amendment right to use criminally derived property to retain counsel of choice in a criminal case. *See,* Kaplan and Drysdale v. United States, 109 S. Ct. 2646 (1989); United States v. Monsanto, 109 S. Ct. 2657 (1989).

[123] *See, e.g.*, Pennsylvania, Pa. Stat. Ann. tit. 18, § 5111(c); South Carolina, S.C. Code Ann. § 44-53-475(B); and Utah, Utah Code Ann. § 76-10-1905.

[124] *See, e.g.*, New Jersey , 1994 N.J.Laws 121, § (6)(a).

suit, including reasonable investigative and attorneys' fees.[125] Such civil penalty may be imposed in addition to any applicable criminal fine and in addition to any civil forfeiture or other remedy available. Prosecutors should be concerned that a civil penalty may be interpreted as punitive as opposed to remedial. This could result in a violation of the double jeopardy clause where the defendant has already been sanctioned in the underlying criminal case.[126]

G. Currency Transaction Reporting Violations

A number of states have adopted criminal statutes for violation of their currency transaction reporting laws. Several states have adopted statutes which provide that a person who conducts one or more transactions, involving one or more monetary instruments, with a particular threshold value (usually in excess of $10,000), and who fails to comply with the currency transaction reporting requirements under state and/or federal law would be presumed to know that the monetary instrument or instruments involved are the proceeds of criminal conduct.[127] These statutes are analogous to the Federal laws enforcing currency transaction reporting requirements. Discussion of these particular statutes is beyond the scope of this handbook.

H. Alternative Theories of Prosecution

Money laundering is a financial crime, but highly particularized; the money laundering statutes have been adopted by the various states with specific goals in mind. Prosecutors may therefore find themselves faced with a set of facts involving a subject's financial affairs that do not satisfy the specific elements test of their respective statutes. In such instances, the resourceful prosecutor should then turn to other criminal statutes to prosecute the subject. Discussion of this topic is also beyond the scope of this handbook.

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[125] Washington, Wash. Rev. Code § 9A.83.020(5).

[126] United States v. Halper, 490 U.S. 435 (1989). Recent decisions indicate the law is not well settled in this area and prosecutors are well advised to consult appellate decisions in their respective states.

[127] Some states also provide for a state "analog" of the IRS Form 8300 (report of cash received in business).

I. Elements of State Money Laundering Statutes — Charts

1. Intent or *Mens Rea*

INTENT OR *MENS REA*			
	Knowledge		Specific Intent
MMLA	X	and*	X
AZ	X	and	X
AR	X	and	X
CA (PC)	X	or	X
CA (H&S)	X	and	X
CO	X	or	X
CT	X	and	X
FL	X	and	X
GA	X	and	X
HI	X	or	X
ID	X	or	X
IL	X	and	X
KS	X	or	X
LA	X	and	X
MD	X	and	X
MI	X	and	X
MN	X	-----	----------
MO	purpose**	or	purpose**
NV	X	and	X
NJ	X	and	X
NY	X	and	X
OK	X	or	X
PA	X	and	X
RI	X	or	X
SC	X	and	X
TX	X	-----	--------
UT	X	or	X
VA	X	and	X
WA	X	----	--------

* "and" signifies that the statute contains at least one form of money laundering that requires proof of both knowledge and specific intent.

** Missouri statute uses language which states, "with a purpose to..."

2. Conduct or *Actus Reus*

CONDUCT OR *ACTUS REUS**										
	Transaction		**Transportation**		**Recieves, acquires or maintains an interest**		**Means/facilitation**		**Business**		**Financial institution**
MMLA	X		X		X				X		
AZ	X		X		X		X		X		
AR							X				X
CA(PC)											X
CA (H&S)	X		X		X		X				
CO	X		X		X		X				
CT	X										
FL	X		X								
GA	X										
HI											X
ID	X		X				X				
IL	X										
KS	X		X		X		X				
LA	X		X		X		X				
MD	X		X		X		X				
MI	X				X						
MN	X								X		
MO	X										
NV	X		X								
NJ	X		X				X				
NY	X										
OK	X		X		X		X				
PA	X										
RI	X										
SC	X		X								
TX	X		X		X		X				
UT	X		X		X						
VA	X										
WA	X										

* This is based on a literal reading of statutes; it does not account for interpretations or language.

3. Threshold Amount

THRESHOLD AMOUNT								
	None or "anything of value"		Minimum $3,000		Exceeds $5,000		$10,000 or more	Exceeds $25,000
MMLA	X							
AZ	X							
AR	X							
CA(PC)					X			
CA (H&S)								X
CO	X							
CT							X	
FL	X							
GA	X							
HI					X			
ID	X							
IL	X							
KS								
LA			X					
MD	X						X	
MI							X	
MN					X			
MO	X							
NV							X	
NJ	X							
NY							X	
OK	X							
PA	X							
RI	X							
SC	X							
TX			X					
UT	X							
VA	X							
WA	X							

4. Predicates

PREDICATES							
	Drugs Only		SUA*		Any Felony		Any criminal activity or unlawful activity
MMLA			X				
AZ			X				
AR			X				
CA(PC)					X		
CA (H&S)	X						
CO	X						
CT					X		
FL			X				
GA					X		
HI					X		
ID			X				
IL							X
KS	X						
LA					X		
MD	X						
MI			X				
MN					X		
MO					X		
NV			X				
NJ							X
NY			X				
OK	X						
PA							X
RI			X				
SC	X						
TX							X
UT			X				
VA	X						
WA			X				

* These statutes specify predicates from among various criminal acts.

5. Qualifying Monetary Instruments

QUALIFYING MONETARY INSTRUMENTS	
MMLA	Anything of value
AZ	Domestic and foreign coin and currency; bearer instruments; bank and traveler's checks; money orders
AR	Domestic and foreign coin and currency; bearer instruments; bank and traveler's checks; money orders
CA(PC)	Domestic and foreign coin and currency; bearer instruments; negotiable instruments; gems; etc.
CA (H&S)	Domestic and foreign coin and currency; bearer instruments; negotiable instruments; gems, etc.
CO	Anything of value
CT	Domestic and foregin coin and currency; bearer instruments; or "equivalent property"
FL	Domestic and foreign coin and currency; bearer instruments; negotiable instruments
GA	Domestic and foreign coin and currency; bearer instruments; bank and traveler's checks; money orders
HI	Domestic and foreign coin and currency; bearer instruments; checks; money orders; gems, etc.
ID	Anything of value
IL	Domestic and foreign coin and currency; bearer instruments; traveler's checks
KS	Anything of value
LA	Domestic and foreign coin and currency
MD	Domestic and foreign coin and currency; bearer instruments; bank and traveler's checks
MI	Domestic and foreign coin and currency; bearer instruments
MN	Domestic and foreign coin and currency; bearer instruments; bank and traveler's checks; money orders; securities; gems; etc
MO	Domestic and foreign coin and currency
NV	Domestic and foreign coin and currency; checks and negotiable instruments; securities; gems; etc.
NJ	Anything of value
NY	Domestic and foreign coin and currency; bearer instruments; or "equivalent property"
OK	Anything of value
PA	Domestic and foreign coin and currency; checks and negotiable instruments; bearer instruments
RI	Domestic and foreign coin and currency; checks and negotiable instruments; bearer instruments
SC	Domestic and foreign coin and currency; checks and negotiable instruments; bearer instruments
TX	Domestic and foreign coin and currency
UT	Domestic and foreign coin and currency; checks and negotiable instruments; bearer instruments
VA	Domestic and foregin coin and currency; checks and negotiable instruments; bearer instruments
WA	Anything of value

6. Sting Provisions

	PROVISIONS		
	"Attempt to Conduct"	"Sting" Provision	Exemption for Legal Fees
MMLA	NO	NO	NO
AZ	NO	NO	NO
AR	YES	YES	YES
CA(PC)	YES	NO	YES
CA (H&S)	NO	NO	YES
CO	NO	NO	NO
CT	NO	NO	NO
FL	YES	YES	NO
GA	YES	NO	NO
HI	YES	NO	NO
ID	NO	NO	NO
IL	YES	NO	YES
KS	NO	NO	YES
LA	NO	NO	YES
MD	NO	NO	YES
MI	YES	YES	NO
MN	NO	NO	YES
MO	YES	NO	NO
NV	YES	NO	YES
NJ	NO	NO	NO
NY	NO	NO	NO
OK	NO	NO	YES
PA	NO	NO	NO
RI	YES	YES	NO
SC	YES	YES	NO
TX	NO	YES	YES
UT	NO	YES	NO
VA	YES	NO	NO
WA	YES	YES	YES

J. State Money Laundering Statutes

STATE	CITATION
Arizona	Ariz. Rev. Stat. Ann. § 13-2317
Arkansas	Ark. Code Ann. §§ 5-42-201 to 5-42-205
California	Cal. Health & Safety Code §§ 11370.6 and 11370.9 and Cal. Penal Law §§ 186.9 and 186.10
Colorado	Colo. Rev. Stat. § 18-18-408
Connecticut	Conn. Gen. Stat. Ann §§ 53a-275 to 53a-282
Florida	Fl. Stat. Ann. § 896.101
Georgia	Ga. Code Ann. §§ 7-1-911 to 7-1-916
Hawaii	Haw. Rev. Stat. §§ 708-8120 and 708-8121
Idaho	Idaho Code § 18-8201
Illinois	Ill. Ann. Stat. 38 § 29-B-1
Kansas	Kan. Stat. Ann. § 65.4142
Louisiana	La. Rev. Stat. Ann. § 40:1049 as revised by La Act 78, 1994, ALS 78
Maryland	Md. Code Ann., art. 27 § 297B
Michigan	Mich. Comp. Laws §§ 750-411j to 750-411q
Minnesota	Minn. Stat. Ann. §§ 609.496 to 609.497
Missouri	Mo. Ann. Stat. ch. 574.105
Nevada	Nev. Rev. Stat. Ann. § 207.195
New Jersey	N.J. Stat. Ann. L. 1994, c.121(4)
New York	N.Y. Penal Law §§ 470.00 to 470.20
Oklahoma	Okla. Stat. Ann. tit. 63, § 2-503.1
Pennsylvania	Pa. Stat. Ann. tit. 18 § 5111
Rhode Island	R.I. Gen. Laws §§ 11-9.1-15
South Carolina	S.C. Code Ann. § 44-53-475
Texas	Tex. Health & Safety Code Ann. § 481.126 and Tex. Penal Code Ann. tit. 7 §§ 34.01- § 34.02
Utah	Utah Code Ann. §§ 76-10-1901 to 76-10-1908
Virginia	Va. Code Ann. § 18-2-248.7
Washington	Wash. Rev. Code §§ 9A.83.010 to 9A.83.040

K. Model Money Laundering Act

Section 1. Short Title.

This [Act] shall be known and may be cited as the "Model Money Laundering Act."

Section 2. Legislative Findings.

(a) Criminal activity and the networks that characterize criminal industries divert millions of dollars form the legitimate commerce of this state each year through the provision of illicit goods and services, force, fraud, and corruption.

(b) Individuals and groups associated together to conduct criminal activity pose an additional threat to the integrity of legitimate commerce by obtaining control of legitimate enterprises through criminal means, by force or fraud, and by manipulating those enterprises for criminal purposes.

(c) Money and power generated by criminal activity are being used to obtain control of legitimate enterprises, to invest in legitimate commerce, and to control the resources of facilitating ongoing criminal activity.

(d) Criminal activity and proceeds of criminal activity subvert the basic goals of a free democracy by expropriating the government's monopoly of the legitimate use of force, by undermining the monetary medium of exchange and by subverting the judicial and law enforcement processes that are necessary for the preservation of social justice and equal opportunity.

(e) Criminal activity impedes free competition, weakens the economy, harms in-state and out-of-state investors, diverts taxable funds, threatens the domestic security, endangers the health, safety, and welfare of the public and debases the quality of life of the citizens of this state.

(f) Criminal activity becomes entrenched and powerful when the social sanctions employed to combat it are unnecessarily limited in their vision of the goals that may be achieved, in their legal tools or in their procedural approach.

(g) Societal strategies and techniques that emphasize bringing criminal remedies to bear on individual offenders for the commission of specific offenses are inadequate to reach the economic incentive supporting the criminal network, are expensive to implement, and are costly in terms of the loss of personal freedom of low-level participants in criminal networks. Comprehensive strategies are required to compliment the criminal enforcement strategies by focusing on the financial components and motivations of criminal networks; enlisting the assistance of private victims; empowering courts with financially oriented tools; and developing new substantive, procedural and evidentiary laws creating effective financial remedies for criminal activity.

Section 3. Purposes.

The purposes of this [Act] are:

(a) to defend legitimate commerce from criminal activity;
(b) to provide economic disincentives for criminal activity;
(c) to remedy the economic effects of criminal activity; and
(d) to lessen the economic and political power of criminal networks in this state by providing to the people and to the victims of criminal activity new preventive measures through criminal sanctions and civil remedies.

Section 4. Definitions.

In this [Act], unless the context otherwise requires:

(a) "Proceeds" means property acquired or derived directly or indirectly from, produced through, realized through, or caused by and act or omission and includes any property of any kind.

(b) "Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim or right with respect to anything of value, whether real or personal, tangible or intangible.

(c) "Specified unlawful activity" means any act, including any preparatory or completed offense, committed for financial gain, that is punishable [as a felony] [by confinement for more than one year] under the laws of this state, or if the act occurred outside this state, would be punishable [as a felony] [by confinement for more than one year] under the laws of this state in which it occurred an under the laws of this state, involving:

(1) [trafficking in controlled substances, homicide, robbery, extortion, extortionate extensions of credit, trafficking in explosives or weapons, trafficking in stolen property, or obstruction of justice,] [a reference to those acts or offenses described in 18 U.S.C. 1956(c)(7)].

(2) [reference to grades of offenses, such as "any first degree misdemeanor or higher,' or "any felony," and/or to other appropriate specified state offenses.]

(3) [for states with state racketeering or criminal profiteering statutes, reference to "predicates" to the racketeering offenses and to the racketeering offenses, e.g., Illegal investment in an enterprise, illegal control of an enterprise, illegal conduct of an enterprise].

(d) "Transaction" includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawals, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of any monetary instrument, use of a safe deposit box, or any other acquisition or deposition of property be whatever means effected.

(e) "Unlawful activity" means any act which is chargeable or indictable as [an offense] [a crime] or

any [degree] [classification] under the laws of the state in which the act occurred [or under federal law] and, if the act occurred in a state other than this state, would be chargeable or indictable as [an offense] [a crime] and any [degree] [classification] under the laws of this state [or under federal law].

Section 5. Penalty; Civil Remedies.

(a) It is unlawful for any person:

(1) who knows that the property involved is the proceeds of some form of unlawful activity, to knowingly transport, receive or acquire the property or to conduct a transaction involving the property, when, in fact, the property is the proceeds of specified unlawful activity;

(2) to make available to another, by transaction, transportation or otherwise, knowing that it is intended to be used for the purpose of committing or furthering the commission of specified unlawful activity;

(3) to conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the intent to conceal or disguise the nature, location, source, ownership, or control of the property or the intent to avoid a transaction reporting requirement under [Model Financial Transaction Reporting Act] [or federal law]; or

(4) knowing that the property involved in the transaction is the proceeds of some form of unlawful activity, to knowingly engage in the business of conducting, directing, planning, organizing, initiating, financing, managing, supervising, or facilitating transactions involving property that, in fact, is the proceeds of specified unlawful activity.

(b) A person who violates:

(1) paragraph (1),(2) or (3) of subsection (a) of this section is guilty of a crime and upon conviction may be imprisoned for not more than [ ] years, fined not more than [ ] or twice the value of the property involved, whichever is greater, or both.

(2) paragraph (4) of subsection (a) of this section is guilty of a crime and upon conviction may be imprisoned for not more than [ ] years, fined not more than [ ] or twice the value of the property involved, whichever is greater, or both.

(c) A person who violates any subsection of this section is subject to a civil penalty of three times the value of the property involved in the transaction, in addition to any criminal sanction imposed.

(d) [reference to state racketeering statutes, if any, making money laundering a predicate offense and incorporating civil forfeiture remedies.]

Section 6. Uniformity of Construction and Application.

(a) The provisions of this [Act] shall be liberally construed to effectuate its remedial purposes. Civil remedies under this [Act] shall be supplemental and not mutually exclusive. They do not preclude and are not precluded by any other provision of law.

(b) The provisions of this [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among state enacting it.

(c) The attorney general is authorized to enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this [Act].

Section 7. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provisions or application, and to this end the provisions of this [Act] are severable.

Section 8. Effective Date

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

PART II

INVESTIGATING MONEY LAUNDERING CASES

PART II — INVESTIGATING MONEY LAUNDERING CASES

CHAPTER ONE — CASE INITIATION AND CASE SCENARIOS

A. Case Initiation

The first question to be answered is, "How is money laundering detected?" Money laundering is a derivative crime; its investigation is often an outgrowth of investigation of the underlying crimes for profit. These underlying crimes for profit might be anything from trafficking in illegal goods, such as narcotics, weapons, public corruption, fraud, or improper hazardous waste disposal. Each large investigation into crimes for profit should be accompanied by a crime-proceeds investigation targeting the money laundering aspect of the crime. This is particularly true when the underlying crime involves a large criminal organization. It is as important to the organization to hide its money as to commit the crime itself for the participants to enjoy the fruits of the illegal activity.

By concentrating at least part of the investigative effort on the financial aspect of crime, investigators have the opportunity to employ the spiraling case development technique discussed at page I-12. The investigation of the core activity includes evaluation of possible money laundering charges against those knowingly providing property used to commit the offense and hiding the proceeds. The investigator then uses the leads developed in the financial investigation to move to more significant targets in the organization. Temporarily focusing the investigation on the facilitator will provide leads that will allow the investigation of the core activity to focus its attention on those at a higher level in the criminal enterprise because the facilitator can provide information on how the money was spent and to whom it was given.

The key, of course, is training officers in the finances of crime. Each unit focusing on crime for profit should be given training in the finances of crime and should focus its efforts on this aspect of crime at each level of investigation. For instance, financial information could be included in a search warrant for a drug dealer's home (*see* Sample Warrant Application in Part II, Chapter 5), or witnesses and informants questioned for financial information as well as information on the underlying offense. A search that turns up information on the name of a

person providing real estate services or the numbers of bank accounts is as useful as one that turns up a quantity of drugs. In addition to training in the finances of crime, all law enforcement personnel authorized to conduct searches should have extensive training in Fourth Amendment jurisprudence. This is particularly important in searches that involve finding currency and searches for financial information.

The case scenario, Operation Skybox, at page II-11, is an example of the development of a money laundering case growing out of a narcotics case. It provides good examples of a number of investigative techniques such as profiling, controlled deliveries, pen registers, search warrants and interagency cooperation. It is also a good example of cooperation between the narcotic investigators who are aware of the importance of financial investigations and a financial investigation team.

Other sources of leads are governmental regulatory boards such as State Banking Commissions, whic license and regulate the non-bank financial institutions frequently used by money launders, and financial institution employees who have been trained to recognize suspicious transactions. While they are required to fill out a suspicious transaction report or a criminal referral form, a phone call may be the head start needed to make a case.

It is frequently possible to restart a stalled investigation by turning it into a tax evasion case and utilizing the resources of the tax collection agency. For a more detailed description on the subject, see the case scenarios beginning on page II-11, and the article in the Financial Investigation Resources chapter at page II-93.

Law enforcement officers are continually involved in the arrest of individuals with significant amounts of narcotics and currency. Unfortunately, because of the demands on officers' time, there is seldom follow-up investigation and analysis of information obtained by the seizure. This is particularly true of seizures made by uniformed officers on highway stops. Post-seizure analysis of several seizures could show relationships through phone numbers, addresses, vehicle ownership, or other information. Without post-seizure analysis, links between drug traffickers and facilitator go undetected. A model for establishing a post-seizure analysis team as part of a task

force operation is included in this manual with a description of the team established by the Houston High Intensity Drug Trafficking Area Task Force.

While task forces exist to investigate all types of underlying criminal conduct at the state and local level, the most frequently used, and best funded, are the regional, multi-agency narcotics task forces funded under the Byrne Block Grant program.[1] Others, such as airport task forces and tax fraud task forces, can be rich sources for money laundering investigations. Included in our case scenarios at page II-25 is a description of a health care fraud task force in Northern California that used money laundering charges to bring down a ring involved in phoney personal injury claims. One goal of a money laundering unit should be to establish with these task forces, at the very least, an informal relationship, if not a formal one based on the model proposed in the chapter on task forces.

All officers have an opportunity to contribute large and small leads. Many money laundering cases have been initiated because an officer detected a large amount of cash while making a routine traffic stop. An observation that some drug dealers seem to be driving expensive cars from one particular dealership may provide a starting point for gathering evidence on currency reporting violations and money laundering by the car dealership.

Information derived from reports to the U.S. Department of the Treasury, as required under the Bank Secrecy Act (BSA),[1] are not only the single most important source of information for the money laundering investigator, but can be the basis of proactive investigations focusing on money laundering as the primary offense. Access to the information is through the Financial Crimes Enforcement Network (FinCEN), a division of the Department of the Treasury. FinCEN's mission is to provide intelligence support to a wide range of law enforcement agencies, including state and local agencies. FinCEN provides proactive targeting information; supports ongoing criminal investigations; monitors the trends and patterns of money laundering; and assists in the coordination of law enforcement anti-money laundering and other kinds of financial crimes efforts. An explanation of BSA data and other databases available at FinCEN is included in the section on public records and electronic databases in Part II, chapter 2, Financial Investigation Resources.

[1]Administered by the Bureau of Justice Assistance, United States Department of Justice.

BSA data from FinCEN is made available to states in two forms. One is direct access through the state coordinator using either a paper form-generated request or direct computer access through Operation Gateway. States may also have entered into a Memorandum of Understanding (MOU) with Treasury to receive BSA data for transactions within the state on magnetic tape. Information retrieved through Gateway or otherwise from FinCEN must be connected to a case and is a purely a reactive tool. On the other hand, the information on the BSA tapes may be used proactively with supporting software allowing the data to be fully analyzed.

The suspicious transaction report — included on the Cash Transaction Report (CTR) — provides information that is of the greatest use in proactive investigations.[2] Computer analysis allows the investigative agency to separate out the cash transaction reports and analyze them to discover prospective targets for further investigation.

Several states have entered into MOUs and are currently using this data to select targets proactively. The experience of those doing so, however, indicates that the greatest value of proactive BSA data analysis is in the earliest stages of an investigation when the question is "Given several individuals whom we suspect are involved in revenue-producing illegal activity, who are the key players?" An answer to this preliminary question is most helpful in focusing a financial investigation — it identifies the target. Additionally, it provides a wealth of background information on the players, such as, which banks have been used by the targets, where the targets were on given dates, names of associates and amounts of cash involved in the transactions. Much of this information is difficult, if not impossible, to get from any other source. A case scenario for proactive development is found at page II-27. It describes the use of a computer analysis of suspicious CTRs to target money transmitters laundering money for cocaine traffickers in Houston, Texas.

Just because a prosecutor works in a small district attorney's office or in a small state's Attorney General's office, he or she should not discount the possibility of bringing money laundering charges. Money laundering takes many forms and a money laundering charge is usually no further away than the closest drug dealer. A case scenario for the prosecution of money laundering for the smaller states is included at page II-32.

[2] At the present time Treasury is considering changes to the CTR which will have an impact on the suspicious transaction report. Prosecutors are advised to be alert for changes in this and in other forms.

B. Case Scenarios

The following six scenarios are based on money laundering cases that help to illustrate the manner in which money laundering cases are developed under differing factual situations. The experienced prosecutor learns to recognize the possibilities inherent in criminal activity that is grounded in the profit motive. Knowing how to "follow the money" and knowing whether or not the facts will support a money laundering prosecution or an alternative charge, such as tax evasion, is the key to successful prosecution of the crime for profit.

1. Operation "Skybox"

a. Case Summary

In November 1992, San Diego Police Detectives noticed an unusually high number of packages of illegal drugs being shipped out of San Diego via Federal Express.

Federal Express employees had noticed a common thread among people shipping out the drugs. The suspects were black and had Jamaican accents. Their vehicles were 1980s Nissans, Hondas, and Toyotas registered to a local used car dealership. Male subjects would commonly wait in the vehicle while females would deliver the packages to the counter. Most of these deliveries were between 3:00 PM and 5:00 PM, were paid for in cash, with next day delivery requested. It appeared that the packages containing the drugs were being shipped by a large group of suspects; however, the method of operation was nearly identical in each case.

The illegal drugs (both cocaine and marijuana) were concealed in household appliances; the packages were wrapped in Christmas or other gift wrapping paper. This wrapping technique was apparently utilized because parcel companies tend to avoid opening these packages because of the difficulty in re-wrapping such packages in their original paper.

A two-year investigation by San Diego Narcotics Detectives revealed that a well organized group, consisting mostly of illegal Jamaicans, had been distributing illegal drugs to states east of the Mississippi by using local, private, and government parcel services and female couriers on commercial airlines. Large amounts of cash had been intercepted coming into San Diego to these same suspects through UPS, Federal Express, Airborne Express, Western Union, and airline couriers. This ring of traffickers constantly changed parcel companies in order to avoid detection by law enforcement and to cut their losses should there be a seizure of cash or contraband.

Recently, the investigation revealed that the narcotic proceeds were being sent back to the owner of the same used car dealership which was the registered owner of the cars used to deliver the drugs to Federal Express. More than eight different packages of cash were intercepted and/or seized for a total of over $270,000 within a two month period. A search warrant for the dealership's business account revealed cash deposits in excess of $70,000 per month over an 18-month period.

Search warrants were executed on two residences in San Diego which were suspected sources of supply for the marijuana and cocaine. A controlled delivery of money was followed directly from the used car dealership to one residence. The other residence was identified by a female courier at the San Diego Airport as the source of the marijuana that she was carrying to the east coast.

b. Investigative Techniques

(1) Profiling

When the detectives first noticed that there were common characteristics among the suspects and the methods that were used to ship the cocaine and marijuana, they began to profile the packages themselves. A "profile" can be used as probable cause for a search warrant when combined with a dog sniff. Also, it will alert the postal employees to contact law enforcement when a package fitting the profile is observed. In this case the profile was:

1. black male driver dropped off a black female passenger who brought the package into the office;
2. the packages were delivered to the office close to closing time;
3. overnight air delivery was requested;
4. fees were paid in cash;
5. packages were gift wrapped; and
6. female name on return address.

(2) Controlled Deliveries

In cases of this nature, it is essential that there be cooperation between law enforcement and the package delivery service. Federal Express was concerned about the safety of their employees and the reputation of their business. "Overnight delivery" guaranteed delivery by 10:00 A.M. the following day. If packages were held beyond that time while law enforcement obtained a search warrant, Federal Express would have to make excuses concerning the whereabouts of the package.

Packages coming into San Diego addressed to the targeted drug traffickers and money launderers were first opened with a search warrant followed by a controlled delivery. An undercover police officer dressed in a Federal Express uniform and driving a Federal Express truck made the delivery and obtained a signature for the receipt of the package. Surveillance units were set up ahead of time in order to observe the delivery and follow the package when, and if, it changed hands. The surveillance units observed the packages of money being accepted by the owner of the used car dealership and, then, being handed off, intact, to previously identified Jamaican drug traffickers. On one occasion, the money lead the surveillance units to a residence which had been suspected of being a source of large quantities of marijuana. A search warrant was later obtained with the use of separate probable cause, thus allowing execution without divulging the greater investigation.

A controlled delivery of another package followed the same pattern. Again the owner of the used car dealership accepted the package and handed it to an identified Jamaican dealer. The

Jamaican was watched until he realized that he was being followed and abandoned his car, with the motor running, in a parking lot. Marked units were summoned to the scene to impound the vehicle which was registered to the used car dealership. Inside the vehicle the officers found the box of money with the address label torn off and a cellular phone. While the officers were completing their impound, the owner of the used car dealership arrived at the scene and told the officers that he had been contacted by the driver of the car. He requested that the car be released to him. The request was denied.

(3) Dial Number Recorders

A search warrant requesting a Dial Number Recorder (or Pen Register) is a court order that the telephone company record all out-going numbers dialed together with the time and date. After it was discovered that packages of money were being mailed directly from the east coast to the used car dealership, a search warrant was obtained on the telephone number of the used car dealership. The warrant set out probable cause to obtain the numbers of all outgoing calls from the dealership during a ten day period (this was "re-uped" for successive ten day periods). These numbers would become especially useful during controlled deliveries of money. Calls were made to the east coast before the money came in and calls were made after the delivery. These calls formed the basis of overt acts for the purpose of establishing a criminal conspiracy.

A dial number recorder can produce a huge volume of computer generated information which must be identified and analyzed. The State of California Narcotics Information Network has inputed all the information from the phone company's discs and is preparing charts showing the connections between the target's phone calls, the controlled deliveries and the observations of the surveillance units.

(4) Inter-agency cooperation

The success of Operation Skybox depended heavily upon cooperation between law enforcement agencies in many jurisdictions, both Federal and State. The Airport Task Force made

up of both Federal and State agents notified Skybox detectives when they detained couriers with connections to Jamaican possees. Customs and the IRS aided in obtaining visa information and in analyzing financial information. Postal Inspectors performed data searches for packages mailed to certain address and suspects. Finally, the Narcotics Task Force Package Interdiction Team assisted in profiling and the detention and seizure of incoming packages of money.

Many controlled deliveries of illegal drugs were made on the east coast with the cooperation of local police agencies there. The resulting arrests helped to establish the fact that the incoming money was the product of drug proceeds. And finally, but most importantly, the relationship of mutual respect that was cultivated by the Skybox detectives with Federal Express employees played a key role in making the case.

Operation Skybox demonstrates a number of the factors vital to success in money laundering cases. Among those are the alertness of the package express employees and the follow up which allowed the case to be developed to its full maximum potential. The investigators carefully followed the leads provided by the employees and patiently worked up a winning case. The task force approach also proved vital to the successful conclusion of the investigation.

2. From Trafficking to Money Laundering and Tax Evasion

The following case demonstrates the proactive development of money laundering and tax evasion charges arising out of a drug trafficking arrest where the evidence in the drug case was somewhat thin.

a. Case Summary

Joan Smith was arrested and successfully prosecuted on Possession of Narcotics for Sale charges based on the seizure of 80 pounds of marijuana at her residence. A total of $60,000 in cash was seized from two safe deposit boxes. Smith, along with her husband, James Smith, also had $40,000 in a joint savings account.

Bank records, real estate records, and receipts for expenditures were seized from the Smith residence along with the marijuana. Seized records revealed that Joan Smith had received a substantial inheritance the previous year ($45,000). Joan told officers that she had not worked for several years, but her husband was self-employed in a car restoration business.

b. Legal Issues

The Califronia money laundering statute (Cal. Penal Code section 186.10) requires a cash or qualifying monetary instrument transaction in excess of $5,000 derived from felony proceeds through a financial institution.

Failure to File Income Tax Returns with an Intent to Evade Taxes (Cal. Revenue and Taxation Code section 19706) requires the wilful failure to file an income tax return with the intent to evade taxes.

c. Objective

The objective was to develop money laundering and/or tax evasion charges against Joan and James Smith. At the time of the arrest of Joan Smith, the evidence was insufficient to bring narcotic trafficking charges against James Smith. Yo make the case, investigators used the followoing investigative techniques, some of which were pursued simultaneously..

(1) Review of Records Seized at Residence

Receipts and contracts showed expenditures by the Smiths in excess of $70,000 in 1992 and $110,000 in 1993. Real estate records revealed a purchase of unimproved real property in 1993 for $68,000.

(2) Check Data Bases, Public Records, Department of Motor Vehicles

The Currency Transaction Report data base showed Joan Smith depositing $16,000 in cash in $100 bills in a previously unknown bank account in 1992. The nature of this deposit ($100 bills and substantial amount of cash) is consistent with a narcotic trafficking/money laundering scheme. Computer and public records searches of real estate ownership records showed that the

Smiths owned the residence they were living in as well as the unimproved real estate. The motor vehicle check showed that the Smiths also owned several cars.

(3) Determine Status of Employment

A written request to the Employment Development Department showed that neither of the Smiths had been employed by another person or entity for the last two years. A review of the Fictitious Business Name records showed that James Smith had not filed a fictitious business name statement for his purported car restoration business. A written request to the California Board of Equalization (sales tax agency) showed that James Smith had not applied for a sales permit or filed quarterly sales tax returns as required for a business that buys, restores, and resells cars.

(4) Determine State Income Tax Filing Status for the Last Five Years

A fax request to the California Franchise Tax Board showed that Smiths had filed tax returns for 1989-91, but had not filed returns for 1992 and 1993. Certificates of non-filing and due diligent search were obtained from the agency.

(5) Execute Search Warrants on All Known Banks (Including Credit Card Banks) Used by the Smiths and All Escrow Companies Involved in Smith Real Estate Purchases

Under California law, and the laws of many other states, search warrants are necessary to obtain financial records during the investigative stage. In several other states, racketeering demands and investigative subpoenas are allowed to search financial institution records.

Cancelled checks and credit card documents showed an additional $30,000 expended in 1992 and $50,000 expended in 1993 by the Smiths. Escrow records from the sale of the unimproved real estate purchase showed that the Smiths paid for the downpayment with two cashier's checks, one for $6,500 and the other for $5,000. Bank records established that Joan Smith's inheritance of $45,000 could be traced and isolated to a joint savings account with a balance of $40,000.

Search warrants were executed on banks which issued the cashier's checks to determine the existence of "qualifying cash transactions" over $5,000 for purposes of satisfying the state money laundering statute. This is an essential step in those states having thresholds for money laundering cases. The records revealed that both cashier's checks were purchased in cash, thereby qualifying them as two money laundering violations (a $4 fee was paid along with the $5,000 resulting in that transaction satisfying the threshold requirement of "in excess of $5,000").

(6) Preparation of a Source and Application Analysis Schedule

Using documents obtained from the residence, bank records, credit card records, and real estate records, the investigative auditor prepared a schedule listing all known expenditures of the Smiths for the target years (1992 and 1993 —years involved in narcotic trafficking). The expenditure list included all asset purchases, mortgage payments, increases in balances in accounts, utility payments, living expenses, etc.) From the total known expenditures for each year, the auditor subtracted income from legitimate sources (*e.g.*, loans, inheritance). This resulted in a bottom line figure for sources of income from illegal sources for 1992 of $100,000 and for 1993 of $160,000.

(7) Add State Franchise Tax Board as a Member of the Investigative Team

The State Franchise Tax Board assists with calculations and expert testimony concerning failure to file income tax returns with an intent to evade violations. (Under California law a couple must file an income return where their income exceeds $16,000 in a calendar year.) Because income tax charges were expected to be filed, the Franchise Tax Board could give the investigative team the otherwise privileged copies of the income tax returns filed by the Smiths for the years 1989-1991. These returns show that the Smiths knew they are supposed to file income tax returns and did so, and did not have any income producing assets or businesses as of 1991 to support their expenditures in 1992 and 1993.

While the threshold amounts for filing, and access to tax records, will vary from state to state, it is important to remember that, where a tax case can be made, the state revenue department is a valuable resource tool both for information and expertise.

d. Analysis

A financial investigation arising from a narcotic trafficking case must focus on establishing that the targets are expending significantly more than their assets or than they are earning from legitimate sources. The investigative team must anticipate defenses as to sources of the money and refute these defenses during the course of the investigation. In this case scenario, the anticipated defense of money derived from inheritance was refuted/neutralized by tracing the inheritance to one bank account. The defense of money derived from legitimate employment (particularly the car restoration business) was refuted by the lack of records at various governmental agencies (*e.g.*, Employment Development Department, Board of Equalization, Franchise Tax Board— no income tax returns filed for 1992 and 1993). The filed income tax returns along with financial statements prepared by the Smiths for the refinance of their residence in 1991 also helped refute the defense argument that the Smith expenditures for 1991 and 1992 were derived from a self-employment business as well as the argument that the expenditures were derived from a liquidation of previously-owned assets. (*See United States v. Cruz*, 993 F.2d 164, 167-168 (8th Cir. 1993), for the necessity of establishing an informal net worth of the defendant at the commencement of the target years.)

A defendant is put into a "catch-22" situation when income tax evasion charges are filed — the more he argues that the money came from legitimate business or employment sources, the more vulnerable he is to the tax evasion charges (assuming he did not file income tax returns or failed to disclose the criminal activity proceeds on filed returns).

Where a state has a money laundering statute, a financial investigation should also enable the prosecutor to file money laundering charges on specific transactions involving proceeds derived from the particular criminal activity.

This case illustrates the utility — not to say necessity — of the financial analysis. This subject is explored in more detail in Part II, Chapter 4, Net Worth and Source and Application of Funds Analysis.

3. Houston's Post-Seizure Analysis Team

a. Concept

Law enforcement officers from federal, state, and local agencies are continually involved in the arrest of individuals where significant amounts of illicit narcotics and/or currency are seized. Unfortunately, the everyday demands on law enforcement personnel seldom allow for critically needed post-seizure follow-up investigation and analysis. This is particularly true of seizures of narcotics and currency by state and local uniformed officers on highways and roads traversing their jurisdictions. Other important seizures that deserve post-seizure investigation/ analysis consideration are those made at U.S. Border Patrol checkpoints and U.S. Customs ports of entry. Many arrests and seizures can be linked through telephone numbers, mailing addresses, commercial hauling businesses, types of vehicles, areas of concealment within load vehicles, routes of travel, and other factors. On many occasions these similarities are not compared with other investigations. Thus, possible links and commonalities between major drug traffickers and their organizations going undetected.

Representatives from the Houston High Intensity Drug Trafficking Area (HIDTA) and the Office of National Drug Control Policy, realizing the importance of post-seizure analysis and investigation to identify commonalities and links between major drug trafficking organizations, and determined there was a need for a unit to acquire, investigate, and analyze data not previously available to investigators. The Post Seizure Analysis Team (PSAT), funded by Houston HIDTA appropriations, began operations on March 1, 1992, at the Department of Public Safety (DPS) Headquarters in Austin, Texas. The PSAT is managed by the Texas DPS Narcotics, DEA, FBI, U.S. Customs, and IRS. There are future plans to include an INS Intelligence agent in the unit. Additionally, the Texas National Guard has provided personnel to support this overall effort.

It was important to recieve a commitment to the unit concept from federal and local agencies prior to the creation of the unit. The majority of the federal and state participants in the PSAT were identified and had reported for duty prior to critical decisions being made about the unit's goals, objectives, and operating procedures. Each of these participants actually helped create the "ground rules" for the PSAT which greatly enhanced the level of acceptance of all decisions made. The selection of the team members (Federal/State), whether by design or fortune, helped the PSAT get off the ground without delay. Furthermore, the U.S. Attorney's Office in Houston, the coordinator for the Houston HIDTA program, has established a close working relationship with the PSAT and offers input and guidance in the continuing development of this intelligence gathering effort.

b. Goals and Objectives

Through the collection, examination, and analysis of the intelligence data available from certain drug and currency seizures that have occurred in Texas and certain areas of the nation, the goal of the PSAT is to establish connections or links between these seizures and ongoing investigations in the state and other parts of the nation. It is also the goal of the unit to identify major drug trafficking organizations through the establishment of a linkage between various seizures and compile this information into an intelligence database.

The primary objective of the team is to gather significant post-arrest/seizure information from all law enforcement agencies in Texas and, in some cases, other parts of the country. The team then performs follow-up investigations and analysis to establish interconnectivity of the information in an effort to identify major drug trafficking networks and participants. Because of the tremendous number of seizures, additional objectives of the team are:

- Establishment of drug and currency seizure criteria for seizures by state/local uniformed officers and at U.S. Border Patrol checkpoints and U.S. Customs ports of entry. That criteria is:

- 200 pounds of marijuana;
- five kilograms of cocaine;
- $10,000 in currency; or
- any amount of heroin.

- Establishment of an intelligence data/resource checklist to properly research arrest and seizure information.
- Development of procedures to collect drug-related information from all agencies involved in drug law enforcement.
- Development of systematic methods designed to investigate and analyze the interconnectivity of data obtained after significant arrests, seizures or incidents.
- Establishment of the fact that seemingly unrelated information from arrests, seizures, and incidents reveals linkages and commonalities among drug trafficking organizations.
- Development of reporting procedures to fully integrate information from all participating agencies into concise, complete intelligence briefs. These briefs contain facts from, and references to, the contributing agencies' investigative reports.
- Development of secure dissemination procedures to maintain integrity of the Federal/State reports and to allow multiagency access to information gathered by the team without compromising ongoing investigations. These procedures are:
  - Only PSAT generated reports and PSAT generated analyst workups are disseminated.
  - Dissemination forms are filed at time of dissemination of any portion of the entire PSAT report. This procedure allows the disseminating officer to advise the requesting officer or agency of other requests pertaining to the same file and allows PSAT to monitor agencies requesting information.
- Research and procurement of appropriate commercial and governmental data bases to augment existing archives.
- Development of OCDETF-quality investigations from the information compiled.
- Provision of assistance to drug law enforcement officers, at all levels in Texas and the nation, by making available a unique tool to enhance their investigations of large drug trafficking organizations.

- Promotion of enhanced cooperation between local, state, and federal agencies in drug law enforcement in Texas and the nation.
- Education of law enforcement officers on PSAT — Pipe Line officers, Texas DPS Patrol Officers during In-Service, and presentation of PSAT to all officers, Federal, State,County, and local, during drug conferences throughout the state.

In the initial stages of the PSAT, a strong emphasis was placed on "getting the word out." Team members attend many law enforcement conferences and meetings and give briefing on what the PSAT concept is all about. These briefings also help gain acceptance for the unit's effort. The team members have also provided specialized training seminars to improve the knowledge and abilities of the uniformed troopers and Border Patrol agents making the drug seizures.

c. Lessons Learned

Lesson 1. Based on the present workload, the size of the PSAT needs to be significantly expanded. However, through the establishment of a case-specific seizure criteria, this workload can be managed to a limited extent. In the formation of a similar effort, an evaluation of several factors should be conducted. Those factors are:

a. The total number of drug and currency seizures made throughout the state. This information can be acquired from sources such as the Department of Public Safety or the state Highway Patrol, any required reports submitted by local police departments or sheriff's offices, and the El Paso Intelligence Center. Other sources of information are the FBI's Racketeering Enterprize Investigation (REI), the U.S. Border Patrol, DEA, and Pipeline Seizures.

b. The commitment of personnel — commissioned, analytical, and support — by federal agencies, as well as local agencies, if desired.

Lesson 2. A factor that has proven instrumental to the current success with the PSAT is the organizational structure of the unit. The PSAT was organized by and is managed and supervised by the Texas DPS. Additionally, the PSAT operates out of offices provided by DPS in conjunction with DPS Headquarters in Austin, Texas. This oversight and management by DPS has proven important for several reasons.

a. DPS, as a state agency, is the central repository and clearinghouse for the majority of all drug intelligence generated by state and local officers. Additionally, it operates the Texas Narcotics Information System (TNIS), the statewide computerized drug intelligence pointer index.
b. TNIS is the Texas-based hub for drug intelligence that will be interconnected with similar drug intelligence hubs in the states of New Mexico, Arizona and California. The enhanced regional drug intelligence effort is the focus of the Southwest Border States initiative. Since many of the drug seizures examined by the PSAT are interstate highway interdiction cases, the location and coordination of the PSAT by the DPS is even more important.
c. As coordinator of PSAT, DPS is able to act as a neutral broker in the coordination of the efforts of the federal participants; all participants in the PSAT effort are equal players.

d. Summation

Since the Houston HIDTA Post Seizure Analysis Team has been in operation, some successes have been realized and the initial objectives have been attained. It has been a constant learning process for all team members with continued procedure upgrade and change so as to enssure the team evolves into a viable contributor to the drug law enforcement effort in Texas and the nation. From the start of the Post Seizure teams, the U.S. Attorney's offices asked several questions of the team which needed to be answered upon attempting to work up an OCDETF proposal:

a. Identity of heads of organizations,

b. Types of drugs and quantities being smuggled/delivered,

c. Mode and methods of smuggling used (18 wheelers, vehicles, aircraft, etc.),

d. Cooperating individuals within the organization, and

e. Drugs on the table.

The difference between intelligence gathering to identify an organization and PSAT:

a. PSAT is not an enforcement team; it works up a case, briefs the agencies involved and explains commonalities between the seizures, disseminates the information and eventually turns the case over for prosecution;

b. avoidance of duplication during the work up of the case:

1) If the case cross-relates to any case already being worked by the officer and/or analyst, a meeting is held and the case is transferred over to one file and one analyst.

2) If PSAT discovers during the work-up of a case that another agency already has an on-going file, that agency or officer is contacted, and the case is turned over to that agency.

It is important to emphasize that whatever successes the PSAT has had, or will have, would not have been possible without the strong and positive support from the U.S. Attorney's Office in Houston and the leadership in the various participating law enforcement agencies.

3. From Health Care Fraud to Money Laundering[1]

a. Case Summary

On October 6, 1993, a federal grand jury in San Francisco, California, returned three indictments charging a total of 12 defendants, including three attorneys and two physicians as well as administrators of various law firms and medical clinics, with mail fraud and money laundering. The indictments were announced in conjunction with the formation of a Health Care Fraud Task Force in the Northern District of California. Northern California's Health Care Fraud Task Force is coordinated by the U.S. Attorney's Office in that judicial district and includes representatives

[1] This section is an adaptation of an article written by Assistant U.S. Attorney of the Northern District of California, Stephen Meagher, and Trial Attorney of the Money Laundering Section of the Department of Justice, Laury Gordon, which originally appeared in the March/April 1994 issue of the *Financial Crimes Report*.

from ten federal agencies, five state agencies and a variety of private organizations. The Task Force is responsible for coordinating federal law enforcement efforts aimed at health care fraud.

b. The Prosecutions

The mail fraud and money laundering prosecution targets fraudulent personal injury claims. California insurers estimate that such claims are responsible for losses of as much as $1 billion annually. The indictments allege that the defendants knowingly made fraudulent insurance claims based on grossly inflated medical bills. Medical clinics falsified records reflecting treatments that were never actually delivered to, or received by, patients. In some instances, treatment records were inflated by as much as 1,000 percent. The exaggerated treatment records were given to law offices specializing in personal injury cases. Although the attorneys and their employees knew the medical records were false, they advanced and settled insurance claims based on those records. Both the law offices and the medical clinics then paid part of the insurance settlement proceeds to so-called "cappers." Cappers refer accident victims and their cases to clinics and law offices in return for a portion of the insurance settlements. The payment of such referral fees is illegal under California law because the presence of a capper with an interest in the settlement encourages fraudulent inflation of claims.

The cases resulted from a 3½-year undercover investigation. The investigation was coordinated by the San Francisco field office of the FBI, with assistance from the U.S. Postal Inspection Service, the California Highway Patrol, the California Department of Motor Vehicles, and the San Francisco Police Department. Five private insurers also assisted by issuing insurance policies in the names of undercover investigators posing as accident victims. When claims were made against the fictitious policies, the insurance companies negotiated the claims and paid settlements in the normal course of their business.

The undercover operation commenced with the establishment of a front business, Select Capital and Resources. Select Capital was purportedly in the business of assisting automobile accident victims. Undercover agents posed both as employees of Select Captial and as people who had been involved in automobile accidents. Law offices paid agents posing as cappers $400 to

$700 from the insurance settlements in return for referring a case. Similarly, the cappers collected referral fees from physicians and medical clinics; at rates as high as 30 percent of the medical bill. The scheme was profitable for everyone because the claims were inflated to reflect medical care that was never provided.

The money laundering charges are based on promotion and concealment theories and charge the payments to cappers as the financial transaction. The capping payments had to be concealed from the insurance carriers to avoid additional scrutiny or outright claim denial which would have resulted if the insurers had been aware of the referral fees. The promotion theory is premised on the purpose of the capping payment, which was to encourage further case referrals thereby perpetuating the scheme. This is the first time federal money laundering statutes have been used in this context.

The prosecutions represent one of the first comprehensive law enforcement efforts targeting medical and legal professionals involved in advancing fraudulent personal injury claims. Most so-called "staged accident" cases focus on the claimants and those organizing them rather than on the professionals providing the medical and legal services that drive insurance settlements.

c. Conclusion

The United States spends more of its gross domestic product on health care than on any other industrialized country. This expenditure supports a diverse system of health care finance which is particulary vulnerable to fraud. The above case demonstrates how the application of the money laundering statutes can enhance law enforcement's efforts against health care and other types of fraud.

5. A Proactive Case Development Scenario

a. Background

Historically, the role of the criminal investigator has been to react to events initiated by third parties rather than to act independently of such events. For example, a crime is reported to

the police who then begin an investigation aimed at apprehending the reported suspect. If the crime is not reported, there is no investigation. In such cases the police are performing reactive, as opposed to proactive, investigations. Recently, however, there has been a great deal of interest in improving the ability of the police to investigate crime; particularly non-violent crime; proactively. These "victimless" crimes include money laundering and other financial offenses which seldom are reported to the police since the parties involved are usually willing participants. What follows is a discussion of how such a case can be developed proactively.

Obviously, most profit-motivated criminals, in particular dug dealers, are forced to deal with large amounts of cash. Their customers simply don't write checks. This reliance on cash is, however, the weakest link in the criminal enterprises because profit-oriented crime is most vulnerable to detections at the point where the illegal cash has not yet been passed through a legitimate financial institution. Therefore, a successful proactive investigation should focus on large movements of cash as an initial indicator of possible criminal activity.

It is well known that financial institutions are required to file cash transaction reports on any deposit or withdrawal of over $10,000. Most such transactions are legitimate. Many, however, are not. Reviewing CTR reports can therefore provide the proactive investigator with the first lead in uncovering criminal activity.

b. Proactive Use of CTRs

Recently, the Office of the Texas Attorney General set out to put this theory to the test. Knowing that financial institutions routinely identify certain cash transaction as suspicious, investigators started with the premise that analyzing suspicious CTRs (or Suspicious Transactions Reports) would provide a list of viable targets. First, however, the STR data had to be collected and entered on file. To do this, the CTR data was acquired via magnetic tape. These tapes were then loaded into a financial database. After loading approximately 1,000,000 of the most recent records, the computer programmers began the task of extracting the STR data geographically.

Since Houston was well known as a major center for cocaine trafficking, a report was generated which indicated the volume of STR activity by ZIP code within the Houston metropolitan area. This revealed a high concentration of STRs within a relatively small region of the city, an area known to be home to an usually large number of Colombian nationals. Having developed a geographic target from the STR data, investigators then needed to identify the individuals responsible for the suspicious transactions. To do this, investigators queried the database for individual transactor suspects who were found to be responsible for the majority of the suspicious transactions.

c. Developing The Target

Identifying possible targets was the first step. Developing a criminal case was the next. Starting with the name of the worst offender, investigators began contacting the banks which had filed the STRsto find out why the bank believed suspicious activity was involved. In several cases, the bank responded that an STR was filed merely because the individual had on occasion made a deposit just under $10,000. It was therefore bank policy to identify all subsequent cash deposits as possible structuring and therefore suspicious. In other cases, in addition to the dollar amount of the deposit, the bank had observed specific facts that supported the decision to report a deposit as suspicious. These included the fact that the money was brought to the bank in plastic garbage bags, that the amounts were always similar and made up of large denominations, and that the tellers assigned to count the money sometimes became somewhat disoriented after handling the money, presumably due to high concentration of drug residues on the cash itself.

Based upon these specific facts, investigators believed they had a viable group of targets. Of the businesses identified several were found to be currency transmission businesses licensed by the state to wire transfer money outside the country. Investigators knew that the state licensing statute required such businesses to maintain records of each transaction. It was believed that reviewing these records would reveal that the businesses were generating false receipts to avoid the CTR regulations and disguise the true source of the money. The simplest way to make a criminal case would be to conduct surveillance of the business for an extended period of time and

then compare the surveillance data to the records generated in-house by the business. To further enhance the case, investigators decided that the deposits made during the surveillance period should be checked for drug residue. Advance planning was obviously critical.

d. Investigative Techniques

One of the businesses was singled out as the primary target. The bank where the deposits were made was served with a grand jury subpoena which directed the bank to allow officers to examine the money at the time it was received. The examination would be conducted by means of a narcotics detection dog and an ion scan.[2] The narcotics dog would indicate that the money was in fact tainted while the ion scan would identify the illegal substance and quantify the amount of the drug present. This would presumably show that the money was tainted far in excess of any coincidental contact with a controlled substance.

Having arranged for the testing procedure, surveillance was then begun. The goal of the surveillance was to count the number of customers entering the business and identify customers who might be known drug traffickers or money launderers. This part of the investigation was obviously tedious and was made even more so by the fact that the business, as suspected, had very few customers.

After a week of surveying the business and testing the cash deposits for narcotics residue, the investigator met with auditors from the state banking department, the agency responsible for licensing and regulating wire transmission businesses. The purpose of the meeting was to review the business's receipts for the time period covered by the surveillance. The auditors had obtained the receipts as part of a routine audit of the business.

The first obvious discrepancy was the difference in the number of customers recorded during the surveillance and the number of customers reflected by the receipts. Far fewer people

[2] The Barringer Ion Mobility Spectrometer Analysis is a method of determining the presence of a controlled substance, the type of substance present, and the relative concentration of the substance.

entered the business than the receipts indicated. Investigators then checked the names and identification numbers on the receipts. Typically, this was the customer's driver's license number. Over 90 percent of the names did not match the driver's license number, according to state records.

Investigators then divided the dollar amount of the business deposits by the number of actual customers observed during the surveillance. By doing this it was determined that it was mathematically impossible for all of the deposits received by the business to have been $10,000 or less. Since the business had failed to file a single CTR, it was clear that structuring was occurring.

Finally, investigators began the process of tracing money going out of the businesses's account. This revealed that most of the money was being transmitted to the same three accounts in Florida. Information received from federal authorities indicated that those accounts were linked to suspected Colombian money launderers.

At this point, investigators had developed sufficient evidence to prove a federal structuring violation and a state money laundering offense, as well as several lesser state offenses. Based on this evidence, search warrants were obtained authorizing the seizure of the businesses's accounts, records, and equipment. After executing these warrants the case was referred to the grand jury for indictment.

e. Conclusion

While this example is specific to the example of a wire transmission business, the same techniques and strategies can be used against other suspected money launderers. Individuals making large cash deposits can be identified from CTR data. If the bank receiving the deposit identifies it as suspicious, investigators can question the bank about the underlying circumstances. If the individual works for a business that deposits large amounts of cash, surveillance of the business can be used to ascertain actual business activity which, if unusually low, can be compared

against the business's own records. And, in all cases, the business's deposits can be tested for the presence of drugs and other factors indicating drug dealing.

Again, a money laundering operation is most vulnerable at the point it first attempts to integrate the illegal proceeds into a legitimate financial institution. By proactively targeting such transactions, investigators can identify and successfully defeat money laundering at its source.

6. A Scenario for the Smaller States

Although the preceding scenarios described activities in larger cities and states, money laundering cases need not be limited to only those offices with above-average resources. It is, in fact, true that money laundering cases require a greater use of manpower and other resources than does the more simple narcotics case. However, such cases are not beyond the ability of smaller offices to pursue. A long-term commitment is required, but the successful money laundering case inflicts far greater damage to the drug or other criminal operation that the simple street bust and quick conviction.

a. Introduction

When a prosecutor hears the phrase "money laundering," often images of complicated financial transaction involving various financial institutions in many different countries come to mind. In some instances, there are such complicated transactions. But money laundering takes on many forms and, for the prosecutor working in the less-populated states, money laundering is rarely farther away than the closest drug dealer. While this drug dealer may not be laundering his money through Swiss bank accounts, chances are he is in violation of the statute of he state in which he is operating. The focus of this scenario is the successful prosecution of a drug dealer involved in smaller-scale money laundering.

Often, more than one type of conduct is prohibited by money laundering statutes. A financial transaction involving proceeds derived from the specified unlawful activity)SUA),

designed to conceal the nature or location of such proceeds, is generally one type of violation. Likewise, one who facilitates, organizes or supervises the transfer of proceeds derived from SUA is typically in violation of the applicable statute. A third type of violation is the knowing sale, transfer or the making available of something of value that is intended to be used to commit SUA. Other types of conduct may be prohibited as well.. A prosecutor must know the reach of his own state statute.

b. Getting Started

Once a prosecutor is thoroughly familiar with the applicable state statute, he must commit himself to expending the necessary time and effort to pursuing a money laundering conviction. The prosecutor must have regularly scheduled fact-to-face meeting with the case agent to remain updated on the progress of the investigation. Without such meeting, at the end of the investigation, the prosecutor will be faced with a large box of unfamiliar and unorganized paperwork. Time constraints will the find the prosecution placed on a back burner, soon to be forgotten. By spending a little time — perhaps an hour a week — with the case agent during the course of the investigation, a prosecutor will save valuable time in preparing the case for prosecution.

Just as important in the prosecutor of a successful money laundering case is the presence of an investigator who is willing to invest the time to develop the case. It is ideal of the investigator is trained in the area of financial investigations. Some states, such as Idaho, are fortunate to have and investigative team whose function it is to investigate these types of crimes. However, even if such a unit does exist, a money laundering investigation can still be undertaken. It is especially helpful if local law enforcement has designated an officer for these types of investigation. Training in financial investigation is available throughout the Untied States and the cost is more than reasonable

c. The Investigation

(1) Identifying the Target

Most, if not all, of the major players in the drug business in an area are known to law enforcement. More than likely, these people have already been prosecuted, or at least investigated, by the state's bureau of narcotics or a local task force. There may even be an on-going investigation of a particular drug dealer. Money laundering cases are easily worked in conjunction with drug investigations.

The target must be someone that will make the investigative and prosecutorial efforts worthwhile. Therefore, the target should not be a local crook selling nickel bags of dope on the street corner but, instead, someone that is suspected of moving a large (for that area) quantity of controlled substances — someone who is a mid- to high-level dealer.

(2) The Covert Stage

In all but the rarest cases, it is not possible to trace specific funds directly to a particular controlled substance violation. How then can it be established that the target is in the drug-dealing business or that his money comes from dealing drugs? A prosecutor must, first, have witnesses (informants, co-conspirators, or undercover officers) who can and will testify as to the target's drug activities and supporting physical evidence such as audio or video tapes. Second, it must be established that the target has funds with no know legitimate source. To establish such a fact, a net worth analysis of the target must be made, including a determination of the target's income, both legitimate and otherwise, and his net worth.

The fact-gathering must be done without "tipping off" the target. Thus, by necessity, the first part of the investigation must be covert. A target who suspects that he is a target will likely shut down his operation and conceal his assets. How can such an investigation be done without arousing the target's suspicion? Informants, public records, and the friendly neighborhood tax man can provide a wealth of information; other traditional investigatorial techniques such as surveillance and electronic monitoring will yield further intelligence.

(a) Informants

One of the earliest sources of investigation will be informants, documented and otherwise, who have been providing information to law enforcement officials about the activities of the target. For the most part, a confidential informant, working under the direction of law enforcement, is a secure source of information:

- Time frame — the investigator must "pin down" to the greatest extent possible the dates on which the informant head, or will be having, contact with the target. A typical money laundering investigation focuses on approximately a three-year period, but information generated outside the periods may still be valuable.

- Specific drug information — the informant must be asked specific questions concerning amount, price, and type of drugs with which the informant was involved. Where the information is note specific, all doubts must be resolved in favor of the target. If the informant states that he was buying between one and two ounces of cocaine for from $1,000 to $1,500 every two weeks, ten the computation should be made on the lower amount, on ounce for $1,000. This practice lends integrity to the investigation in the eyes of the court and, later, the jury.

- Other purchasers — the informant may know others who purchased drugs from the target. Each name should be documented and checked out. Some of these contacts may be willing to give information, especially if the alternative might be incarceration.

- Target's assets and habits — the investigator should ask whether the informant knows of, or has heard the target talk about, his assets or the volume drugs sold. The informant might know about a purchase or know how the target pays for items — *i.e.*, always in cash or always with large bills. The informant may also know about habits or interests the target has such as taking expensive trips, renting cars to pick up drugs, or gambling.

The investigator should plan to interview an informant more than once. Recall may be more specific when different questions are asked or further information becomes available to the investigator.

(b) Public Records

Public records offer two benefits: they contain a jackpot of information about your target and the information can be obtained without alerting the target. While all possible public records should be researched, perhaps the best starting point is court records.

If the target has been the subject of an earlier prosecution, court documents may contain public defender applications that will containt financial doucments made under oath. Such documents will help establish your target's declared income which, in all likelihood, will not explain your target's lifestyle.

Credit applications, child custody or divorce records, title searches, etc., will often provide you with conflicting information. Your target will likely exaggerate his legitimate income on credit applications, while downplaying that income on court documents. These inconsistent statements made by your target will get you a lot of mileage later before a jury.

The types of public records available to you will vary from state to state. Never hesitate to call a prosecutor in another jurisdiction to help you out. It just may be the case that your target is being worked by other agencies in a different state. A joint investigation will help both cases.

(c) State Tax Commission

If you live in a state that has local income tax reporting requirements, you should contact these people at the beginning of your investigation. The tax records, or lack thereof, on file in each state also provide leads for you investigation. If your target has filed a state tax return, chances are that his declared income will conflict with other financial information that you have.

Local laws will limit the amount of information that is available from the state tax commission. Typically, no information will be available to you unless a cooperative investigation is undertaken. A quick call to the tax people will let you know the limits of permissible contact. If you have a state income tax reporting requirement, no money laundering investigation should be undertaken without the help of the tax commission.

(d) Surveillance

Surveillance of your target is an invaluable tool, but since the money laundering investigation will surely continue for several months, great caution must be used. Drug dealers are often "surveillance conscious" and a single investigator following your target in the same vehicle day after day will likely be detected.

Surveillance will serve several ends. If you are able to establish that your target stays home during normal working hours, it will negate your target's late claim that he was doing some type of labor. It will also identify other possible sources of information by determining with whom your target associates over what period of time. These sources will be contacted during the overt phase of the investigation.

Mobile surveillance of your target may also help find assets located away from your target's home. Rented storage units may hide vehicles or other evidence of excessive spending. Your target may also have real property of which you were not aware, and his trips may lead you to it.

While surveillance is necessary, it must be stressed that all efforts to keep track of your target must be concealed. Once surveillance is burned down, it may be months before your target becomes active in the drug business.

(e) Electronic Monitoring

The types of electronic monitoring available will vary widely from state to state, as will the procedures necessary to set up such monitoring. At a minimum, a pen register should be placed on your target's phone. This will identify associates of your target that may become valuable sources of information once the investigation goes overt.

Wire taps are also excellent tools, but their use may be severely restricted. Money laundering may or may not be an enumerated offense for which wire taps can be used. Check your statutes carefully, If a decision is made to use a wire tap, understand that it involves a great deal of manpower to operate.

In the covert stage of the operation, as well as when the investigation goes overt, the information you cannot find is often just as important as the information you can find. Lack of employment or lack of income, or the absence of a rich relative leaving large sums of money to your target helps establish that any money your target does have must have come from unlawful sources.

(3) The Overt Stage

At some point your target will become aware of the investigation. If your money laundering case is being conducted in conjunction with a drug violation investigation, this usually occurs when your target is arrested or when a search warrant is executed. Once the investigation goes overt you will have access to information that was previously not available to you.

If your target is employed, now is the time to get his employment records. No longer must you be concerned about your target's employer burning down your investigation. Likewise, this is the time to approach the co-conspirators or associates of your target. They may be willing to talk once it is explained that they have the opportunity to become a witness or a defendant.

If you were not able to obtain information from financial institutions such as banks or credit unions during the covert part of the investigation, now is the time to get this information. Each of these institutions will have a compliance officer who can inform you of the easiest manner in which to obtain the necessary documents. It may be as simple as preparing a subpoena. Your local statutes again will be important, for in some states this information cannot be obtained without a search warrant.

In short, once your investigation goes overt, all lead which could not be followed during the covert stage must be explored.

d. Evidence Gathering

In both the covert and overt stages of the investigation you will be gathering evidence in the form of documents and witness interviews. There is only one cardinal rule in this area: all evidence must be obtained thorough the proper legal means. If you cut corners or try to side step the law in order to save time, you will compromise the entire investigation. If your statute requires that information be obtained through subpoenas, use subpoenas. If you have to resort to search warrants, then do so.

There is no excuse for improperly gathering evidence. This information is available through the proper channels and good police work mandates that you follow the correct procedures. Remember, when the decision was made to pursue a money laundering case, it was understood that it would be a time-consuming project. Cutting corners will result in the suppression of evidence that otherwise would be admissible.

e. Organization

Good organization is essential for the successful prosecution of a money laundering case. Since these cases will have extensive documentation, you must have a good system in place to keep track of your information.

Each time contact is made with a business, a separate file should be opened. In this file you will keep all sales slips, receipts, order forms, or whatever information you have gotten from this business concerning a particular asset or work history. It is imperative that whatever information you receive, it goes immediately into this file. It does not take long to end up with an uncontrollable heap of paper work if this is not done.

On the inside cover of each file, make yourself a "cheat sheet" as to what the file contains, how it was obtained (subpoena, interview, etc.), and the names of witnesses you will be able to use. Each document should also be numbered in some manner (such as a Bates stamp) so that you

will always know what you have when it comes time for discovery. The work involved in setting up such a filing system makes your case much easier to understand and manage, and much more presentable to the court.

A separate witness file should also be established, rather than trying to put these into the documentary files. Once again, this does entail a bit more work, but the added organization is more than worthwhile. A cheat sheet should also be put on the inside of each file, describing the witness, his relationship to your target, and a summary of what this witness can testify to.

f. The Charging Decision

As noted earlier, a money laundering statute can be violated in more than one way. The prosecutor must decide which particular type of violation he can prove, or perhaps which one will be the easiest to prove. This will depend on the evidence obtained and the availability of witnesses.

One of the best violations to charge is that involving a financial transaction with proceeds known to be derived from a controlled substance. When your target has no legitimate income, almost every single purchase or expenditure he makes is a violation of this provision. Of course, you do not want to charge him with 200 counts, some of which involve buying groceries from the store.

Some prosecutors will use a dollar figure as a staring point. The purchase of anything with a value over $1,000, or whatever figure you decide is sufficient, is one way to handle this. A series of events may also form the basis of a criminal count, whereas one house payment of $400 may not be sufficient, but 24 months of house payments add up to a significant amount.

However a determination is made as to what particular items to charge, the key is to avoid overkill. Juries will quickly lose interest if your case becomes bogged down with what could be considered insignificant charges. Remember that you already have a case that will be document-

intensive, so you must be selective in what you present to the court.

The manner in which your choose to bring a money laundering case is also important. In those states that use a grand jury, it is highly recommended that you present your case in this fashion. Grand juries have the time (and sometimes even the desire) to thoroughly examine your case. And, with the number of documents to be presented, it is nice not to have the objections of the defense attorney preceding each slip of paper marked into evidence. A grand jury also allows you more time to get your discovery in order, since typically no discovery is required until after the grand jury comes back with an indictment.

If your state requires that charges be made at a preliminary hearing or examination, where the defendant and his attorney are present, along with the presiding judge, it is important to keep in mind one thing: you will probably have to educate the judge as to what money laundering involves. In many states, money laundering statutes are new and have not been tested in the courts. An understanding of your individual statute will be imperative to keep the judge from being confused, especially by objections from the defense attorney who also is likely not to understand the statute.

h. Discovery

Discovery should not cause a great deal of concern, provided that the investigation has been well-organized from the beginning. As stated previously, some type of numbering system must be in place so that you can keep track of what your have. A Bates stamp number on the back of each document, along with a master index of the documents, has worked well in Idaho.

The timing of your discovery may depend on whether you use the grand jury. But, regardless of that, you should make every effort to turn over discovery at the earliest possible time. Many prosecutors have an "open file" policy with defense counsel, allowing them access to everything in the prosecutor's file. Since most of the information your have in your files, excluding your work product, is subject to discovery, it is recommended that a similar policy be

implemented. Although some prosecutors do not like "organizing" the defense case, it often makes the presentation of your case much easier.

If your organization is good, discovery should not present many problems. Poor organization may lead to inadvertent exclusion of certain documents, which may later be suppressed as a sanction for failure to comply with discovery. This can easily be avoided by keeping your files in order.

i. In the Courtroom

The first attack likely to come in your case will be via pre-trial motions. Defense counsel will try to suppress documents that you have obtained, or challenge the validity of the statute itself. As long as you have insisted that your investigators use legal process to gather your documents, you should have little worry in this area.

Challenges to the validity of the statute are commonplace, and rarely upheld. Since it is unlikely that your will have any case law on point in your own state, you must research the law in states where the law is similar. Usually, a phone call to the prosecutor's office in these states will result in a brief or case law being sent to you.

Just as the investigation had to be organized, so too must your presentation to the jury. If possible, have your exhibits pre-marked and arranged in the order in which you will present them. In those states that allow you to have the case agent sit with you at the prosecution table, be sure to avail yourself of this opportunity.

In any case that involves many documents, you must be careful not to lose the finder of fact to boredom. A good way to combat this is by the use of visual aids. Depending on your budget, the type of visual aids available is almost endless. But even if your budget is limited, simple visual aids are beneficial. The use of an overhead projector and transparencies goes a long way in adding life to your case. However, not every document you have needs to be turned into a

visual display. Choose certain documents that clearly show the jury how your target has broken the law.

The trial of a money laundering case is not significantly different from other criminal trials. While it may involve the presentation of more documentary evidence than a prosecutor may be used to, the trial will involve the same concerns that arise in every trial. Prosecutors should not be dissuaded from trying these cases based upon some unfounded fears of being buried in paperwork. These cases offer a great opportunity to expand the efforts of prosecutors' offices in combatting the drug dealer.

j. Closing

While many prosecutors used to believe that money laundering cases were reserved for only the most sophisticated criminals, today's statutes provide an effective tool for prosecutors in smaller jurisdictions to use in fighting drug dealers in their communities. All that is needed to successfully use these laws is a desire to rid the streets of these criminals and a willingness to devote the time necessary to accomplish this task. The satisfaction gained from a successful money laundering prosecution will rival the feeling had in any criminal prosecution.

CHAPTER TWO — FINANCIAL INVESTIGATION CHECKLIST AND RESOURCES

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A. FINANCIAL INVESTIGATION CHECKLIST

1. LAW ENFORCEMENT/FINANCIAL/TAX DATA BASES

a. ☐ Currency Transaction Reports (CTR) Regarding Individuals or Corporations (contact FinCEN State Coordinator) (See p. II-51, II-64)

b. ☐ Suspicious Transaction Reports (STR) Regarding Individuals or Corporations (contact FinCEN State Coordinator) (See p. II-52)

c. ☐ Currency and Monetary Instrument Reports (CMIR) Regarding Individuals and Corporations (contact FinCEN State Coordinator) (See p.II-52, II-70)

d. ☐ Certificate of Non-Filing of Income Tax Return and Certificate of Due Diligent Search (Need Individual's Social Security Number — Call State Tax Board) (See p. II-93)

e. ☐ Commercial/Other Financial Data Basis from FinCEN (call FinCEN State Coordinator) (See p. II-85)

2. EMPLOYMENT/BUSINESS RECORD

a. ☐ State Office Administering Unemployment Benefits — Information Concerning Target's Employment (Need Target's SSN) (See p. II-56)

(1) ☐ Certified Copy of Computer Print-out Requested

(2) ☐ Certified Copy of Due Diligence Search and Absence of Records Requested

b. ☐ State Sales Tax Agency — Information Concerning Gross Revenues of Target Business Reported on Quarterly Sales Tax Returns; Application for Sales Permit (See p. II-54)

(1) ☐ Certified copy of Application for Sales Permit and Quarterly Sales Tax Returns Requested

(2) ☐ Certified Copy of Due Diligence Search and Absence of Records Requested

3. OTHER LAW ENFORCEMENT RESOURCES

a. ☐ U.S. Postal Service Mail Cover (List of Return Addresses and Addresses on All Mail or Packages Sent to Target's Address) (See pp. II-62 and II-112)

b. ☐ Form 8300 (Report of Trade or Business of Currency Received in a Transaction in Excess of $10,000) (See p. II-53)

c. ☐ State and Local Liquor Licensing Authority's Files (Includes Application Which Has Bank Account Information on Businesses Licensed by ABC)

4. ASSETS — FOR PREPARATION OF NET WORTH ANALYSIS; MODUS OPERANDI OF PERSON ENGAGING IN CRIMINAL ACTIVITY; AND ASSET FORFEITURE (See, generally, pp. II-113 to II-123)

a. Real Property

(1) ☐ Computer Search Regarding Real Property Ownership (*e.g.*, LEXIS) of Target

(2) ☐ Computer Search Regarding Real Property of Ownership of Target's Relatives/Associates

(3) ☐ Search of Any Interest In Real Property of Target for Relatives/ Associates at County Recorder's Office

(4) ☐ Request Escrow Company to Voluntarily (No Search Warrant/ Subpoena) Turn Over Escrow Records of Target's Real Estate Transactions

(5) ☐ County Assessor's Office — Copy of Payment Instruments

b. Vehicles/Boats

(1) ☐ Department of Motor Vehicles's Print-out Concerning Registered Owners/Legal Owners of Vehicles/Boats

(2) ☐ Registration History (Includes Title Documents, Sales Price, No Lien Purchase Information [No Loan], Name of Dealership)

(a) ☐ Certified copy requested

(3) ☐ Copy of Driver's License

(a) ☐ Certified copy requested

(4) ☐ No Lien Purchase Vehicle/Boat Data Base (Information Concerning Purchases of Vehicles over $30,000 and Boats over $20,000 Without a Loan)

(5) ☐ Request Records of Car or Boat Purchases from Dealership

5. OTHER PUBLIC RECORDS (See, generally, pp. II-54-56)

a. ☐ City Business License Information

(1) ☐ Certified Copy

b ☐ County Fictitious Business Name Statement

(1) ☐ Certified Copy

c. ☐ Superior Court (Family Court) Dissolution Files (Contains Target's Financial Declaration)

(1) ☐ Certified Copy

d.. ☐ Civil Proceeding Court Files (Often Targets Will be Sued Civilly by Victims in Fraud Cases)

(1) ☐ Certified Copy

e. ☐ Secretary of State — UCC-1 Creditor/Debtor Information Regarding Security Interests on Personal Property

(1) ☐ Certified Copy

f. ☐ Articles of Incorporation and Statements of Officers Filed with Secretary of State

(1) ☐ Certified Copy

g. ☐ Limited Partnership Information

(1) ☐ Certified Copy

6. CONSENT FORMS (SIGNED BY TARGET OR PARTY WITH AUTHORIZED ACCESS TO RECORDS)

a. ☐ Authorization to Release State and Federal Tax Returns (See pp. II-55, II-99 and II-100)

b. ☐ Authorization to Release Bank Records

c. ☐ Authorization to Release Escrow Records

7. SEARCH WARRANTS (See, generally, pp. II-153-237)

a. ☐ Residence(s)

b. ☐ Banks/Financial Institutions (Accounts, CDs, Loans, Signature Cards, and Specific Transaction Information)

c. ☐ Target's Stockbroker

d. ☐ Target's Insurance Broker (*e.g.*, Records Including List of High Priced Personal Property)

e. ☐ Target's Accountant (Copies of Tax Returns and Underlying Information for Preparation of Returns)

f. ☐ Credit Bureau Companies (*e.g.*, TRW) (Information Concerning Target's Credit Cards, Loans, etc.)

8. FINANCIAL ANALYSIS

a. ☐ Net Worth Analysis (Compares a Target's Net Worth at Commencement of Criminal Activity With Net Worth at Time of Arrest to Establish Accumulation of Assets from Illegal Activity) (See II-115)

or

b. ☐ Source and Application of Funds Analysis (Sets Forth Target's Expenditures During the Years of His Involvement In Criminal Activity to Show a Substantial Excess of Expenditures Over Sources of Legitimate Income (*e.g.*, salary) Over the Time Period of the Criminal Activity) (See II-118)

1. Bank Secrecy Act Data

Information derived from reports that are required under the Bank Secrecy Act to be sent to the Department of Treasury may be the single most important source of information available to the money laundering investigator. Generally, access to the information is through the Financial Crimes Enforcement Network (FinCEN), a division of the Department of Treasury. Begun in 1990, FinCEN provides investigative support for both Federal and State financial investigations. Non-federal investigators should contact their statewide FinCEN coordinator. A list of coordinators is found at page II-74. The coordinator will be able to provide detailed information about resources FinCEN can provide the state. The basic FinCEN check is done in response to a written request made through the coordinator. The request includes identifiers on the individual being checked and generally takes two weeks to produce results unless the state is on Operation Gateway. (Gateway is an on-line service for BSA information provided to states through FinCEN)

A FinCEN check will include all the BSA databases, as well as the results of queries done against all the major commercial databases. A list of these databases is included at page II-79. FinCEN also has a strategic division which will do in-depth studies of suspicious currency movement within the state. Such studies are invaluable when dealing with lawmakers on the need for anti-money laundering legislation.

Four major reports filed by banks and other financial institutions, including non-bank financial institutions, such as money transmitters, money exchange houses, and check cashers, are available through FinCEN. These are:

a. Currency Transaction Reports

Form 4789, a "CTR," requires particular financial institutions that conduct cash transactions in excess of $10,000 by, through, or to another institution to report specified detailed information about

the transaction to Treasury. Financial institutions subject to this requirement include banks, savings associations, credit unions, securities brokers and dealers, foreign currency brokers, money movers, check cashers and currency exchange houses. A copy of this form is found at p. II-64.

b. Reports of International Transportation of Currency or Monetary Instruments

Form 4790, a "CMIR," requires all persons to report to the U.S. Customs Service specified detailed information on their importation or exportation of currency or monetary instruments in bearer form with a combined value in excess of $10,000. A copy of this form is found at p. II-70.

c. Reports of Foreign Bank and Financial Accounts

Form 90-22.1, an "FBAR," requires persons subject to the jurisdiction of the United States to annually report to the Internal Revenue Service specified detailed information concerning their interest in various accounts maintained in a foreign country, including bank accounts and securities, trading accounts, or any other financial account in a foreign country, with a combined value in excess of $10,000.

d. Currency Transaction Reports by Casinos

Form 8362, a "CTRC," requires casinos to report specified detailed information about currency transactions in excess of $10,000. Nevada casinos are still exempt from the federal reporting rules but the state has reporting requirements which cover the same information. A copy of this form is found at p. II-68.

e. Suspicious Transaction Reports

An "STR" is obtained by checking item 1(c) of the CTR form. That form is then converted to an STR. Financial institutions subject to BSA reporting requirements are required by Treasury regulation to report suspicious transactions whether or not the transaction is for more than $10,000. This has been true since January 1990. However, new regulations are being proposed to do away with the suspicious transaction reporting requirement and substitute it with a requirement for filing a separate Criminal Referral Form.

f. Information Concerning Purchase of Cashier's Checks, Money Orders, Bank Checks or Traveler's Checks in amounts between $3,000 and $10,000.

Effective August 13, 1990, financial institutions were required to maintain a chronological log of cashier's checks, money orders, bank checks or drafts, or traveler's checks purchased in amounts between $3,000 and $10,000. This is no longer the case, the regulation having been withdrawn in the fall of 1994. However, the logs for the intervening years should still exist and provide useful information on these transactions.

g. Information Concerning Cash in Excess of $10,000 Received in a Trade or Business

Form 8300. Certain businesses that receive cash in excess of $10,000 are required to file IRS Form 8300 detailing this transaction. Because this is an IRS form, subject to the secrecy provisions of the Internal Revenue Act, this information is not generally available to state investigators without an 8300 analog requiring state filing of the same information. Federal and state court clerks have recently been added to the list of those who must report cash receipts of bail from any source for defendants charged with drug, racketeering and money laundering offenses. A number of states have passed statutes with state reporting requirements. Model legislation is included in the Model Financial Remedies Act.

h. Records Required in Wire Transmittals and Transfers of Funds by Financial Institutions.

As of January 1, 1996, financial institutions will be required to maintain records of wire transmittals and transfers of funds where the transaction exceeds $3,000. The regulations will be administered by FinCEN. They provide identification information on both the transferor and the beneficiary of wire transfers. Because the regulations apply to all domestic financial institutions this should be a particularly rich source of information in money laundering cases.

In addition to access to the BSA data through the state FinCEN coordinator, Gateway or otherwise, a number of states now receive their states' BSA information on magnetic tape. The tapes

are obtained from Treasury through a Memorandum of Understanding (MOU). Treasury currently requires a state BSA analog statute (requiring financial institutions to file with Treasury and the state) before it will enter into an MOU. A model state analog statute is contained in the Model Financial Remedies Act in NAAG's publication, *A State and Local Response to Money Laundering*. Several states are currently receiving data in this form and are using it to select targets proactively. You should check with your state FinCEN coordinator to see if your state has this capability.

2. Public Records

a. Accessing Public Records Through Commercial DataBases

A number of commercial databases accessing public records are now available to the investigator. These can include information available at the local courthouse (recorder, court clerk, county clerk, UCC filings, Treasurer, Assessor, etc.), the state Secretary of State (corporation records, state UCC filings, etc.), and credit reports. An article describing them is included at page II-85 of this section.

b. Documents Concerning Real Estate Transactions

Generally, documents concerning real estate transactions are available through the real estate records at the county courthouse. This information may be available on the commercial databases referenced above. Additional records may be available from escrow companies and title insurers. A search warrant or grand jury subpoena may be necessary, but documents that may be available from them include such items as real estate purchase contracts, settlement statements, copies of checks for down payment, and documents identifying participating financial institutions from which loan applications with financial statements and other loan documents may be obtained.

c. Board of Equalization

State or local boards of equalization or tax appraisal should be able to provide identifying information about owners of businesses and real estate within the taxing jurisdiction.

d. State Tax Agency

State tax agencies are excellent resources for gathering information to help create a financial

profile on a target. Investigators need to review their respective state laws and talk with the legal department of the taxing agency to determine the nature of information available through it. In general, you should be able to determine if a state income tax has been filed. Depending on state law, critical financial information may become available, especially in joint investigations.

Where the target is laundering money through a legitimate business, state sales tax records should be able to inform the investigator of gross revenue claimed by the business, its legal status and ownership interests.

A detailed article on the use of the tax man and his resources in financial investigations and money laundering prosecutions begins at page II-93.

e. Authorization to Release Tax Information

At the time of arrest, execution of a search warrant or other appropriate event, the investigator should request that the suspect sign an authorization to release tax information. A sample form is included at pp. II-99-100. Executed authorizations will enable the investigator to get copies of state and federal income tax returns for the target years of the investigation. The time period of the authorizations should encompass several years of tax filings — before the taxpayer's suspected involvement in criminal activity — for comparison purposes and for assistance in a net worth analysis.

f. Department of Motor Vehicles

In addition to providing law enforcement with a suspect's driving record and vehicle registration history, DMV can provide the name and address of the dealership where the suspect has purchased his vehicle(s). Some states that are receiving BSA data on tape and are processing it by computer are matching STR information with "High Roller" information, *i.e.*, a list of people who have purchased new cars with no outstanding liens. Analysis of this information could lead to individuals with unusually large numbers of automobiles that may indicate the purchase of "load cars."

g. Records of Civil Proceedings

A wealth of information can be obtained about a suspect's finances from a divorce, bankruptcy, or any other civil litigation file available through the court clerk. A divorce file will contain detailed statements about a suspect's assets, debts, income, and living expenses. A deposition may contain important information about his financial affairs.

A suspect's bankruptcy file will contain a detailed sworn statement regarding his assets, income, debts, and names and addresses of creditors. These cases are filed with the Bankruptcy Court Clerk in U.S. District Court.

In certain white collar schemes, the suspect may well be a defendant in a civil law suit brought by one of his victims. Civil proceeding indexes should be researched in each jurisdiction in which the suspect operates.

h. Employment Records

The records of the office administering unemployment benefits should be searched for employment history and receipt of unemployment benefits. A social security number is usually required for this information. Depending on state law, information about salary may not be available. That information can, however, be obtained from the employer.

i. State Licensing Agencies

If the suspect has a license issued by a state licensing agency, such as the state Alcoholic Beverage Control Agency or a state gaming commission, there is probably a complete financial statement on file with that agency as part of the application process. In any event, the state ABC agency should be checked to see if an application was ever made, regardless of whether a current permit is held.

3. Bank Records

a. Locating an Individual's Bank Account

A suspect's bank accounts, while one of the most valuable sources of information to the financial investigator, is one of the most challenging to obtain. Short of material seized with a search warrant, or following the individual until he makes a deposit, there is no easy answer. A FinCEN search will produce some account numbers if CTRs have been filed concerning his transactions. There are unfortunately, no databases or other handy sources of information. Mail and trash covers are the two most useful general investigative techniques that are available to most jurisdictions. Since a mail cover is limited to one month, January a is good choice because the cover will usually pick up statements from banks that send them out only once or twice a year. (See following section on mail covers and sample letter requesting a mail cover at page II-112). Trash is available year round. It should be noted, however, that some jurisdictions, such as California, require a warrant for certain trash covers.

A check of UCC filings for an individual will turn up the names of secured parties, often banks. In states where banking information can be obtained by use of a grand jury subpoena or racketeering demand, information on deposit items and electronic funds transfers will often reveal other banking relationships. A check with a check cashing verification service, such as Tele-check, may reveal that an inquiry has been made and the bank the check was drawn on.

b. Obtaining Cooperation Through Informal Bank Contacts

Make an appointment with the bank's Chief of Security at the main office. This is the supervisor of the bank's security guards and the person in charge of internal investigations. This person will have a law enforcement background, often an impressive one. Some banks prefer that contacts with law enforcement be handled through their Compliance Officer — the banker in charge of ensuring compliance with BSA and other regulations. If so, the Chief of Security will be aware of this and will probably introduce you to the Compliance Officer.

If the bank has in-house counsel, this individual should be contacted as well as a matter of courtesy, especially if the contact is being made by a prosecutor. In-house counsel will be the source of advice for bank officials on requests for information emanating from law enforcement and will most likely steer you to the Chief of Security or the Compliance Officer as may be appropriate.

Banks have nothing to fear from cooperation with law enforcement. There is no Fourth Amendment right to privacy covering financial records maintained in a bank. *United States v. Miller*, 425 U.S. 435 (1976) and, in 1993, Congress added 31 U.S.C. § 5318(g)(3), providing:

> Any financial institution that makes a disclosure of any possible violation of law...and any director, officer, employee, or agent of such institution, shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State. . . .

So far all the cases following this "safe harbor" provision have held that the bank is immune from civil liability for disclosures to law enforcement. It is a relatively new provision, however, and some banks may not fully trust it. It is extremely important that you make a clear distinction between an informal and a formal request for information. An informal request should not result in copies of documents (unless you are prepared to have those documents suppressed as evidence later on). The informal request is used to determine whether formal procedures will be used and, if so, which documents relating to which accounts will be later obtained by subpoena or search warrant.

c. Obtaining Information on Wire Transfers

If a person walks into a bank and says to the teller, "I want to wire some money" to someone, no problem. From an investigative perspective, the records related to wire transfers are just as discoverable and informative as records associated with writing a check. In the subpoena, records demand or search warrant, remember to include "all records of electronic funds transfers" in the list of items to be turned over.

All wire transfers, even international electronic funds transfers ("EFTs"), are effectuated by a book transfer between two accounts in a bank somewhere. It parallels the process of collecting checks. The same reserve accounts, clearing accounts and correspondent accounts that are used to collect checks are used to "wire" funds. At the point of collection — the moment when the process becomes irrevocable — one account is credited and another debited. The difference with EFTs is that instead of a check being physically sent from place to place to trigger the collection process, electronic messages are sent. Otherwise the process of moving money is the same.

4. Obtaining Records from Out of State

a. Obtaining Records by Search Warrant

(1) Obtaining Financial Records by a Foreign State's Search Warrant

Many criminal organizations will launder money out-of-state or otherwise engage in financial transactions out-of-state with proceeds derived from specified unlawful activity. Records of transactions occurring in a foreign state can be obtained pursuant to a search warrant executed by a law enforcement agency located within the foreign state according to the laws of that state. The search warrant procedure is best accomplished by the respective law enforcement agencies of the two states entering into a joint investigation. An agent from the foreign state prepares a short affidavit, which *inter alia*, incorporates an affidavit from an agent in the originating state which sets forth the particulars of the criminal activity and how the sought-after financial records evidence such criminal activity. Many large law enforcement agencies have liaison agents who facilitate the interstate search warrant process.

A sample of a "piggyback" affidavit in support of a search warrant prepared by the cooperating state is included at p. II-101.

(2) Obtaining Financial Records Generated in the Local Jurisdiction but Stored in Foreign State Jurisdiction

For reasons of efficiency, ease of electronic data transfer and or a desire for the centralized storage of records, many multi-state corporations store records of transactions in a state other than where the transaction occurred. In an attempt to obtain out-of-state records, a prosecutor can contact

the legal counsel of a multi-state corporation and inform him of the prosecutor's intention to serve a search warrant on the corporation's branch office located within the prosecutor's jurisdiction. The search warrant will call for all relevant records generated at the branch office location, wherever stored. Sample language for description of item(s) to be seized and location(s) to be searched is in Part II, ch. 5, Warrants, Subpoenas, and Demands.

The prosecutor can cite/argue any state statutes which mandate a financial institution maintain records, the fact that the corporation has an agent for service of process as a prerequisite for doing business in the state, and the fact that a corporation's record storage protocol should not frustrate the public policy of the state to obtain records generated within the state which evidence criminal activity occurring within the state.

b. Obtaining Out of State Records by Subpoena

All fifty states plus the Virgin Islands and Puerto Rico have passed the Uniform Act to Secure the Attendance of Witnesses from Without a State in a Criminal Proceeding. A list of statutory citations is found at page II-211. The Uniform Act provides for the subpoena of witnesses whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding. Under the provisions of the Uniform Act, if a person is a material witness in a proceeding or a grand jury investigation, a judge may issue a certificate stating the facts and specifying the number of days the witness will be required. This is presented to a court in the jurisdiction where the witness is found and if, after a hearing, the judge finds the person is material and attendance will not cause undue hardship may compel his attendance to testify in the proceeding or grand jury investigation.

This out of state subpoena may be used to compel attendance at grand juries of custodians of records sought in the investigation. Forms to compel out of state witnesses to attend a grand jury are included at page II-213. Schedules directed to obtaining records of attorneys, accountants, banks, casinos, corporations, credit card companies, estates, insurance companies, investment companies,

loan companies, partnerships, settlement companies, and information on automobiles and boats are included in Part II, Ch.5, Warrants, Subpoenas, and Demands at pp. II-220. to II-237.

5. Obtaining Records and Witnesses from Out of Country

Contact the Office of International Affairs (OAI), Criminal Division, Department of Justice, Washington, D.C. (202) 514-0015 for assistance in obtaining either witnesses or documents from a foreign country. The United States has entered into Mutual Legal Assistance Treaties with at least 17 countries — with more are being negotiated — that provide for simplified methods of obtaining evidence and witnesses from those countries. OAI can furnish you with a set of forms necessary to accomplish what you want, whether it is obtaining evidence, attendance of witnesses or deposition in the foreign country. Sample forms requesting assistance are included at p. II-105-111.

OAI advises and assists State and local prosecutors on substantially the same basis as it advises their Federal counterparts: in securing extradition or other lawful return of fugitives; in acquiring evidence from other countries in admissible form; in attempting to resolve other problems that entail application of international law to domestic U. S. proceedings.

OAI publishes a periodic bulletin highlighting available resources, treaties, and trends in international law enforcement cooperation, and practical tips for busy prosecutors in dealing with international matters. To subscribe, send a disk with your name and mailing address to "OAI Connections" Office of International Affairs, Criminal Division, Department of Justice, P.O. Box 27330, Washington, D.C. 20038.

In no event should independent action be taken without first contacting OAI. In some European countries, for instance, it is a violation of their law for a foreign investigator to even telephone a cooperating, friendly witness.

6. United States Postal Inspection Service Mail Covers

The United States Postal Inspection Service can provide law enforcement with a handwritten log (mail cover) of all return addresses on mail sent to a target at his mailing address for a period of up to 30 days upon law enforcement's demonstration of the need for the mail cover to locate a fugitive or obtain information concerning the commission, or attempted commission, of a crime. Federal regulations are currently being drafted to allow the U.S. Postal Inspection Service to provide mail cover information solely on law enforcement's need to locate assets of a person involved in criminal activity.

A mail cover can be extended for another 30 days upon an additional showing of necessity. Law enforcement should include in the request that the U.S. Postal Inspection Service provide mail covers on all relevant classes of mail (*i.e.*, first class, third class, etc.) justified by law enforcement's investigation. All names of possible addresses (*i.e.*, aliases, nominee owners) at the target's mailing address should also be included in the request. Law enforcement must return the handwritten logs to the U.S. Postal Inspection Service with 60 days of initial receipt.

Each written request for a mail cover will be unique. However, a sample request letter in included at page II-112 of this section.

7. FBI Document Analysis Section

The FBI's Document Analysis Section will analyze or decipher records pertaining to narcotic trafficking, money laundering, prostitution, bookmaking or other criminal activity. The section will also reconstruct torn, mangled or otherwise illegible records. The FBI will write a report based on its analysis and send an agent to testify in state-based prosecutions.

8. Wiretapping, Pen Register, Trap Tracer

Unlike Federal law which authorizes electronic or wire intercepts in investigation of money laundering offenses, State law frequently limits the circumstances in which a wiretap is authorized for investigation of drug offenses. Individual State law should be researched to determine the availability of a wiretap.

Even if an actual wire tap may not be authorized, frequently pen registers and trap tracers may be. These are both excellent law enforcement tools in financial crimes investigations. A search warrant or other court order may be required. Individual state law will determine what is required. The security division of the telephone company will assist law enforcement in setting up a device that identifies all the telephone numbers called by the target telephone number (pen register) and all the telephone numbers which call the target telephone number (trap tracer). A printout from the pen register/trap tracer device also shows the time of each call and the duration of the call.

9. Ion Scanning

When a seizure of drug cash is made, the usual problem in making an indictable money laundering case against the courier is showing a factual link between the money and felony drug activity. A traditional method has been to use dog sniffs. However, more and more cases like *United States v. $191,910.00 in U. S Currency*, 16 F. 3d 1051 (9th Cir. 1994) are holding dog sniffs inadmissible for this purpose because of the prevalence of drug residue on money in our society. Two techniques that hold promise are ion scanning and washing. Both techniques require trained personnel and special equipment to do the analysis. Currently the machines necessary are very scarce but should be available through the FBI. Contact should be made with your local agents to determine availability.

With ion scanning, a small vacuum cleaner is used to suck up particulate residue from the surface of the money. That residue is deposited on a clean piece of filter paper within the vacuum. The filter paper is then removed from the vacuum and placed in the scanner, and results are produced showing chemical composition and chemical amounts found. The operator should be able to testify that a particular batch of money tests a quantifiable amount above or below the ordinary background drug taint of money found in the area.

Washing produces similar results. The money is washed by placing it in a liquid solvent which dissolves all residue. The sollvent is analyzed for type and amount of chemicals present. Again, a baseline is necessary to show a link to drug activity beyond the local area drug contamination.

C. Financial Reporting Forms

1. Currency Transaction Report (CTR)

Form **4789** (Rev. September 1991)
Department of the Treasury
Internal Revenue Service

Currency Transaction Report

▶ File a separate report for each transaction. ▶ Please type or print.
▶ For Paperwork Reduction Act Notice, see page 3.
(Complete all applicable parts—See instructions)

OMB No. 1545-0183
Expires: 9-30-94

1 Check appropriate boxes if: a ☐ amends prior report, b ☐ exemption limit exceeded, c ☐ suspicious transaction.

Part I Identity of individual who conducted this transaction with the financial institution

2 *If more than one individual is involved, see instructions and check here* . . . . . ▶ ☐

3 Reason items 4–15 below are not fully completed (check all applicable boxes): a ☐ Armored car service (name) ▶ .....
b ☐ Mail deposit/shipment c ☐ Night deposit or ATM transaction d ☐ Multiple transactions (see instructions)

4 Last name	5 First name	6 Middle initial	7 Social security number
			: :

8 Address (number, street, and apt. or suite no.)	9 Occupation, profession, or business

10 City	11 State	12 ZIP code	13 Country (if not U.S.)	14 Date of birth (see instructions)
	:			: :

15 Method used to verify identity: a Describe identification ▶ .....
b Issued by ▶ c Number ▶

Part II Person (see General Instructions) on whose behalf this transaction was conducted

16 If this transaction was conducted on behalf of more than one person, see instructions and check here . . . . . ▶ ☐

17 This person is an: ☐ individual or ☐ organization 18 If trust, escrow, brokerage, or other 3rd party account, see instructions and check here ▶ ☐

19 Individual's last name or Organization's name	20 First name	21 Middle initial	22 Social security number
			: :

23 Alien identification: a Describe identification ▶ .....
b Issued by ▶ c Number ▶
Employer identification number :

24 Address (number, street, and apt. or suite no.)	25 Occupation, profession, or business

26 City	27 State	28 ZIP code	29 Country (if not U.S.)	30 Date of birth (see instructions)
	:			: :

Part III Types of accounts and numbers affected by transaction (If more than one of the same type, use additional spaces provided below)

31 S ☐ Savings ▶ ..... T ☐ Securities ▶ ..... H ☐ CD/Money market ▶ .....
C ☐ Checking ▶ ..... L ☐ Loan ▶ ..... O ☐ Other (specify) ▶ .....
☐ ▶ ☐ ▶ ☐ ▶

Part IV Type of transaction. Check applicable boxes to describe transaction

32 E ☐ Currency exchange (currency for currency)

33 CASH IN:
D ☐ Deposit
G ☐ Security purchased
P ☐ Check purchased
F ☐ CD/Money market purchased
H ☐ For wire transfer
A ☐ Receipt from abroad
K ☐ Other (specify) ▶

34 CASH OUT:
C ☐ Check cashed
T ☐ Security redeemed
W ☐ Withdrawal
R ☐ CD/Money market redeemed
U ☐ From wire transfer
B ☐ Shipment abroad
Y ☐ Other (specify) ▶

35 Total amount of currency transaction (in U.S. dollar equivalent) (always round up)	36 Amount in Item 35 in U.S. $100 bills or higher	37 Date of transaction (see instructions)
Cash in $ ..... .00 Cash out $ .00	Cash in $ ..... .00 Cash out $ .00 ☐ Unknown	: :

38 If other than U.S. currency is involved, please furnish the following information: a Exchange made ☐ for or ☐ from U.S. currency
b Country ..... c Amount of currency (in U.S. dollar equivalent) $ ..... .00
b Country c Amount of currency (in U.S. dollar equivalent) $ .00

39 If a negotiable instrument or wire transfer was involved in this transaction, please furnish the following information and check this box (see instructions) ▶ ☐
a Number of negotiable instruments involved .....
b Number of wire transfers involved
c Total amount of all negotiable instruments and all wire transfers (in U.S. dollar equivalent) ▶ $ .00

Part V Financial institution where transaction took place

40 a ☐ Bank (enter code number from instructions here) ▶ [ ]
b ☐ Savings and loan association c ☐ Credit union d ☐ Securities broker/dealer e ☐ Other (specify) ▶

41 Name of financial institution	42 Address where the transaction occurred (see instructions)	43 Employer identification number
		:

44 City	45 State	46 ZIP code	47 MICR number	Social security number
	:		:	: :

48 If this is a multiple transaction, please indicate: a Number of transactions ▶ ..... c ZIP codes ▶
b Number of branches ▶

Sign Here ▶	49 Signature (preparer)	50 Title	51 Date
	52 Type or print preparer's name	53 Approving official (signature)	54 Date / 55 Telephone number ( )

Cat. No. 42004W

Multiple Transactions

(Complete applicable parts below if box 2 or 16 on page 1 is checked)

Part I Continued—Complete if box 2 on page 1 is checked

4 Last name	5 First name	6 Middle initial	7 Social security number
			: :

8 Address (number, street, and apt. or suite no.)	9 Occupation, profession, or business

10 City	11 State	12 ZIP code	13 Country (if not U.S.)	14 Date of birth (see instructions)
	:			: :

15 Method used to verify identity: a Describe identification ▶ .....
b Issued by ▶ c Number ▶

4 Last name	5 First name	6 Middle initial	7 Social security number
			: :

8 Address (number, street, and apt. or suite no.)	9 Occupation, profession, or business

10 City	11 State	12 ZIP code	13 Country (if not U.S.)	14 Date of birth (see instructions)
	:			: :

15 Method used to verify identity: a Describe identification ▶ .....
b Issued by ▶ c Number ▶

Part II Continued—Complete if box 16 on page 1 is checked

17 This person is an: ☐ individual or ☐ organization | 18 If trust, escrow, brokerage, or other 3rd party account, see instructions and check here. ▶ ☐

19 Individual's last name or Organization's name	20 First name	21 Middle initial	22 Social security number
			: :

23 Alien identification: a Describe identification ▶ .....
b Issued by ▶ c Number ▶ | Employer identification number :

24 Address (number, street, and apt. or suite no.)	25 Occupation, profession, or business

26 City	27 State	28 ZIP code	29 Country (if not U.S.)	30 Date of birth (see instructions)
	:			: :

17 This person is an: ☐ individual or ☐ organization | 18 If trust, escrow, brokerage, or other 3rd party account, see instructions and check here. ▶ ☐

19 Individual's last name or Organization's name	20 First name	21 Middle initial	22 Social security number
			: :

23 Alien identification: a Describe identification ▶ .....
b Issued by ▶ c Number ▶ | Employer identification number :

24 Address (number, street, and apt. or suite no.)	25 Occupation, profession, or business

26 City	27 State	28 ZIP code	29 Country (if not U.S.)	30 Date of birth (see instructions)
	:			: :

Paperwork Reduction Act Notice.—The requested information is useful in criminal, tax, and regulatory investigations, for instance by directing the Federal Government's attention to unusual or questionable transactions. Financial institutions are required to provide the information under 31 CFR 103.22, 103.26, and 103.27.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 24 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service,** Washington, DC 20224, Attention: IRS Reports Clearance Officer T:FP; and the **Office of Management and Budget,** Paperwork Reduction Project (1545-0183), Washington, DC 20503. DO NOT send this form to either of these offices. Instead, see the instructions below on where to file.

General Instructions

Filing Requirements.—Each financial institution other than a casino must file a Form 4789 for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution which involves a transaction in currency of more than $10,000. Multiple transactions must be treated as a single transaction if the financial institution has knowledge that (1) they are by or on behalf of any person, and (2) result in either cash into or cash out of the financial institution totalling more than $10,000 during any one business day. For a bank, a business day is the day on which transactions are routinely posted to customers' accounts, as normally communicated to depository customers. For all other financial institutions other than casinos, a business day is a calendar day.

This form also must be filed when a transaction conducted by a bank customer which has been granted an exemption from filing exceeds the exemption limit. (For bank exemptions, see 31 CFR 103.22 (b).) In addition, this form may be filed for any suspicious transaction, even if it does not exceed $10,000.

Identification Requirements.—All individuals (except employees of armored car services) conducting a currency transaction for themselves or for another person must be positively identified by obtaining their name, address, social security or other identifying number, and date of birth. In addition, the individual's name and permanent address must be verified and recorded. See 31 CFR 103.27.

For individuals who are established customers, identifying information previously obtained from the customer and kept in the financial institution's records may be used for verification. For instance, if a customer's account was opened after documents establishing the person's identity were examined and recorded on the signature card, the financial institution may obtain that information from the signature card. However, statements such as "known customer" or "bank signature card on file" are not permitted. For a U.S. citizen, a driver's permit or any other written identification document acceptable to the financial institution in normal check cashing operations for nonaccountholders (other than a bank signature card) is acceptable for verification. For a nonresident alien, his or her passport, alien ID card, or other official document showing nationality or residence must be examined for verification.

When and Where To File.—File this form by the 15th day after the date of the transaction with the Internal Revenue Service Detroit Computing Center, P.O. Box 33604, Detroit, MI 48232-5604 ATTN: CTR or with your local IRS office. Keep a copy of each Form 4789 for 5 years from the date you file it.

Penalties.—Civil and criminal penalties (up to $500,000 and 10 years imprisonment) are provided for failure to file a report or to supply information or for filing a false or fraudulent report. See 31 U.S.C. 5321 and 5322.

Definitions

Currency.—The coin and currency of the United States or any other country, which circulates in and is customarily used and accepted as money in the country in which issued. It includes United States silver certificates, United States notes, and Federal Reserve notes, but does not include bank checks or other negotiable instruments not customarily accepted as money.

Financial Institution.—Each agency, branch, or office in the United States of any person doing business in one or more of the capacities listed:

(1) a bank as defined in 31 CFR 103.11;

(2) a broker or dealer in securities, registered or required to be registered with the SEC;

(3) a person who engages as a business dealing in or exchanging currency (for example, a dealer in foreign currency or a person engaged primarily in the business of check cashing);

(4) a person who issues, sells, or redeems checks, money orders, or similar instruments, except as provided in 31 CFR 103.11;

(5) a licensed transmitter of funds or other person engaged in the business of transmitting funds;

(6) a telegraph company;

(7) the U.S. Postal Service with respect to selling money orders.

Person.—An individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, and all entities treated as legal personalities.

Transaction in Currency.—This is a transaction involving the physical transfer of currency from one person to another. A transaction in currency does not include a transfer of funds by means of bank check, bank draft, wire transfer or other written order that does not include the physical transfer of currency.

Negotiable Instruments.—For purposes of this form, negotiable instruments are all checks (including personal, business, bank, cashiers, and third-party checks), money orders, traveler's checks, certificates of deposit, and promissory notes.

Specific Instructions

Because of the limited space available on the form, in supplying information requested, you may find it necessary to submit additional sheets of paper. If you must furnish additional information, submit it on plain paper and fasten the paper to the form. Be sure to reference the additional paper to the form, so that if it becomes separated, it can be reassociated.

Item 1—Report filed for exceptional reason.—If this report is filed because it amends a previously filed report, or because deposits or withdrawals exceed a bank customer's exemption limit, or because the transaction is suspicious, check the appropriate box(es) in Item 1. For an amended report, staple a copy of the previously filed report to this report and complete Part V and only those entries which you are amending.

For a suspicious transaction, you should telephone as soon as possible the local office of the Internal Revenue Service, Criminal Investigation Division, in addition to submitting this form. If you do not know the telephone number, call 1-800-800-CTRS, which will put you in contact with an IRS employee. This toll-free number is operational Monday through Friday, from approximately 9 a.m. to 6 p.m. Eastern time. See BSA Admin. Ruling 88-1.

Part I—Identity of individual(s) who conducted the transaction.—Always complete this part.

Item 2—Multiple individuals.—Check the box if two or more individuals conducted the transaction you are reporting. Enter information in Part I for one of the individuals. Enter information on the back of the form for the remaining individuals. For example, if John Doe and Thomas Smith enter your financial institution together and each one deposits $6,000 in cash into their joint account, more than one individual has conducted the transaction. Provide information on either John or Thomas in Part I on the front of the form, and information on the other individual in Part I on the back. If more than three individuals are involved, provide identifying information on additional sheets of paper and attach them to this report.

Item 3—Excluding certain identifying information.—Check the appropriate box or boxes (a,b,c,or d) in Item 3 if you are reporting any of the following transactions: a withdrawal or deposit by an armored car service, a mail deposit or shipment, a night deposit or ATM transaction, or multiple transactions where none of the individual transactions exceeds $10,000 or the exemption limit. For withdrawals or deposits by an armored car service only (Box 3a), you must enter the complete name of the armored car service. However, you need not complete Items 4–15. For mail deposits and shipments (Box 3b), night deposits and ATM transactions (Box 3c), and multiple transactions where none of the individual transactions exceeds $10,000 or the exemption limit (Box 3d), all of the information might not be available. For these transactions, check the appropriate box or boxes and complete as many of Items 4–15 as you can. Complete as much of the back of the form as you can, as well, if Box 3d is checked.

Items 4, 5, and 6—Name of individual who conducted the transaction.—Please complete these items with the name of the individual who actually conducted the transaction with your financial institution. For example, if James B. Jones, an employee of Bill's Grocery Store, makes a deposit into Bill's Grocery Store's account, the name of James B. Jones (not Bill's Grocery Store) would be filled in here. Enter the individual's last name in Item 4, first name in Item 5, and middle initial in Item 6.

Item 7—Social security number.—The social security number of the individual whose name you entered in Items 4, 5, and 6 must be filled in here. If that individual is an alien who does not have a social security number, write NONE in the space, and complete Item 15.

Items 8, 10, 11, 12, and 13—Address.—Enter the permanent street address, including ZIP code, of the individual whose name you entered in Items 4, 5, and 6. Item 11 will always be the 2-letter state abbreviation used by the Postal Service. A P.O. box number may never be used by itself and may only be used if there is no street address. If a P.O. box number is used, the name of the street, apt. or suite no., road, or route number where the person lives must be provided in Item 8 along with the P.O. box number. If the address is outside the United States, provide the city, province or state, postal code, and the name of the country.

Item 9—Occupation, profession, or business.—Fully identify the occupation, profession, or business of the individual whose name was entered in Items 4, 5, and 6, for example, secretary, shoe salesman, insurance salesman, carpenter, attorney, etc. Do not use nondescriptive terms such as merchant, self-employed, businessman, etc.

Item 14—Date of birth.—The date of birth of the individual whose name you entered in Items 4, 5, and 6 must be included here. Six numerals must be inserted for each date. The first two numerals will reflect the month of birth, the second two numerals the calendar day of birth, and the last two numerals the year of birth. Zero (0) should precede any single-digit number. For example, if the individual's birth date was April 3, 1948, Item 14 should be filled in as 04 03 48.

Item 15—Method used to verify identity.—Review the identification requirements under **General Instructions**. Then, in Item a, enter the type of document used to verify the individual's identity, such as driver's license, passport, etc. In Item b, provide the name of the issuer of the document you entered in Item a. For example, if a driver's license was used to verify the individual's identity, provide the name of the state that issued the license in Item b. Enter the number of the license, passport, etc., in Item c.

Part II—Person on whose behalf this transaction was conducted.—Refer to the definition of **Person** on page 3. If the individual in Part I conducted the transaction for himself or herself only, do not complete Part II. If the individual in Part I is conducting a transaction for another person, Part II must be completed. If the individual in Part I conducted the transaction for himself or herself and another person, Part II must be completed. (See the instructions for Box 16.) In all other cases, including armored car service, mail deposit/shipment, night deposit, and ATM transactions, complete Part II. See BSA Admin. Ruling 89-5.

Box 16—Multiple individuals or organizations.—If this transaction is being conducted for more than one individual (including the individual described in Part I) or organization (see instructions for Box 17), check Box 16, provide identifying information on one of the persons, and complete the applicable entries on the back of the form. For example, if William Brown, the owner of Bill's Grocery Store, Inc., deposits $4,000 in cash into his personal savings account and $7,000 in cash into his store's operating account, Box 16 should be checked; William Brown should be identified in Part I and Part II, and Bill's Grocery Store, Inc. should be identified in Part II on the back of the form. If more than three individuals are involved, provide additional information on additional sheets of paper and attach them to this report.

Box 17—Individual or organization.—If the person on whose behalf the transaction was completed is an individual, check the "individual" box in Item 17. For **any** person other than an individual, check the "organization" box. Check **both** boxes if the transaction is on behalf of both an individual and an organization.

Box 18—Trust, escrow, brokerage, and other third-party accounts.—If the transaction affects a trust, escrow, brokerage, or other third-party account, check Box 18. In completing Part II, enter identifying information on the **beneficiary of the account.** For example, if Karen Coe, the trustee of the Linda Scott Living Trust, makes a reportable deposit for the trust, identifying information on Karen must be entered in Part I on the front of the form, and identifying information on Linda must be entered in Part II on the front of the form. However, if the transaction is not conducted by the trustee, agent, broker, or fiduciary, on the back of the form in Part II enter identifying information on the trustee, agent, broker, or fiduciary.

Items 19, 20, and 21—Name of person on whose behalf the transaction was conducted.—If the person on whose behalf the transaction was conducted is an individual, put his or her last name in Item 19, first name in Item 20, and middle initial in Item 21. If the person is an organization, put its name in Item 19 and leave Items 20 and 21 blank.

Items 22 and 23—Identifying number; alien identification.—If the person whose name you provided in Items 19, 20, and 21 is a U.S. citizen or an alien with a social security number, enter his or her social security number in Item 22. If that person is an organization (see Box 17 above), provide its employer identification number. If the person is an alien who does not have a social security number, you must complete Item 23. Enter a general description of the type of official document issued to that person in Item 23a (e.g., "passport"), the country that issued it in Item 23b, and its number in Item 23c.

Items 24, 26, 27, 28, and 29—Address.— Provide the permanent street address of the person whose name you entered in Items 19, 20, and 21. Follow the instructions for Items 8 and 10–13.

Item 25—Occupation, profession, or business.— Follow the instructions for Item 9.

Item 30—Date of birth.—If an individual is named in Items 19, 20, and 21, complete Item 30. Follow the instructions in Item 14 for furnishing this 6-figure date.

Part III—Accounts affected by the transaction.

Box 31—Types of accounts and account numbers.—Check the boxes and enter the account numbers of the accounts affected by the transaction. If more than one of the same type of account is affected by the transaction, check the box which has a code letter beside it and enter the account number; then, for each remaining account, enter the same code letter next to a box having no code letter beside it, check that box, and enter that account number. For example, if 2 savings accounts are affected, check the box with "S" beside it and fill in the account number; then print "S" to the left of the box with no code beside it (to signify the type of account), and enter the account number. You may have to use additional sheets of paper to show all of the accounts affected.

If the transaction does not affect any account, make no entry in Part III. For example, a cashier's check purchased only with cash would not affect any account and therefore would not require any entry in this part.

Part IV—Type of transaction.—Check the box or boxes that describe the transaction. The code letters beside the boxes in Items 31 through 34 are for IRS processing purposes.

Box 32—Currency exchange.—Check this box if currency was exchanged for currency. This includes exchanging U.S. currency for foreign currency, foreign currency for U.S. currency, and U.S. currency for other U.S. currency. It also may include a transaction where negotiable instruments are involved, so long as currency is both received and paid out by your financial institution. See Item 35.

Items 33 and 34—Cash in; cash out.— Check the appropriate box or boxes under Item 33 when currency is received by the financial institution, and the appropriate box or boxes under Item 34 when currency is paid out by the financial institution.

Item 35—Total amount of currency.—In the space provided, reflect the total amount of Cash in or Cash out. In some instances, such as a currency exchange, both the Cash in and Cash out areas must be filled in. For example, if an individual transfers Mexican pesos to your financial institution strictly for "$40,000" in U.S. currency, you should check Box 32, and enter "$40,000" for both the Cash in and Cash out amounts of Item 35. If less than a full dollar amount is involved, round that figure to the next higher dollar. For example, if the Cash in totalled $10,000.05, show the figure as $10,001.00.

If the transaction involves a negotiable instrument (see **General Instructions**), as well as currency, enter only the amount of currency. Therefore, if an individual transfers a check in the amount of $6,000 and Mexican pesos in the amount of $7,000 (U.S. equivalent) in exchange for $13,000 in U.S. currency, you should check Box 32, write in "$7,000" for the Cash in amount of Item 35, and write in "$13,000" in the Cash out amount of Item 35.

Item 36—Amount in $100 bills or higher.— Enter the amount of the transaction reported in Item 35 that is in denominations of U.S. currency of $100 or higher. For example, if the currency transaction involves Cash in of $100,000 and $50,000 is in U.S. currency of $100 or higher bills, enter $100,000 in the Cash in portion of Item 35, and $50,000 in the Cash in portion of Item 36. If none of the denominations of currency are $100 or higher, enter "0." If the financial institution does not know the amount of total currency that is in U.S. currency of $100 or higher (e.g., because there are multiple transactions), check "Unknown." Do not leave this item blank.

Item 37—Date.—Enter the date of the transaction. Refer to Item 14 for instructions in furnishing this 6-figure date.

Item 38—Foreign currency.—If the currency transaction involves a foreign currency, enter the information in the appropriate spaces. Check the appropriate box in Item 38a if foreign currency was exchanged for or exchanged from U.S. currency. Enter each country in Item 38b, and the amount of the foreign currency in U.S. dollar equivalent in Item 38c. For example, a deposit of Italian lire would have "Italy" entered in Item 38b, and the amount, converted into U.S. dollars entered in Item 38c. Since currency was not exchanged, no entry is made in Item 38a. If currency of more than two foreign countries is involved in the transaction, attach a separate sheet of paper that clearly identifies the individual or organization for whom the transaction was completed and report the information for each foreign currency required by Item 38.

Item 39—Negotiable instrument or wire transfer.—If the transaction involved one or more negotiable instruments (see **General Instructions**) or wire transfers, check the box. In Item 39a, state the number of negotiable instruments involved. In Item 39b, state the number of wire transfers involved. Then, in Item 39c, state the total amount of all negotiable instruments and wire transfers involved in U.S. dollar equivalent. Round less than full dollar amounts to the next higher dollar.

Part V—Financial institution where transaction took place.

Box 40—Type of financial institution.— Check the box that describes the type of financial institution where the transaction occurred. If you check Box 40e, be sure to specify the type of financial institution (e.g., check casher, currency exchange).

Box 40a—Banks.—Enter the appropriate code number in the bracket provided for the Federal agency that performs examinations for compliance with the Bank Secrecy Act regulations:

Code 1—Comptroller of the Currency

Code 2—FDIC

Code 3—Federal Reserve System

Code 4—None of the above

Items 41, 42, 44, 45, and 46—Name and address.—Enter the full legal name, street address, city, state, and ZIP code of the branch or office of the financial institution where the transaction occurred. A P.O. box number is not a street address. If multiple transactions occurred at different locations, provide information in these items on any office or branch where one of the transactions occurred. Also, see Item 48.

Item 43—Identifying number.—Enter the financial institution's employer identification number in Item 43. However, if the financial institution does not have one, enter the social security number of the financial institution's principal owner.

Item 47—MICR number.—Enter the MICR number of the branch or office entered in Item 41.

Item 48—Multiple transactions.—If this was a multiple transaction, state the number of transactions in Item 48a; the number of branches involved in Item 48b; and the 5-digit ZIP codes of all the branches involved in Item 48c. If the branches are in the same ZIP code, show the ZIP code only once. If only one branch was involved, list the ZIP code of that branch.

Items 49, 50, 51, and 52—Preparer's signature, title, and date.—Form 4789 must be signed in Item 49 by an individual authorized or designated by the financial institution to sign it. His or her title should be shown in Item 50 and the date of signature entered in Item 51. This signer's name should be typed or printed legibly in Item 52.

Items 53, 54, and 55— Signature, date, and telephone number.—The official who reviews and approves the information on the form must sign in Item 53 and enter the date signed in Item 54. In Item 55 provide the commercial telephone number of a contact person to answer any questions about this report.

U.S. GOVERNMENT PRINTING OFFICE : 1991 O - 301-137 (60003)

2. Currency Transaction Report by Casinos (CTRC)

Form **8362**
(January 1985)
Department of the Treasury
Internal Revenue Service

Currency Transaction Report by Casinos

File a separate report for each transaction. Please type or print.
(Complete all applicable parts—see instructions)

OMB No. 1545-0906
Expires: 12-31-87

Part I **Individual or Organization for Whom This Transaction Was Completed**

Individual's last name	First name	Middle initial	Social security number

Name of organization	Employer identification number (EIN)	Passport number	Country

Number and street	Business or Occupation	Alien registration number	Country

City	State	ZIP code	Country (if not U.S.)	Driver's permit (number and state)

Part II **Identity of Individual Conducting the Transaction** (Complete only if an agent conducts a transaction for the person in Part I)

Last name	First name	Middle initial	Social security number

Number and street	*Passport number*	*Country*	*Alien registration number*	Country

City	State	ZIP code	Country (if not U.S.)	Driver's permit (number and state)

Part III **Patron's Account or Receipt Number** ▶

Part IV **Description of Transaction. If more space is needed, attach a separate schedule and check this box** ☐

1 Nature of transaction (check the applicable boxes)

a ☐ Currency exchange (currency for currency)

b CASH IN

(1) ☐ Deposit (front and safekeeping) (3) ☐ Check purchased (see item 6 below) (5) ☐ Collection on account
(2) ☐ Chips purchased (4) ☐ Wire transfer of funds (6) ☐ Other cash in ..... (specify)

c CASH OUT

(1) ☐ Withdrawal of deposit (front and safekeeping) (3) ☐ Chips redeemed (5) ☐ Other cash out ..... (specify)
(2) ☐ Check cashed (see item 6 below) (4) ☐ Credit advance

2 Total amount of currency transaction (in U.S. dollars)	3 Amount in item 2 in $100 bills or higher	4 Date of transaction (month, day, and year)
$	$	

5 If other than U.S. currency is involved, please furnish the following information:

Currency name	Country	Total amount of each foreign currency (in U.S. dollars)
		$

6 If a check was involved in this transaction, please furnish the following information (See Instructions):

Date of check	Amount of check (in U.S. dollars)	Payee of check
	$	

Maker of check	Drawee bank and city

Part V **Casino Reporting the Financial Transaction**

Name	Identifying number (EIN)

Number and street

City	State	ZIP code

Sign Here

▶ (Casino employee who handled the transaction) (Title) (Date)

▶ (Casino official reviewing and approving the Form 8362) (Title) (Date)

For Paperwork Reduction Act Notice, see page 2. Form **8362** (1-85)

General Instructions

Paperwork Reduction Act Notice.— The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it, and whether you have to give it to us.

The requested information is useful in criminal, tax, and regulatory investigations. In addition to directing the Federal Government's attention to unusual or questionable transactions, the reporting requirement discourages the use of currency in illegal transactions. Casinos are required to provide the information under 31 CFR 103.22, 103.25, and 103.36.

Who Must File.—Each casino must file a Form 8362 for each deposit, withdrawal, exchange of currency or gambling tokens or chips, or other payment or transfer, by, through, or to such casino, which involves a transaction in currency of more than $10,000. Multiple transactions by or for any person which in any one day total more than $10,000 should be treated as a single transaction, if the casino is aware of them.

Exceptions.—Casinos do not have to file Form 8362 for transactions with domestic banks.

When and Where to File.—File this form by the 15th day after the date of the transaction with the Internal Revenue Service Data Center, P.O. Box 32621, Detroit, MI 48232, Attn: CTRC, or hand carry it to your local IRS office. Keep a copy of each Form 8362 for 5 years from the date you file it.

Identifying Number.—For individuals this is the social security number. For others it is the Federal employer identification number (9 digits).

Penalties.—Civil and criminal penalties (up to $500,000) are provided for failure to file a report or to supply information, and for filing a false or fraudulent report. See 31 CFR, sections 103.47 and 103.49.

Specific Instructions

Part I

This part is to be used in all cases. Record information about patrons and other individuals who conduct transactions in person for their own benefit.

If an agent conducts a transaction with the casino for a patron or other person, show in Part I the principal's identity and complete Part II to show the agent's identity.

Use a passport, alien ID card, or other official document showing nationality, to verify the identity of an alien or nonresident of the United States. Use a driver's license or other document, normally accepted as a means of identification when cashing checks, to verify the identity of anyone else. Record the information from the document in the appropriate box.

Part II

Complete this part only when an individual agent conducts a transaction for a patron or other customer of the casino.

The identity of the individual agent must be verified. Use a passport, alien ID card, or other official document showing nationality, to verify the identity of an alien or nonresident of the United States. Use a driver's license or other document, normally accepted as a means of identification when cashing checks, to verify the identity of anyone else.

(1) In the address section, enter the permanent street address of the individual conducting the transaction.

(2) In the social security block, enter the social security number of the individual conducting the transaction. If the individual has no number, write "None" in this block.

Part III

If the patron has an account relationship with the casino, enter the account number. If a receipt has been issued for a front or safekeeping deposit, enter the number.

Part IV

Item 1.—Check the box that describes the exact nature of the transaction.

Item 6.—Complete this if a check is cashed or a check is purchased with currency.

Part V

Enter the full legal name of the casino and the street address of the casino, office, or branch where the actual currency transaction was conducted. Enter the casino's employer identification number (EIN) in the box provided.

Signature.—This report must be signed by the casino employee or official who handled the transaction and also by the casino official who reviewed and approved the Form 8362.

Definitions

Agent.—An individual who conducts a transaction in currency at a casino or gambling casino for or on behalf of another person.

Casino.—An organization licensed as a casino or gambling casino by a State or local government and having gross annual gaming revenue in excess of $1,000,000. It includes the principal headquarters, branch location, or other place of business of the casino or gambling casino.

Currency.—The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. It includes United States silver certificates, United States notes, and Federal Reserve notes, but does not include bank checks or other negotiable instruments not customarily accepted as money.

Domestic Bank.—Each agent, agency, branch, or office in the United States of a foreign bank and each agency, branch, or office in the United States of any person doing business in one or more of the capacities listed below:

(1) a commercial bank or trust company organized under the laws of any state or of the United States;

(2) a private bank;

(3) a savings and loan association or a building and loan association organized under the laws of any state or of the United States;

(4) an insured institution as defined in section 401 of the National Housing Act;

(5) a savings bank, industrial bank, or other thrift institution;

(6) a credit union organized under the laws of any state or of the United States; and

(7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

Patron.—An individual who engages in gaming activities at a casino.

Person.—An individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, and all entities treated as legal personalities.

Transaction in Currency.—A transaction involving the physical transfer of currency from one person to another. A transaction in currency does not include a transfer of funds by means of bank check, bank draft, wire transfer, or other written order that does not include the physical transfer of currency.

3. International Transportation of Currency or Monetary Instruments (CMIR)

Customs Use Only	DEPARTMENT OF THE TREASURY UNITED STATES CUSTOMS SERVICE	Form Approved OMB No. 1515-0079
Control No.	**REPORT OF INTERNATIONAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS**	This form is to be filed with the United States Customs Service
31 USC 5316; 31 CFR 103.23 and 103.25		Privacy Act Notification on reverse
Please Type or Print		

PART I FOR INDIVIDUAL DEPARTING FROM OR ENTERING THE UNITED STATES

1. NAME *(Last or family, first and middle)*	2. IDENTIFYING NO. *(See instructions)*	3. DATE OF BIRTH *(Mo./Day/Yr.)*

4. PERMANENT ADDRESS IN UNITED STATES OR ABROAD	5. OF WHAT COUNTRY ARE YOU A CITIZEN/SUBJECT?
6. ADDRESS WHILE IN THE UNITED STATES	**7. PASSPORT NO. & COUNTRY**

8. U.S. VISA DATE	9. PLACE UNITED STATES VISA WAS ISSUED	10. IMMIGRATION ALIEN NO. *(If any)*

11. CURRENCY OR MONETARY INSTRUMENT WAS: *(Complete 11A or 11B)*

A. EXPORTED		B. IMPORTED	
Departed From: *(City in U.S.)*	Arrived At: *(Foreign City/Country)*	From: *(Foreign City/Country)*	At: *(City in U.S.)*

PART II - FOR PERSON SHIPPING MAILING OR RECEIVING CURRENCY OR MONETARY INSTRUMENTS

12. NAME *(Last or family, first and middle)*	13. IDENTIFYING NO. *(See instructions)*	14. DATE OF BIRTH *(Mo./Da./Yr.)*

15. PERMANENT ADDRESS IN UNITED STATES OR ABROAD	16. OF WHAT COUNTRY ARE YOU A CITIZEN/SUBJECT?
17. ADDRESS WHILE IN THE UNITED STATES	**18. PASSPORT NO. & COUNTRY**

19. U.S. VISA DATE	20. PLACE UNITED STATES VISA WAS ISSUED	21. IMMIGRATION ALIEN NO. *(If any)*

22. CURRENCY OR MONETARY INSTRUMENTS	23. CURRENCY OR MONETARY INSTRUMENTS	NAME AND ADDRESS	24. IF THE CURRENCY OR MONETARY INSTRUMENT WAS MAILED, SHIPPED, OR TRANSPORTED COMPLETE BLOCKS A AND B.
DATE SHIPPED	☐ Shipped To		A. Method of Shipment *(Auto, U.S. Mail, Public Carrier, etc.)*
DATE RECEIVED	☐ Received From		B. Name of Transporter/Carrier

PART III - CURRENCY AND MONETARY INSTRUMENT INFORMATION (SEE INSTRUCTIONS ON REVERSE) (To be completed by everyone)

25. TYPE AND AMOUNT OF CURRENCY/MONETARY INSTRUMENTS	Value in U.S. Dollars	26. IF OTHER THAN U.S. CURRENCY IS INVOLVED, PLEASE COMPLETE BLOCKS A AND B. *(SEE SPECIAL INSTRUCTIONS)*
Coins ☐ A. ▶	$	
Currency ☐ B. ▶		A. Currency Name
Other Instruments *(Specify Type)* ☐ C. ▶		B. Country
(Add lines A, B and C) TOTAL AMOUNT ▶	$	

PART IV - GENERAL - TO BE COMPLETED BY ALL TRAVELERS, SHIPPERS AND RECIPIENTS

27. WERE YOU ACTING AS AN AGENT, ATTORNEY OR IN CAPACITY FOR ANYONE IN THIS CURRENCY OR MONETARY INSTRUMENT ACTIVITY? *(If "Yes" complete A, B and C)* ☐ Yes ☐ No

	A. Name	B. Address	C. Business activity occupation or profession
PERSON IN WHOSE BEHALF YOU ARE ACTING ▶			

Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief it is true, correct and complete.

28. NAME AND TITLE	29. SIGNATURE	30. DATE

(Replaces IRS Form 4790 which is obsolete) Customs Form 4790 (120384)

GENERAL INSTRUCTIONS

This report is required by Treasury Department regulations (31 Code of Federal Regulations 103).

Who Must File. — Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, shipped or received currency or other monetary instruments in an aggregate amount exceeding $10,000 on any one occasion from the United States to any place outside the United States, or into the United States from any place outside the United States.

A TRANSFER OF FUNDS THROUGH NORMAL BANKING PROCEDURES WHICH DOES NOT INVOLVE THE PHYSICAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS IS NOT REQUIRED TO BE REPORTED.

Exceptions. — The following persons are not required to file reports: (1) a Federal reserve bank, (2) a bank, a foreign bank, or a broker or dealer in securities in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier, (3) a commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned, (4) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (5) a common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers, (6) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (7) a travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public, nor by (8) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

WHEN AND WHERE TO FILE:

A. Recipients. — Each person who receives currency or other monetary instruments shall file Form 4790, within 30 days after receipt, with the Customs officer in charge at any port of entry or departure or by mail with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D.C. 20229.

B. Shippers or Mailers. — If the currency or other monetary instrument does not accompany the person entering or departing the United States, Form 4790 may be filed by mail on or before the date of entry, departure, mailing, or shipping with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D.C. 20229.

C. Travelers. — Travelers carrying currency or other monetary instruments with them shall file Form 4790 at the time of entry into the United States or the time of departure from the United States with the Customs officer in charge at any Customs port of entry or departure.

An additional report of a particular transportation, mailing, or shipping of currency or the monetary instruments, is not required if a complete and truthful report has already been filed. However, no person otherwise required to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed. Forms may be obtained from any United States Customs Service office.

PENALTIES. — Civil and criminal penalties, including under certain circumstances a fine of not more than $500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report. In addition, the currency or monetary instrument may be subject to seizure and forfeiture. See sections 103.47, 103.48 and 103.49 of the regulations.

DEFINITIONS:

Bank. — Each agent, agency, branch or office within the United States of a foreign bank and each agency, branch or office within the United States of any person doing business in one or more of the capacities listed: (1) a commercial bank or trust company organized under the laws of any state or of the United States; (2) a private bank; (3) a savings and loan association or a building and loan association organized under the laws of any state or of the United States; (4) an insured institution as defined in section 401 of the National Housing Act; (5) a savings bank, industrial bank or other thrift institution; (6) a credit union organized under the laws of any state or of the United States; and (7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

Foreign Bank. — A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

Broker or Dealer in Securities. — A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

IDENTIFYING NUMBER. — Individuals must enter their social security number, if any. However, aliens who do not have a social security number should enter passport or alien registration number. All others should enter their employer identification number.

Investment Security. — An instrument which : (1) is issued in bearer or registered form; (2) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; (3) is either one of a class or series or by its terms is divisible into a class or series of instruments; and (4) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

Monetary Instruments. — Coin or currency of the United States or of any other country, travelers' checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments (except warehouse receipts or bills of lading) in bearer form or other in such form that title thereto passes upon delivery. The term includes bank checks, travelers' checks and money orders which are signed but on which the name of the payee has been omitted, but does not include bank checks, travelers' checks or money orders made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements.

Person. — An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities.

SPECIAL INSTRUCTIONS:

You should complete each line which applies to you. **Part II.** — Line 22, Enter the exact date you shipped or received currency or the monetary instrument(s). Line 23, Check the applicable box and give the complete name and address of the shipper or recipient. **Part III.** — Line 26, If currency or monetary instruments of more than one country is involved, attach a schedule showing each kind, country, and amount.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

Pursuant to the requirements of Public Law 93-579, (Privacy Act of 1974), notice is hereby given that the authority to collect information on Form 4790 in accordance with 5 U.S.C. 552a(e)(3) is Public Law 91-508; 31 U.S.C. 5316; 5 U.S.C. 301; Reorganization Plan No. 1 of 1950; Treasury Department No. 165, revised, as amended; 31 CFR 103; and 44 U.S.C. 3501.

The principal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of the Customs Service and any other constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency.

Disclosure of this information is mandatory. Failure to provide all or any part of the requested information may subject the currency or monetary instruments to seizure and forfeiture, as well as subject the individual to civil and criminal liabilities.

Disclosure of the social security number is mandatory. The authority to collect this number is 31 CFR 103.25. The social security number will be used as a means to identify the individual who files the record.

The collection of this information is mandatory pursuant to 31 U.S.C. 5316.

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*U.S. GPO: 1991-282-780/41300

4. Report of Foreign Bank and Financial Accounts (FBAR)

Department of the Treasury
TD F 90-22.1 (4-90)
SUPERSEDES ALL PREVIOUS EDITIONS

REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS
For the calendar year 19
Do not file this form with your Federal Tax Return

Form Approved: OMB No. 1505-0021
Expiration Date: 2/93

This form should be used to report financial interest in or signature authority or other authority over one or more bank accounts, securities accounts, or other financial accounts in foreign countries as required by Department of the Treasury Regulations (31 CFR 103). You are not required to file a report if the aggregate value of the accounts did not exceed $10,000. Check all appropriate boxes. SEE INSTRUCTIONS ON BACK FOR DEFINITIONS. File this form with Dept. of the Treasury, P.O. Box 32621 Detroit, MI 48232.

1. Name (Last, First, Middle)	2. Social security number or employer identification number if other than individual	3. Name in item 1 refers to
4. Address (Street, City, State, Country, ZIP)		☐ Individual ☐ Partnership ☐ Corporation ☐ Fiduciary

5. ☐ I had signature authority or other authority over one or more foreign accounts, but I had no "financial interest" in such accounts (see instruction J). Indicate for these accounts:

(a) Name and social security number or taxpayer identification number of each owner _____

(b) Address of each owner _____

(Do not complete item 9 for these accounts)

6. ☐ *I had a "financial interest" in one or more foreign accounts owned by a domestic corporation, partnership or trust which is required to file* TD F 90-22.1. (See instruction L). Indicate for these accounts:

(a) Name and taxpayer identification number of each such corporation, partnership or trust _____

(b) Address of each such corporation, partnership or trust _____

(Do not complete item 9 for these accounts)

7. ☐ I had a "financial interest" in one or more foreign accounts, but the total maximum value of these accounts (see instruction I) did not exceed $10,000 at any time during the year. (If you checked this box, do not complete item 9).

8. ☐ I had a "financial interest" in 25 or more foreign accounts. (If you checked this box, do not complete item 9.)

9. If you had a "financial interest" in one or more but fewer than 25 foreign accounts which are required to be reported, and the total maximum value of the accounts exceeded $10,000 during the year (see instruction I), write the total number of those accounts in the box below: Complete items (a) through (f) below for one of the accounts and attach a separate TD F 90-22.1 for each of the others. Items 1, 2, 3, 9, and 10 must be completed for each account.

Check here if this is an attachment. ☐

(a) *Name in which account is maintained*	(b) *Name of bank or other person with whom account is maintained*
(c) Number and other account designation, if any	(d) Address of office or branch where account is maintained

(e) Type of account. (If not certain of English name for the type of account, give the foreign language name and describe the nature of the account. Attach additional sheets if necessary.)

☐ Bank Account ☐ Securities Account ☐ Other (specify)

(f) Maximum value of account (see instruction I)

☐ Under $10,000 ☐ $10,000 to $50,000 ☐ $50,000 to $100,000 ☐ Over $100,000

10. Signature	11. Title (Not necessary if reporting personal account)	12. Date

PRIVACY ACT NOTIFICATION

Pursuant to the requirements of Public Law 93-579, (Privacy Act of 1974), notice is hereby given that the authority to collect information on TD F 90-22.1 in accordance with 5 U.S.C. 552(e)(3) is Public Law 91-508; 31 U.S.C. 1121; 5 U.S.C. 301, 31 CFR Part 103.

The principal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency for use in a criminal, tax, or regulatory investigation or proceeding.

Disclosure of this information is mandatory. Civil and criminal penalties, including under certain circumstances a fine of not more than $500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report.

Disclosure of the social security number is mandatory. The authority to collect this number is 31 CFR 103. The social security number will be used as a means to identify the individual who files the report.

INSTRUCTIONS

A. Who Must File a Report—Each United States person who has a financial interest in or signature authority or other authority over bank, securities, or other financial accounts in a foreign country, which exceeds $10,000 in aggregate value at any time during the calendar year, must report that relationship each calendar year by filing TD F 90-22.1 with the Department of the Treasury on or before June 30, of the succeeding year.

An officer or employee of a commercial bank which is subject to the supervision of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation need not report that he has signature or other authority over a foreign bank, securities or other financial account maintained by the bank unless he has a personal financial interest in the account.

In addition, an officer or employee of a domestic corporation whose securities are listed upon national securities exchanges or which has assets exceeding $1 million and 500 or more shareholders of record need not file such a report concerning his signature authority over a foreign financial account of the corporation, if he has no personal financial interest in the account and has been advised in writing by the chief financial officer of the corporation that the corporation has filed a current report which includes that account.

B. United States Person—The term "United States person" means (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, or (4) a domestic estate or trust.

C. When and Where to File—This report shall be filed on or before June 30 each calendar year with the Department of the Treasury, Post Office Box 32621, Detroit, MI 48232, or it may be hand carried to any local office of the Internal Revenue Service for forwarding to the Department of the Treasury, Detroit, MI.

D. Account in a Foreign Country—A "foreign country" includes all geographical areas located outside the United States, Guam, Puerto Rico, and the Virgin Islands.

Report any account maintained with a bank (except a military banking facility as defined in Instruction E) or broker or dealer in securities that is located in a foreign country, even if it is a part of a United States bank or other institution. Do not report any accounts maintained with a branch, agency, or other office of a foreign bank of other institution that is located in the United States, Guam, Puerto Rico, and the Virgin Islands.

E. Military Banking Facility—Do not consider as an account in a foreign country, an account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve U.S. Government installations abroad, even if the United States military banking facility is located in a foreign country.

F. Bank, Financial Account—The term "bank account" means a savings, demand, checking, deposit, loan or any other account maintained with a financial institution or other person engaged in the business of banking. It includes certificates of deposit.

The term "securities account" means an account maintained with a financial institution or other person who buys, sells, holds, or trades stock or other securities for the benefit of another.

The term "other financial account" means any other account maintained with a financial institution or other person who accepts deposits, exchanges or transmits funds, or acts as a broker or dealer for future transactions in any commodity on (or subject to the rules of) a commodity exchange or association.

G. Financial Interest—A financial interest in a bank, securities, or other financial account in a foreign country means an interest described in either of the following two paragraphs:

(1) A United States person has a financial interest in each account for which such person is the owner of records or has legal title, whether the account is maintained for his or her own benefit or for the benefit of others including non-United States persons. If an account is maintained in the name of two persons jointly, or if several persons each own a partial interest in an account, each of those United States persons has a financial interest in that account.

(2) A United States person has a financial interest in each bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is: (a) a person acting as an agent, nominee, attorney, or in some other capacity on behalf of the U.S. person; (b) a corporation in which the United States person owns directly or indirectly more than 50 percent of the total value of shares of stock; (c) a partnership in which the United States person owns an interest in more than 50 percent of the profits (distributive share of income); or (d) a trust in which the United States person either has a present beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.

H. Signature or Other Authority Over an Account—

Signature Authority—A person has signature authority over an account if such person can control the disposition of money or other property in it by delivery of a document containing his or here signature (or his or her signature and that of one or more other persons) to the bank or other person with whom the account is maintained.

Other authority exists in a person who can exercise comparable power over an account by direct communication to the bank or other person with whom the account is maintained, either orally or by some other means.

I. Account Valuation—For items 7, 9, and Instruction A, the maximum value of an account is the largest amount of currency and non-monetary assets that appear on any quarterly or more frequent account statement issued for the applicable year. If periodic account statements are not so issued, the maximum account asset value is the largest amount of currency and non-monetary assets in the account at any time during the year. Convert foreign currency by using the official exchange rate at the end of the year. In valuing currency of a country that uses multiple exchange rates, use the rate which would apply if the currency in the account were converted into United States dollars at the close of the calendar year.

The value of stock, other securities or other non-monetary assets in an account reported on TD F 90-22.1 is the fair market value at the end of the calendar year, or if withdrawn from the account, at the time of the withdrawal.

For purposes of items 7, 9, and Instruction A, if you had a financial interest in more than one account, each account is to be valued separately in accordance with the foregoing two paragraphs.

If you had a financial interest in one or more but fewer than 25 accounts, and you are unable to determine whether the maximum value of these accounts exceeded $10,000 at any time during the year, check item 9 (do not check item 7) and complete item 9 for each of these accounts.

J. United States Persons with Authority Over but No Interest in an Account—Except as provided in Instruction A and the following paragraph, you must state the name, address, and identifying number of each owner of an account over which you had authority, but if you check item 5 for more than one account of the same owner, you need identify the owner only once.

If you check item 5 for one or more accounts in which no United States person had a financial interest, you may state on the first line of this item, in lieu of supplying information about the owner, "No U.S. person had any financial interest in the foreign accounts." This statement must be based upon the actual belief of the person filing this form after he or she has taken reasonable measures to endure its correctness.

If you check item 5 for accounts owned by a domestic corporation and its domestic and/or foreign subsidiaries, you may treat them as one owner and write in the space provided, the name of the parent corporation, followed by "and related entities," and the identifying number and address of the parent corporation.

K. Consolidated Reporting—A corporation which owns directly or indirectly more than 50 percent interest in one or more other entities will be permitted to file a consolidated report on TD F 90-22.1, on behalf of itself and such other entitles provided that a listing of them is made part of the consolidated report. Such reports should be signed by an authorized official of the parent corporation.

If the group of entitles covered by a consolidated report has a financial interest in 25 or more foreign financial accounts, the reporting corporation need only note that fact on the form, it will, however, be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

L. Avoiding Duplicate Reporting—If you had financial interest (as defined in instruction G(2)(b), (c) or (d) in one or more accounts which are owned by a domestic corporation, partnership or trust which is required to file TD F 90-22.1 with respect to these accounts in lieu of completing item 9 for each account you may check item 6 and provide the required information.

M. Providing Additional Information—Any person who does not complete item 9, shall when requested by the Department of the Treasury provide the information called for in Item 9.

N. Signature (Item 10)—*This report must be signed* by the person named in Item 1. If the report is being filed on behalf of a partnership, corporation, or fiduciary, it must be signed by an authorized individual.

O. Penalties—For criminal penalties for failure to file a report, supply information, and for filing a false or fraudulent report see 31 U.S.C. 5322(a), 31 U.S.C. 5322(b), and 18 U.S.C. 1001.

The estimated average burden associated with this collection of information is 10 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accurancy of this burden estimate and suggestions for reducing the burden should be directed to the Department of the Treasury, Office of Financial Enforcement, Room 4320 Main Treasury Building, Washington, DC 20220, and to the Office of Management and Budget, Paperwork Reduction Project (1505-0021), Washington, DC 20503.

D. FinCEN State/Local Coordinators

ALABAMA
ALABAMA BUREAU OF INVESTIGATION
Alabama Department of Public Safety
2720-A West Gunter Park Drive
Montgomery, AL 36109

Phone: (205) 260-1170
Fax: (205) 260-8788

ALASKA
ALASKA STATE TROOPERS
Department of Public Safety
Intelligence Unit
4500 W. 50th Avenue
Anchorage, AK 99502

Phone: (907) 243-8916
Fax: (907) 243-7973

ARIZONA
ARIZONA DEPARTMENT OF PUBLIC SAFETY
Intelligence Region
P.O. Box 6638
Phoenix, AZ 85005-6638

Phone: (602) 223-2629
Fax: (602) 223-2912

ARKANSAS
ARKANSAS STATE POLICE
Criminal Investigation Division
P.O. Box 5901
Little Rock, AR 72215

Phone: (501) 221-8210
Fax: (501) 224-5006

CALIFORNIA
CALIFORNIA DEPARTMENT OF JUSTICE
Financial Investigations Program
P.O. Box 161089
Sacramento, CA 95816-1089

Phone: (916) 227-4005
Fax: (916) 227-0546

COLORADO
COLORADO BUREAU OF INVESTIGATION
Crime Information Center
690 Kipling Street, #300
Denver, CO 80215

Phone: (303) 239-4222
Fax: (303) 233-8336

CONNECTICUT
CONNECTICUT CHIEF STATE'S ATTORNEY OFFICE
Division of Criminal Justice
P.O. Box 5000
Wallington, CT 06492

Phone: (203) 265-2373
Fax: (203) 265-1837

DELAWARE
DELAWARE STATE POLICE
P.O. Box 430
Dover, DE 19903

Phone: (302) 739-5996
Fax: (302) 739-4780

DISTRICT OF COLUMBIA
WASHINGTON METROPOLITAIN POLICE DEPARTMENT
Narcotics and Special Investigations Division
1215 Third Street, NE
Washington, DC 20002

Phone: (202) 727-1544
Fax: (202) 727-9722

FLORIDA
FLORIDA DEPARTMENT OF LAW ENFORCEMENT
P.O. Box 1489
Tallahassee, FL 32302-1489

Phone: (904) 488-0586
Fax: (904) 488-7863

GEORGIA
GEORGIA BUREAU OF INVESTIGATION
P.O. Box 370808
Decatur, DG 30037-0808

Phone: (404) 244-2566
Fax: (404) 244-2798

HAWAII
HAWAII ATTORNEY GENERAL'S DEPARTMENT
Criminal Justice Division
425 Queen Street
Honolulu, HI 96813

Phone: (808) 586-1160
Fax: (808) 586-1375

IDAHO
IDAHO DEPARTMENT OF LAW ENFORCEMENT
Financial Investigation and Narcotics Discovery
700 Stratford Road
Meridian, ID 83680-0700

Phone: (208) 884-7120
Fax: (208) 884-7192

ILLINOIS
ILLINOIS STATE POLICE
Division of Criminal Investigation
500 Iles Park Place
Building 5, Suite 400
Springfield, IL 62718

Phone: (217) 524-8138
Fax: (217) 524-8140

INDIANA
INDIANA STATE POLICE
Crime Information Center
P.O. Box 2404
Indianapolis, IN 46206-2404

Phone: (317) 232-7796
Fax: (317) 232-0652

IOWA
IOWA DEPARTMENT OF PUBLIC SAFETY
Intelligence Bureau
Wallace State Office Building
Des Moines, IA 50319-0049

Phone: (515) 281-7013
Fax: (515) 242-6141

KANSAS
KANSAS BUREAU OF INVESTIGATION
1620 SW Tyler
Topeka, KS 66612

Phone: (913) 296-8200
Fax: (913) 296-6781

KENTUCKY
KENTUCKY STATE POLICE
Intelligence Section
1240 Airport Road
Frankfort, KY 40601

Phone: (512) 227-8708
Fax: (512) 564-4931

LOUISIANA
LOUISIANA STATE POLICE
Intelligence & Investigative Support Section
P.O. Box 66614, Drawer 37
Baton Rouge, LA 70896

Phone: (504) 925-6213
Fax: (504) 925-4791 or 4766

MAINE
MAINE STATE POLICE
Criminal Intelligence Unit
State House Station 164
Augusta, ME 04333-0164

Phone: (207) 624-8787
Fax: (207) 624-8768

MARYLAND
MARYLAND STATE POLICE
Bureau of Drug Enforcement
7175 Columbia Gateway Drive
Columbia, MD 24046

Phone: (410) 290-0873
Fax: (410) 290-0886

MASSACHUSETTS
MASSACHUSETTS STATE POLICE
1010 Commonwealth Avenue
Boston, MA 02215-1201

Phone: (617) 566-4500 x309
Fax: (617) 566-8249

MICHIGAN
MICHIGAN DEPARTMENT OF STATE POLICE
221 W. Lake Lansing Road, Suite 102
East Lansing, MI 48823

Phone: (517) 336-6637
Fax: (517) 351-9211

MINNESOTA
MINNESOTA BUREAU OF CRIMINAL APPREHENSION
Special Investigation Unit
1246 University Avenue
St. Paul, MN 55101

Phone: (612) 642-0610
Fax: (612) 642-0618

MISSISSIPPI
MISSISSIPPI BUREAU OF NARCOTICS
P.O. Box 7459
Jackson, MS 39282

Phone: (601) 359-1570
fAX: (601) 373-8347

MISSOURI
MISSOURI HIGHWAY PATROL
Division of Drug and Crime Control
P.O. Box 568
Jefferson City, MO 65102

Phone: (314) 751-3452
Fax: (314) 526-5577

MONTANA
MONTANA DEPARTMENT OF JUSTICE
Law Enforcement Services Division
Scot Hart Building, Room 359
202 North Roberts Street
Helena, MT 59620

Phone: (406) 444-2967 x3874
Fax: (406) 444-2759

NEBRASKA
NEBRASKA STATE PATROL
P.O. Box 94907
Lincoln, NE 68509

Phone: (402) 479-4947
Fax: (402) 479-4002

NEVADA
NEVADA DIVISION OF INVESTIGATION
555 Wright Way
Carson City, NV 89711-0100

Phone: (702) 687-4412 x3337
Fax: (702) 687-4405

NEW HAMPSHIRE
NEW HAMPSHIRE STATE POLICE
Special Investigations Unit
10 Hazen Drive
Concord, NH 03305

Phone: (603) 271-2663
Fax: (603) 271-2520

NEW JERSEY
NEW JERSEY ATTORNEY GENERAL'S OFFICE
New Jersey Division of Criminal Justice
CN085 Hughes Justice Complex
Trenton, NJ 08625-0085

Phone: (609) 984-6500
Fax: (609) 984-4496

NEW MEXICO
NEW MEXICO DEPARTMENT OF PUBLIC SAFETY
Special Investigations Division
4801 Indian School Road, NE, #204
Albuquerque, NM 87110

Phone: (505) 841-4660
Fax: (505) 841-4632

NEW YORK
NEW YORK STATE DEPARTMENT OF LAW
Criminal Prosecutions Bureau
120 Broadway, Room 26-86
New York, NY 10271

Phone: (212) 416-8750
Fax: (212) 416-8931

AND

OFFICE OF THE NEW YORK DISTRICT ATTORNEY
Crimes Against Revenue Unit
One Hogan Place
New York, NY 10013

Phone: (212) 335-9000
Fax: (212) 335-4094

NORTH CAROLINA
NORTH CAROLINA STATE BUREAU OF INVESTIGATION
Criminal Intelligence Section
P.O. Box 29500
Raleigh, NC 27626

Phone: 1-800-334-3000
Fax: (919) 662-4483

NORTH DAKOTA
NORTH DAKOTA ATTORNEY GENERAL'S OFFICE
Bureau of Criminal Investigation
P.O. Box 7429
Fargo, ND 58109

Phone: (701) 239-7126
Fax: (701) 239-1729

OHIO
OHIO BUREAU OF CRIMINAL IDENTIFICATION & INVESTIGATION
Financial Investigation Unit
P.O. Box 365
London, OH 43140

Phone: 1-800-282-3784
Fax: (614) 852-4453

OKLAHOMA
OKLAHOMA STATE BUREAU OF INVESTIGATION
6600 N. Harvey Street, Suite 300
P.O. Box 11497
Oklahoma City, OK 73136

Phone: (405) 848-6724
Fax: (415) 843-3804

OREGON
OREGON STATE POLICE
Criminal Investigation Division
400 Public Service Building
Salem, OR 97310

Phone: (503) 378-3720 ext 4416
Fax: (503) 363-5475

PENNSYLVANIA
PENNSYLVANIA ATTORNEY GENERAL'S OFFICE
Bureau of Narcotics Investigations
16th Floor
Strawberry Square
Harrisburg, PA 17120

Phone: (717) 783-2600
Fax: (717) 783-5431

RHODE ISLAND
RHODE ISLAND ATTORNEY GENERAL'S OFFICE
Deputy to the Attorney General for Law Enforcement
72 Pine Street
Providence, RI 02903

Phone: (401) 274-4400
Fax: (401) 277-1331

SOUTH CAROLINA
SOUTH CAROLINA LAW ENFORCEMENT DIVISION
P.O. Box 21398
Columbia, SC 29211-1398

Phone: (803) 896-7150
Fax (803) 896-7041

SOUTH DAKOTA
SOUTH DAKOTA DIVISION OF CRIMINAL INVESTIGATION
East Highway 34
c/o 500 East Capitol Avenue
Pierre, SC 57501-5090

Phone: (605) 773-3331
Fax: (605) 773-4629

TENNESSEE
TENNESSEE BUREAU OF INVESTIGATION
Criminal Intelligence Unit
1148 Foster Avenue
Nashville, TN 37210

Phone: (615) 741-0430
Fax: (615) 532-8315

TEXAS
TEXAS ATTORNEY GENERAL'S OFFICE
Financial Crimes Division
P.O. Box 12548
Austin, TX 78711-2518

Phone: (512) 463-3088
Fax: (512) 479-8067

UTAH
UTAH DEPARTMENT OF PUBLIC SAFETY
P.O. Box 18654
Kearns, UT 84118

Phone: (801) 284-6223
Fax: (801) 284-6300

VERMONT
VERMONT STATE POLICE
Criminal Division
103 South Main Street
Waterbury, VT 05979

Phone: (802) 244-8781
Fax: (802) 244-1106

VIRGINIA
VIRGINIA STATE POLICE
Support Services Division/Criminal Intelligence Section
P.O. Box 27472
Richmond, VA 23261-7472

Phone: (804) 323-2020 (24 Hour Hotline)
Fax: (804) 323-2021

WASHINGTON
WASHINGTON STATE PATROL
Special Narcotics Enforcement Unit
P.O. Box 2347
Olympia, WA 98507-2347

Phone: (206) 586-2429
Fax: (206) 586-8231

WEST VIRGINIA
WEST VIRGINIA STATE POLICE
Bureau of Criminal Investigation
725 Jefferson Road
South Charleston, WV 25309

Phone: (304) 558-2600
Fax: (304) 744-9369

WISCONSIN
WISCONSIN DEPARTMENT OF JUSTICE
Division of Narcotics Enforcement
P.O. Box 2188
Madison, WI 53701-2188

Phone: (608) 267-1333
Fax: (608) 264-9477

WYOMING
WYOMING DIVISION OF CRIMINAL INVESTIGATIONS
316 West 22nd Street
Cheyenne, WY 82002-0150

Phone: (307) 777-7184
Fax: (307) 777-7252

1. FinCEN (Financial Crimes Enforcement Network)

FinCEN is an organization established by the U.S.Department of Treasury to collect, analyze and disseminate intelligence on financial crimes. FinCEN has a staff of nearly 200 employees to input and analyze information derived from law enforcement, financial, and commercial data-bases. The following is a list of some of the information which can be obtained from FinCEN data bases:

1. Currency Transaction Reports (CTRs)
2. Suspicious Transaction Reports (STRs)
3. Currency and Monetary Instrument Reports (CMIRs)
4. Casino Reports (CTRCs)
5. Foreign Bank Accounts held by United States Citizens (FBARs)
6. Credit information for individuals
7. Information regarding corporations
8. Information regarding real estate ownership, purchase price, and value
9. Information regarding banks and savings and loans, as well as companies' transacting in securities monitored by the Securities and Exchange Commission
10. Access to financial institutions' logs as to qualifying $3,000 to $10,000 transactions

2. Listing of FinCEN Databases

• **CBI (DTEC and IDENT)** is a credit bureau service. FinCEN is only able to obtain "identifying" information on individuals, not their credit history. The identifying information consist of current and former addresses. DTEC is queriable only by Social Security Number.

• **DIALOG** is a gateway to over 400 databases which provide business information and financial data, complete text of articles and news stories, directory-type listing of companies and associations.

• **Dun and Bradstreet (Domestic)** provides reports on U.S. businesses. The reports may include corporate history, financial data, banking relationships, and biographical information about key officers. Bankruptcies, tax liens, and judgements may also be reported.

• **The Financial Database (FDB)** contains data compiled from reports filed with U.S. Treasury Department. The data consists of CURRENCY TRANSACTION REPORTS (CTRs) reflecting cash transaction of more than $10,000; CURRENCY TRANSACTION REPORTS BY CASINOS (CTRCs) of transactions of more than $10,000 with casinos; CURRENCY AND MONETARY INSTRUMENT REPORTS (CMIRs) relating to transporting currency or certain monetary instruments in aggregate amounts exceeding $10,000 into or out of the United States; and REPORTS OF FOREIGN BANK AND FINANCIAL ACCOUNTS (FBARs) relating to interest in, or signature authority over, bank securities or other financial accounts in a foreign country, which exceed $10,000 in total value at any time during a calendar year.

• **Information American (INFO AMER)** can search state corporate and limited partnership records, real property assets, and transfer and affiliations records. It provides personal property assets and can identify all FAA registered commercial and private aircraft owned by businesses and individuals.

• **LEXIS/NEXIS** researches information on court decisions, statutes, regulations, selected newspapers and magazines, and provides full text stories or abstracts. LEXIS-NEXIS also provides public filing at the federal, state and local government levels and other miscellaneous types of information. This database also lists real estate holding in 34 states (including the District of Columbia and the Virgin Islands). Of these States, only six are with complete coverage. All property listings that are shown in this report have been considered. Only those property records likely identified with subjects of this report have been printed in their entirety. Other records will be made available upon special request.

• **METROMAIL** is an automated system of names, addresses and telephone numbers having nationwide coverage. Limited demographic information on individuals and descriptive information on the addresses may be available. A listing of up to 30 neighbors can be obtained. METROMAIL also has a business search capability providing information on 9.2 million business names, addresses and telephone numbers.

• **National Association of Securities Dealers (NASD)** provides biographical information on stock broker/dealer businesses and individuals. The information includes the name, address, social security number, date of birth, education records, work history, broker/dealer number, and personal data such as sex, height, weight, hair and eye color.

• **Treasury Enforcement Communications System (TECS II)** provides information on U.S. Federal law enforcement investigations. It also provides access to the National Crime Information Center (NCIC), the National Law Enforcement Telecommunications Network (NLETS), FAA Private Aircraft records and U.S. Customs Automated Commercial Shippers records (ACS). ACS is an automated record system of import/export declarations and related international shipping documents.

• **TRW Business** provides reports, containing financial data, on large corporations. Key officers and directors may be identified. Public record information such as bankruptcies, tax liens, and judgements may be reported.

• **TRW-Sherlock** is a credit bureau service. FinCEN is only able to obtain "identifying" information on individuals, not their credit history. The identifying information consists of current and former addresses. It often provides a social security number associated with the name in TRW files.

• **TRW-Social** is a credit bureaus service. FinCEN is only able to obtain "identifying" information on individuals, not their credit history. The identifying information consists of current and former addresses. This database is queriable by SSN only.

• **United States Postal Insepction Service (ISDBIS)** is a database of all Postal Inspection Service criminal cases.

3. FinCEN Commercial Database Queries

Queries of the Commercial data base systems may be based on any of the following information:

- individual name, address and zip code;
- social security number;
- surname and zip code;
- surname, city and state;
- addresses (old and new);
- phone number and area code;
- news articles (inquiries can be made by topic);
- legal statute or bill number (House or Senate);
- business name, city and state; and
- equity exchange data and insider information on all companies required to file 10K reports with the SEC by name of officer or director.

4. Commercial Database Information

Responses from the database queries may provide the following information:

- month and year of birth of subject;
- spouse's name;
- names and DOBs of other family members;
- phone numbers, residence and business subscriber information;
- length of residence;
- dwelling type;
- neighbors (names, addresses, phone numbers, etc.);
- forwarding addresses;
- U.S. and South American newspaper and magazine articles;
- pending legislative information;
- criminal, civil, and corporate law cites; and
- business financial and narrative information (domestic and selected international businesses).

- employment information
- selected public records
- selected real estate records
- equity exchange data and insider information of all companies required to file 10K reports with the SEC

Additional commercial data base services expected to be acquired will provide the following information:

- Canadian credit information

As other information becomes available through the addition of data bases, notifications will be provided.

• **Department of Motor Vehicles (DMV)** — The state Department of Motor Vehicles can give you addresses and a copy of an individual's driver's license photo with a signature.

• **Voter Registration Files** — These files will give you the voter's full legal name, address, date of birth and social security number along with a phone number and a signature.

• **Marriage Records** — These records include date of birth, social security number and proof of identity of both the marriage partners. The proof of identity often used will be a driver's license or passport.

• **Corporation Filings** — Incorporation documents are filed by the Secretary of State in each state and often in each county. Most States require the person who is forming the corporation to fill out a form which often includes such information as a list of the registered agent, incorporators, officers and directors.

• **Grantor-Grantee Records** — Records of transfers of title to real property are maintained by the counties in all states. The records contain a description of the property, dates of acquisition and sale, purchase and sale prices, identity of mortgage lenders, names of title insurance companies, names of attorneys representing the parties to a transfer of title, and other related information.

• **Court Records** — These records may contain financial information and personal histories. Divorce cases often have detailed information on assets and liabilities of both husband and wife. Other lawsuits, such as personal injury suits, business litigation and bankruptcy, may yield important information which will be helpful in a money laundering investigation.

F. Using Commercial Databases to Access Public Record Information[1]

The investigation of financial crimes routinely involves an asset check on one or more suspects. Likewise, in any criminal investigation in which forfeiture is a consideration, an asset check on the key players is necessary. When the targets of such investigations are known to have lived in the local area for many years and to have involved themselves in only local-area activities, standard investigative techniques apply:

At the local courthouse one may find:

- judgments, including civil judgments, divorce decrees and probate orders;• deeds;
- recorded real estate agreements;
- liens and lien releases, including mechanics liens;
- real property tax records, including the name and address used for billing;
- utility filings — sewer hook ups, water hook ups and electrical/phone hookups;
- recorded mortgages — both chattel (personal property) mortgages and real estate mortgages;
- notices of *lis pendens*;
- options to buy; and
- easements and easement releases.

At the office of the Secretary of State the following may be available:

- identification information on firms incorporated in or doing business in the state;
- identification information on partnerships and professional associations formed or doing business in the state;
- names of all incorporators or general partners;
- names of registered agents; and
- numbers and types of shares issued.

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[1] This section is adapted from and article written by Bart Cox, initally published in the March/April 1993 issue of the *Civil Remeidies in Drug Enforcement Report.*

At the repository for Uniform Commercial Code (UCC) information — usually the office of the Secretary of State — one may find:

- recorded financial statements;
- names of creditors;
- names of debtors;
- values of properties used as security; and
- types and amounts of financing obtained.

Investigators are trained to get such public record information on a routine basis. But what about records and assets located in other counties and other states? With extensive resources it might be feasible to send investigators to several locations to conduct such searches, but the more practical approach is for an investigator to conduct the search by accessing a commercial database loaded with public record information.

In the old days, when paper was the primary medium used to store information, documents had to be keypunched into computers, a method that is labor intensive, costly and time consuming. These days most offices use word processors. That means documents are now available in a medium other than paper — floppy disk, magnetic tape, etc. For a fee, many offices will make such documents, in computer-readable format, available to commercial database service vendors. Such vendors then upload the documents into their mainframes and sell access to lawyers and investigators.

Another development, advances in the manufacture of computer hardware, continues to produce mass storage at lower cost. It is now possible to store whole libraries of documentary information for less than the paper to print it on would cost.

Both these developments — the advent of word processors and the declining cost of mass storage — occurred during the past decade. The result has been an explosion of information available through commercial databases.

In the legal field the most widely known commercial database is LEXIS, but there are many others. Commercial databases are maintained on mainframe computers in a central location and accessed by telephone using a modem connected to a computer. The equipment and procedure used to access LEXIS is the same as that used to hook up to any commercial database. All that is needed is a PC, a modem, a telephone line and a password.

The three major commercial vendors of public record information, in alphabetical order, are Information America, LEXIS, and Prentice Hall. They are extremely competitive, and the market they serve is expanding rapidly.

The following charts compare coverage of the three vendors in six categories. In the first column, "REAL ESTATE," the primary source of the information is State tax assessor/collectors. Asterisks indicate additional information from grantor/grantee books kept by county clerks.

The second column, "CORPORATION," indicates the availability of information on active and inactive partnerships and corporations registered to do business or incorporated in the state. Usually this information is maintained by the State's Secretary of State.

The third column, "UCC," refers to Uniform Commercial Code filings, again, usually maintained by the Secretary of State. Whenever a person or business takes out a secured loan, the lender files UCC lien information indicating names of debtors, the secured party and a description of the property used as collateral. The "secured party" is important because it indicates the financial institution where the debtor maintains a business relationship.

The bankruptcy information comes from the clerks of the federal bankruptcy courts and includes the name of the bankrupt person or company and the names of participating creditors. It may have information about assets as well.

These six categories are by no means comprehensive. All three vendors, for example, have online access to aircraft registered with the FAA. LEXIS has boats licensed by the state of Florida and Prentice Hall has a database with environmental data containing information on hazardous waste sites, among other things. Each vendor has online information the other does not. Each has certain areas of more concentrated coverage than the other. Prentice Hall, for example, has more extensive UCC coverage than LEXIS.

Counting up the Xs in each column, the vendor with the greatest variety of public record information currently available for online searches is Information America. Information America also has extensive international coverage, including a fairly comprehensive database with Canadian public record information. Information America also has the following features not available elsewhere:

- Sleuth - A handy method of conducting nationwide searches for assets and relationships which are displayed in a series of user-friendly screens.

- Business Finder and People Finder - Each of these represents a fast method for locating a business or a person. People Finder, compiled from telephone directories and other sources, has 111 million names, and 61 million telephone numbers.

- Dun's Business Records and Executive Affiliation - Provides information on businesses and executives, including a company profile, history, operations and executive information.

- Boats - All boats registered with the Coast Guard.

1. What Does the Service Cost?

Information America charges by the search, regardless of results, and the scope of the search determines the cost. LEXIS charges by time in use, and Prentice Hall charges by the results obtained.

Knowing that State law enforcement must always keep close watch on expenditures, we inquired among those in the law enforcement community fortunate enough to be users of all three services. Such users must make decisions on a daily basis with an eye on the bottom line. Even among those with years of experience using all three services, it is extremely difficult to estimate costs because there are so many factors involved.

Is the search on an individual or a business? Is the target likely to have been involved in litigation? Can the target's activity be assumed to be confined to one state or a few states? How expert is the person doing the searching? Speaking very generally, Prentice Hall appears to be positioning itself as the most price-competitive of the three.

With any of the services it is almost impossible to predict exactly what a search will cost. More experienced users will, of course, have a better feel for cost than will novices.

When pressed, our law enforcement source with the most experience using all three services gave the following estimates, emphasizing that they were "strictly ball park figures." Searches that are very limited in scope cost less than $10 with any of the three vendors. Comprehensive, nationwide searches might cost as little as $15 with the least expensive vendor under the best circumstances or as much as $75 with the most expensive vendor and a particularly costly search.

In considering price, there are two factors that particularly impact the cost of LEXIS: volume of use and skill of the user. Some LEXIS users have long-standing "flat rate" contracts (as do some Information America customers) at prices considerably below the standard rate of approximately $200 per hour. Others have agreements with LEXIS for a volume discount. Either agreement can result in considerable savings. Additionally, LEXIS has the most sophisticated search methodology, based on Boolean logic. A user well versed in LEXIS searching technique can make it very competitive in terms of price.

2. Which System is Most User Friendly?

Of the three vendors, only LEXIS provides color screens. LEXIS also has the fastest response time, which is important since it charges by time of use. Experienced users are particularly laudatory of the customer support service provided by LEXIS; training, response to telephone inquiries, technical assistance in setup, problem solving and advice to its users on better ways to take advantage of its service. Prentice Hall is especially proud of its customer training program. Information America's "sleuth" feature gets rave reviews from the user community. Prentice Hall's "universal" search is also widely acclaimed, and a search of LEXIS' ALLOWN library for assets or ALLUCC for business records is simple and comprehensive. If copies of deeds or other records that have been located are needed, all three vendors have a copying and delivery service, and LEXIS has a good price for its overnight delivery service.

The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) has extensive expertise in the law enforcement use of public record commercial database information and is developing computer systems for more efficient searching of those databases. FinCEN has recently concluded information sharing agreements with all but three states, and agencies wanting to try out commercial database capabilities in particular cases or to gain more information about law enforcement use of information of this sort may want to get in touch with FinCEN through their state-local FinCEN coordinator.

C. Conclusion

As the office automation revolution proceeds, more and more public record information is becoming available to investigators working at their desks. If money is pivotal, Prentice Hall looks like an attractive choice. If real estate records are of primary concern, LEXIS and Information America are competitive. On the other hand, if business information is of primary interest, look to Prentice Hall or Information America. And remember, things change quickly in the information age.

	Bamkruptcy			Judgments			Tax Liens		
	LEX/NEX	Info Am	Pren Hall	LEX/NEX	Info Am	Pren Hall	LEX/NEX	Info Am	Pren Hall
Alabama									
Alaska									
Arizona			X						
Arkansas									
California		X	X		X	X		X	X
Colorado					X				
Connecticut									
Delaware									
Dist. of Col.									
Florida									
Georgia		X	X						
Hawaii			X			X			X
Idaho									
Illinois									
Indiana									
Iowa					X			X	
Kansas									
Kentucky									
Louisiana									
Maine									
Maryland									
Massachusetts					X			X	
Michigan									
Minnesota									
Mississippi									
Missouri									
Montana									
Nebraska					X			X	
Nevada			X			X			X
New Hampshire									
New Jersey		X							
New Mexico									
New York									
North Carolina									
North Dakota									
Ohio									
Oklahoma									
Oregon			X			X			X
Pennsylvania		X	X						
Rhode Island									
South Carolina									
South Dakota									
Tennessee									
Texas		X	X		X	X		X	X
Utah			X						
Vermont									
Virgin Islands									
Virginia									
Washington			X			X			X
West Virginia									
Wisconsin									
Wyoming									

	Real Estate			Corporations			UCC		
	LEX/NEX	Info Am	Pren Hall	LEX/NEX	Info Am	Pren Hall	LEX/NEX	Info Am	Pren Hall
Alabama									
Alaska						X			X
Arizona	X*	X*			X	X			
Arkansas						X			
California	X*	X*	X	X	X	X	X	X	X
Colorado	X*	X*		X	X	X		X	X
Connecticut		*	*	X	X	X			
Delaware	X*	X		X	X	X			
Dist. of Col.	X*	X*							
Florida	X*	X*			X	X		X	X
Georgia	X*	X*		X	X	X		X	
Hawaii	X*	X*							
Idaho					X	X			
Illinois	X*	X*		X	X	X	X	X	X
Indiana				X	X				
Iowa					X	X		X	X
Kansas	X	X							
Kentucky	X*	X							
Louisiana	X	X			X				
Maine									
Maryland	X*	X*		X	X	X	X	X	X
Massachusetts	X*	X*	X*	X	X	X	X	X	X
Michigan	X	X		X	X				
Minnesota	X	X							
Mississippi	X	X			X	X			
Missouri	X	X		X	X	X		X	X
Montana									
Nebraska					X	X		X	X
Nevada	X*	X*		X	X	X			X
New Hampshire						X			
New Jersey	X*	X*							
New Mexico	X	X							
New York	X*	X*		X	X	X			X
North Carolina	X	X			X			X	X
North Dakota									
Ohio	X*	X*		X					
Oklahoma	X	X			X				
Oregon					X	X			X
Pennsylvania	X*	X*		X	X	X	X	X	X
Rhode Island		*	*		X	X			
South Carolina	X	X			X			X	
South Dakota									
Tennessee	X*	X*			X	X			
Texas	X	X		X	X	X	X	X	X
Utah	X	X			X	X			X
Vermont						X			
Virgin Islands	X	X							
Virginia	X*	X*							
Washington	*	*			X	X			
West Virginia									
Wisconsin	X	X		X	X	X			
Wyoming						X			

*Deed Trasnfers also available

G. Using the Tax Man and His Resources in Financial Investigations and Money Laundering Prosecutions[1]

1. Initial Considerations

There are occasions when an investigator "knows" that a person (or persons) is involved in a narcotics trafficking/money laundering operation but does not have probable cause to execute search warrants to collect the hard evidence of criminal activity. On these occasions, the investigator can gather information to create a financial profile of a suspect to assist in the establishment of probable cause. State tax agencies are excellent resources to help in the creation of the financial profile.

Investigators and prosecutors need to review their respective state laws and talk with legal departments of their respective tax agencies to determine the nature of the information that can be obtained and the procedure involved to obtain it.

In California, the fact that an individual or business has not filed an income tax return is not privileged.[2] Upon written request, California investigators/prosecutors can obtain a Certificate of Non-Filing of Income Tax Return and a Certificate of Due Diligent Search of Records from the California Franchise Tax Board for the calendar years the individual or business has failed to file income tax returns. The fact that a person or business has not filed an income tax return is consistent with the modus operandi of the narcotic trafficker/money launderer who does not want to disclose the receipt of illegitimate income to tax agencies. Thus, the failure to file a return helps establish probable cause and can be included in an affidavit in support of a search warrant[3]

Where the illicit organization uses a business to facilitate the laundering of narcotics trafficking proceeds, the state sales tax agency should be able to inform the investigator of gross revenues

[1] This section is adapted from an article written by James Dutton, California Deuty Attorney General, which was initially published in the May/June 1994 issue of the *Financial Crimes Report*.

[2] Cal. Rev. & Tax. Codes §§ 19542, 19543, and 19547.

[3] United States v. $93,685.61 in U.S. Currency, 730 F.2d 571 (9th Cir.) *cert. denied,* 469 U.S. 831 (1984); United States v. $175,260, 741 Supp. 45 (E.D.N.Y. 1990); United States v. One 1985 Plymouth Colt Vista, 644 F. Supp. 1546 (N.D. Ill. 1986).

claimed by the business, the business's legal status (*e.g.*, corporation, partnership, or sole proprietorship) and the suspect's ownership interest in the business. In California, upon the written request of a prosecutor, the above information will be provided by the Board of Equalization. The information is derived from quarterly sales tax returns and applications for sales tax permits. In the great majority of cases, the suspect's income (which is explained as being derived from the "front" business in defense of narcotics/money laundering charges) substantially exceeds the amount of revenue claimed on the business's quarterly sales tax returns.

An Internal Revenue Service (IRS) Form 8300 is required to be filed by a trade and business which receives cash aggregating in excess of $10,000 in a business transaction. (For example, this can be from a sale of a car or the payment of attorneys' fees.[4] Form 8300 contains identifying information about the individual who engages in the transaction and the individual or business on whose behalf the transaction was made. The form also sets forth the number of $100 bills used in the transaction — (the denomination of choice of drug dealers.)

State and local law enforcement cannot obtain a copy of Form 8300 from the federal government because it is classified as a tax return and, therefore, privileged. However, law enforcement in California and Arizona have access to 8300 information by statute.[5] Their respective statutes require businesses to file duplicate copies of form 8300 with state agencies. (Other states should consider enacting similar legislation to allow law enforcement access to this very important investigative tool.)

The IRS will also supply local law enforcement with information to assist its investigations. The IRS, along with other federal agencies (U.S. Customs and Financial Crimes Enforcement Network) will disseminate Bank Secrecy Act (BSA) information to law enforcement. BSA

[4] Payment of attorneys' fees are not considered to be covered under the attorney-client priviledge umbrella except, possibly, under the circumstance were disclosure would provide the "last link" to privileged and incriminating information. United States v. Levinthal, 961 F.2d 936 (11th Cir.) 1992); United States v. goldberger & Dubin, P.C., 935 F.2d 501 (2d Cir. 1991).

[5] CAL. REV. & TAX. CODE § 18645(e); ARIZ. REV. STAT. ANN. § 6-1241(C).

information includes Currency Transaction Reports (CTR) required to be filed by financial institutions (*e.g.*, banks, check cashers, currency dealers or exchangers, telegraph companies) on cash transactions by individuals or businesses in excess of $10,000. BSA information also includes Currency and Monetary Instrument Reports (CMIR) that must be filed by a person who transports cash or negotiable instruments in bearer form[6] in excess of $10,000 across the US Border. Law enforcement in a number of states can obtain BSA information about their respective state-based currency transactions and transportation from their respective state agencies based on memoranda of understanding (MOU) entered into with the U.S. Department of Treasury. The MOUs allow the IRS to disseminate BSA information to the states via magnetic tape.[7]

2. Joint Investigation With a State Tax Agency

The following major benefits accrue to the narcotics/money laundering investigation when an agent from the state income tax agency is brought in as part of the investigative team:

- Immediate access to state income tax returns filed by the suspect or his business.
- Expertise in the analysis of financial records and assistance in the preparation of schedules showing that the suspect's expenditures substantially exceed his income from legitimate sources (called a "source and application of funds analysis").
- In situations where known expenditures significantly exceed reported income on tax returns (if tax returns are filed at all), establishment of probable cause for the execution of search warrants on the suspect's residence, business, or institutions maintaining records of suspect's assets, liabilities, or expenditures.
- Probable cause is established on the basis of felony violations for failure to file income tax returns or fraudulent filing of income tax returns.

The aforementioned source and application of funds analysis has evolved from the more traditional net worth analysis used by the IRS in preparing tax cases.[8] These analyses are relevant to narcotics trafficking/money laundering investigations in that a person engaged in a profit-

[6] *See* 31 C.F.R. § 103.11(i) for a complete list of institutins required to file Currency Transaction Reports.

[7] Memoranda of Understanding have been signed by Arizona, California, Florida, Illinois, Maryland, New York, and Texas.

generating illicit activity must have expenditures (asset accumulation or day-to-day expenses) that substantially exceed income from legitimate sources. An investigator can collect information concerning income and expenditures from a variety of sources, including the suspect's employer, bank records, court records (probate, dissolution, bankruptcy and civil litigation files) and real estate and vehicle ownership records. The above-mentioned analyses and/or the underlying financial information assist in the establishment of probable cause for search warrants and are admissible at trial.[9]

Even where an investigator is unable to bring in the state income tax agency as part of the investigation (and thus not able to obtain copies of a suspect's state income tax returns from the agency), the investigator should attempt to obtain copies of state and Federal tax returns by search warrants executed on the suspect's residence, business or his accountant's place of business. There is no accountant-client privilege under federal law.[10] Copies of tax returns obtained by search warrant or subpoena are admissible at trial under federal law.[11] Certain states may prohibit the introduction of copies of income tax returns seized by search warrant because of a statutory or case-created tax return privilege.[12]

Tax returns can also be obtained via consent forms signed by the suspect. Even where tax returns are not the basis for tax evasion charges, the returns are still useful for preparing a

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[8] For an excellent dissertation on the source and application of fund analysis and the net worth analysis, see NOSSEN AND NORVELLE, THE DETECTION, INVESTIGATION AND PROSECUTION OF FINANCIAL CRIMES, 2d ed. 1993. *See also*, Part II, Chapter Three at p. II-106.

[9] United States v. Isabel, 945 F.2d 1193, 1202-03 (1st Cir. 1991); United States v. Hoyland, 903 F.2d 1288 (9th Cir. 1990); United States v. Nelson, 851 F.2d 976 (7th Cir. 1988); United States v. Lewis, 759 F.2d 1316 (8th Cir. 1985); United States v. Murillo, 709 F.2d 1298 (9th Cir. 1983); United States v. Harvey, 560 F. Supp. 1040, 1089-90 (S.D. Fla. 1982).

[10] Rule 501 of the FED. R. EVID.; United States v. Bein, 728 F.2d 107, 112 (2nd Cir. 1984); Couch v. United States, 409 U.S. 322 (1973).

[11] Stokowitz v. United States, 831 F.2d 893 (9th Cir. 1987); Heathman v. United States District Court, 503 F.2d 1032 (9th Cir. 1974).

[12] In California, the issue of admissibility of tax returns obtained by search warrant has not been resolved. See Schnable v. Superior Court, 9 Cal. App. 4th 1588 (1992) and Miller v. Superior Court, 71 Cal. App. 3d 145 (1977) in support of an argument for admissibility; and see Webb v. Standard Oil Company, 49 Cal.2d 509 (1957) in support of an arguments against their admissibility.

source and application of funds analysis; for impeaching a suspect (defendant) whose tax return declaration materially understates income; and for helping to identify assets subject to asset forfeiture.

3. Sample Language for Search Warrants

No matter how eloquently financial investigation concepts are stated, most agents and prosecutors are primarily interested in the bottom line—what needs to be included in the affidavit in support of a search warrant? Sample language for affidavit concerning suspect's expenditures and failure to file income tax returns during the time period of his purported involvement in criminal activities (*e.g.*, 1991 and 1992) follows:

A tabulation of known expenditures by Mr. Suspect based on a review of escrow documents, receipts, cancelled checks, and other documents evidencing payment show expenditures in 1991 of $140,000 and expenditures in 1992 of $181,000. Affiant believes that the above amounts represent only a part of Suspect's expenditures due to incomplete records, and undocumented cash expenditures.

Information supplied by the California Franchise Tax Board shows that Suspect did not file individual tax returns for the State of California for calendar years 1991 and 1992. In 1991 and 1992 a California resident was required to file an income tax return under Revenue and Taxation Code section 18501 (or predecessor statute) where his gross income exceeds $8,000. The suspect did file a California income tax return for 1990.

Based on affiant's training and experience, expenditures substantially in excess of reported gross income on tax returns (in this case no reported income for years 1991 and 1992) usually mean the individual is engaged in an illegal income generating enterprise, like narcotics trafficking. Money derived from narcotics trafficking is not usually reported on a tax return.

4. Trial

The investigation has resulted in the filing of felony narcotics trafficking, money laundering, and tax evasion charges. Federal tax returns are now obtainable from the IRS for the state trial pursuant to 26 U.S.C. § 63103(h)(4)(A). This section allows disclosure of tax returns in a state criminal proceeding involving tax administration where the taxpayer is a defendant.

Resources permitting, the IRS will supply a Criminal Investigation Division (CID) agent to testify as an expert that the defendant's financial transactions are consistent with the normal practices of a money laundering scheme. CID agents have extensive experience in investigating money laundering cases under federal money laundering statutes (18 U.S.C. §§ 1956, 1957). CID agents from each geographic region have attended a nationwide training program for the purpose of establishing a cadre of expert witnesses qualified to testify about money laundering in federal and state prosecutions.

5. Conclusion

State narcotics and money laundering investigators presently do not take full advantage of information and resources available from state and federal tax agencies. When a narcotics/money laundering investigation has run out of gas, bringing in a state tax agent as part of a joint investigation can provide the necessary fuel to power the investigation to a successful prosecution. In addition to the tax agent bringing with him "high octane" tax evasion charges, he can decipher the "high tech" manuals (financial documents) necessary to operate a financial investigation.

H. Authorization to Release Tax Information Filed With the Internal Revenue Service

I, the undersigned, authorize the Department of Treasury, Internal Revenue Service, to release copies of all tax documents filed with the Internal Revenue Service, and/or information regarding the failure to file tax documents, to the [fill in law enforcement agency] for the years_____ to _____.

This authorization is being made voluntarily and no threats, promises or coercion have been made to induce me to sign this authorization. I am aware that, without this authorization, my tax information is confidential and protected by law under the Internal Revenue Code and/or relevant case law.

_____ _____

DATE SIGNATURE

_____

NAME (PRINT)

_____

SOCIAL SECURITY NUMBER

_____

ADDRESS

_____

CITY STATE ZIP

_____

WITNESS

I. Authorization to Release Tax Information Filed with the State Franchise Board

I, the undersigned, authorize the State of _____Franchise Tax Board to release copies of all tax documents filed with the Franchise Tax Board and/or information regarding the failure to file tax documents, to the _____for the years _____to _____.

This authorization is being made voluntarily and no threats, promises or coercion have been made to induce me to sign this authorization. I am aware that, without this authorization, my tax information is confidential and protected by law under [fill in the state], and/or the relevant case law.

_____ _____

DATE SIGNATURE

_____

NAME (PRINT)

_____

SOCIAL SECURITY NUMBER

_____

ADDRESS

_____

CITY STATE ZIP

_____

WITNESS

J. Model Affidavit in Support of a Foreign State Search Warrant

AFFIDAVIT

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, LARRY LUNSFORD, being duly sworn, depose and say:

1. I have substantial probable cause to believe and I do believe that I have cause to search the premises, structures, rooms, receptacles, and safes situated at:

Security Pacific National Bank
South Clairemeont Office
3091 South Clairemont Drive
San Diego, California

FOR THE PROPERTY: Source documents (credit copy and check(s) or teller cash-in tickets) and any documents, mircrofilm, microfiche, computer hardware and software, or records showing the source of funds, and/or other bank accounts used for the purchase of the following check:

Date	Amount	Bank Name	Check No.	Payee
5/6/85	$189,000.00	Security Pacific National Bank	_____	Ticor Title Ins. Escrow # _____

Purchaser/Remitter: _____

2. I am a peace officer employed by the California Department of Justice, Special Prosecutions Unit and have been so assigned for three months. Prior to that, I was assigned to the Bureau of Narcotics Enforcement for three years assigned to the Clandestine Laboratory Task Force. Prior to that, I was employed by the San Diego Sheriff's Department for ten and one half years, assigned to the Narcotics Task Force for five years. During this time I have investigated a wide variety of criminal activities including major narcotic conspiracies, financial investigations and investigations of organized crime.

3. I have participated in hundreds of arrests of persons for violations involving controlled substances. I have testified as an expert witness in the United States District Courts and the Superior and Municipal Courts of San Diego on numerous occasions. I have had formal specialized training in financial asset investigations under the direction of the U.S. Department of Justice and the Drug Enforcement Administration.

4. I have conducted in excess of 50 financial investigations involving the tracing of funds and assets gained through narcotics trafficking.

5. Affiant's experience includes the investigation of several large-scale narcotics conspiracies and the laundering of their illegal drug proceeds. It has been affiant's experience that the drug traffickers frequently invest their illegal drug proceeds into a variety of legitimate business investments, such as real estate and stock trading accounts, in an attempt to legitimize the financial assets derived from illicit drug sales.

6. Affiant further learned through experience and training that drug traffickers often acquire and control their assets through other persons who allow themselves to be used as nominee purchasers in order to hide the identity of the true owner. Illicit drug money is often "laundered" through such an individual when the drug trafficker provides cash to the nominee, who in turn purchases cashier's checks (in amounts not exceeding $10,000 to eliminate federal and state reporting requirements) which are thereafter consolidated and used to purchase assets, often including real estate.

7. On June 12, 1990, the Special Prosecutions Unit received a request for investigative assistance from Michael R. McVey, Assistant Attorney General, Organized Crimes and Racketeering of the Arizona Attorney General's Office. Assistant Attorney General McVey requested assistance in obtaining source bank records associated with the purchase of cashier's checks in California whch were used to purchase real estate in Arizona.

8. On June 27, 1990, affiant received a copy of an "Affidavit for Search Warrant," subscribed and sworn to by Special Agent Joe H. North, Arizona Attorney General's Office, dated June 8, 1990. (See Exhibit A, attached.) Accompanying the North affidavit was a copy of an "Affidavit for Search Warrant" by affiant, Otis Thrasher, Department of Arizona Public

Safety (see Exhibit B, attached).

9. On June 19, 1990, affiant contacted Special Agent Joe H. North via telephone and discussed the status of the Arizona investigation to date and the details contained in North's "Affidavit for Search Warrant" attached as Exhibit A and incorporated herein. Special Agent North verified the statements made in his affidavit as being true and correct to the best of his knowledge and belief.

10. On June 29, 1990, affiant contacted Investigator Steve Lump, Arizona Department of Public Safety, via telephone and discussed the status of the Arizona investigation and the details contained in Thrasher's "Affidavit for Search Warrant" attached as Exhibit **B** and incorporated herein. Lump was the co-affiant on Thrasher's "Affidavit for Search Warrant." Lump verified the statements made in his affidavit as being true and correct to the best of his knowledge and belief.

11. The Arizona authorities seek to obtain records pertaining to the purchase of cashier's checks at the various California banks, which were then used to purchase real estate as part of a suspected laundering operation of illicit drug proceeds. (Records described in paragraph 19 of attached affidavit, Exhibit A.)

12. Upon review of the records and/or a copy of Security Pacific National Bank's cashier's check #2412469, in the amount of $189,000.00 (attached as Exhibit "C" and incorporated herein), Security Pacific National Bank was contacted in order to verify the issuing bank branch for the check and the present location of relevant source documents for proper search warrant service. Affiant learned that the records and documents will be obtained by service at the following bank branch location:

Security Pacific National Bank
South Clairemont Office
3091 South Clairemont Drive
San Diego, California

13. Following review of the affidavits of Special Agent North (Exhibit A) and Officer Lump (Exhibit B) and the discussions with Special Agent North and Officer Lump, affiant has concluded that probable cause exists to believe and affiant does believe, that Norman Dale

HEIFNER, Sr. and Sharon HEIFNER and others were involved in a conspiracy in Arizona to manufacture and distribute dangerous drugs (methamphetamine), the manufacture and distribution of dangerous drugs, and illegally conducting an enterprise. Additionally, affiant believes that the crimes of conspiracy to commit money laundering and money laundering were committed both in the State of Arizona and in California.

14. Based on affiant's fourteen years experience as a law enforcement officer and the facts set forth in the attached affidavit be Special Agent North (Exhibit A), and by Office Thrasher (Exhibit "B"), affiant further believes that there is probable cause to believe, and affiant does believe, that evidence of the above felonies will be provided by the following records: source documents (credit copy and check(s) or teller cash-in tickets) and any documents, records showing the source of funds and/or other bank accounts used for the purchase of said check described in paragraph 12, above.

15. Affiant therefore requests the issuance of a search warrant authorizing him or other law enforcement officers working with him to conduct a complete search of the premises, structures, rooms, receptacles, and safes situated at the bank location listed in paragraph number 12, for the documents and records described in paragraph number 14, above.

DATED:

_____
Special Agent
Special Prosecutions Unit

Prepared with the assistance of and reviewed by:

_____
Deputy Attorney General
Special Proscutions Unit
California Department of Justice

K. Model MLAT Letter

U.S. Department of Justice

United States Attorney
Central District of California
United States Courthouse
Room 601
751 West Santa Ana Boulevard
Santa Ana, California 92701

October 29, 1990

Mr. Richard Owens
Associate Director
Office of International Affairs
P.O. Box 27330
Washington, D.C. 20038-7330

Supplemental Request for Assistance in the Prosecution of
Daniel James Fowlie in the Case:
United States v. Daniel James Fowlie
Central District of California - Case NO. SA CR 88-83 JFL

Dear Mr. Owens:

I am a Special Assistant United States Attorney in the Office of the United States Attorney for the Central District of California. I am criminally prosecuting a case in which the defendant is charged with trafficking in drugs and illegally transporting drug profits from the United States into the Kingdom of the Netherlands. Witnesses necessary to this prosecution are located in the Kingdom of the Netherlands and have been contacted by the Rotterdam Police and other authorities. At this time they have voluntarily agreed to come to the United States to testify at the trial currently scheduled for January 15, 1991.

I want to interview the Dutch witnesses in late November, early December, 1990 in preparation for the trial. Furthermore, if an unforeseen event occurs where one or more of the witnesses cannot attend the trial in the State of California, I would like to take the deposition of any such witness in late December, 1990, or during the first two weeks of January, 1991. Please request the assistance of the appropriate Dutch authorities regarding these interviews and possible depositions.

Peter DeVette, a police officer employed by the Rotterdam Police Department, is a necessary witness in the case against Daniel James Fowlie. Please also request the assistance of the appropriate Dutch authorities for the allowance of Mr. DeVette to attend the upcoming trial in the State of California.

PRIOR TREATY REQUEST

In May of 1989, a request under the Treaty on Mutual Assistance in Criminal Matters was made to the Kingdom of the Netherlands to assist in the taking of the depositions of six of the same Dutch witnesses that are subject to this current supplemental request.

This prior Treaty request was in the companion criminal case, *United States v. Daniel Mack Fowlie, et al.*, Central District of California, Case NO. SA CR 88-82 AHS. With the assistance of the Dutch authorities, the depositions took place in Rotterdam between June 5 and June 8, 1989. Three of the defendants in the companion case, Christopher O'Keefe, Daniel Mack Fowlie, and Gus Fowlie have all pled guilty to conspiracy charges regarding the drug trafficking operation headed by the defendant in the current case, Daniel James Fowlie.

FACTS

Beginning in or before 1982, and continuing into 1985, Daniel James Fowlie and his two sons, Daniel Mack Fowlie and Gus Fowlie, along with Clyde Ronald Gates, Joseph Cooper, Christopher O'Keefe and Jon Aiken operated a drug distribution network based in California. They received marijuana from Mexico and distributed it to drug sellers in various parts of the United States and Canada. Daniel James Fowlie ran the organization. Clyde Ronald Gates handled the money. Daniel Mack Fowlie, Gus Fowlie, Jon Aiken and others participated in the loading and unloading of the marijuana and transportation of United States currency out of the United States. Christopher O'Keefe also participated in the loading and unloading of marijuana, as well as the transportation of the marijuana.

During 1982 Daniel James Fowlie lived in California and directed his drug distribution from there. In 1983 and early 1984, he lived in Rotterdam, Kingdom of the Netherlands. While in Rotterdam, the drug distribution continued from California with Clyde Ronald Gates and Joseph Cooper operating the business in California at Daniel James Fowlie's direction. During this period, the drug business generated millions of dollars in revenue, much of which was transported to Daniel James Fowlie in Rotterdam. Joseph Cooper gave the United States currency, hidden in the side of suitcase, to various couriers who carried the currency to Daniel James Fowlie in Rotterdam. These couriers, including Daniel James Fowlie, Gary Foster, and Gus Fowlie, failed to report the transportation of the currency upon their departure from the United States for Rotterdam. In Rotterdam, Daniel James Fowlie used the United States currency to purchase and remodel a building, to operate his business (Tencoil Europa) and for living expenses.

Tencoil Europa, located in Rotterdam, and Tenco, located in California, were businesses run by Daniel James Fowlie. These businesses were purportedly involved in large-scale crude oil transactions; however, no oil transactions were completed. In 1984, Daniel James Fowlie returned to California and resumed direct control of this drug distribution business. Daniel Mack Fowlie, Gus Fowlie and others assisted Daniel James Fowlie in the loading and unloading of marijuana in California from 1984 to early 1985.

In early 1985, after the local police discovered that Daniel James Fowlie was operating his drug business from a ranch in California, Daniel James Fowlie moved to Mexico. From Mexico, Daniel James Fowlie continued to operate his drug business through associates in the United States. During this period, Daniel Mack Fowlie and others, transported the United States currency generated from the marijuana distribution network to Daniel James Fowlie in Mexico.

CRIMES CHARGED

Daniel James Fowlie is charged separately from the other members of the drug trafficking conspiracy. He resisted extradition from Mexico for approximately two years. Pursuant to a Mexican Court of Appeal ruling, Daniel James Fowlie was extradited to the United States in June of 1990.

Daniel James Fowlie, is charged with:

1. Violating Title 21, United States Code, Section 841, by possessing a controlled substance (marijuana) with the intent to distribute it.

2. Violating Title 21, United States Code, Section 846, by conspiring to possess controlled

substances (marijuana) with the intent to distribute the substances.

3. Violating Title 21, United States Code, Section 848, by engaging in a continuing criminal enterprise as an organizer of five or more persons to possess controlled substances with the intent to distribute the substances. Section 848(a) provides in part:

> any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than ten year and which may be up to life imprisonment.

4. Violating Title 18, United States Code, Section 371, by conspiring to defraud the United States Government. Section 371 provides:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

The conspiracy to defraud charged against these defendants has as its objectives:

> (a) the knowing and willful defrauding of the United States, in particular the Internal Revenue Service of the Department of the Treasury, by impeding, impairing, obstructing, and defeating its lawful government function to ascertain, compute, assess, and collect revenue, namely, income taxes.
>
> (b) the knowing and willful defrauding of the United States, in particular the United States Customs Service, by impeding, impairing, obstructing and defeating its lawful government function of the collection of data and reports of the transportation out of the United States of monetary instruments of more than five thousand dollars ($5,000.00).

5. Violating Title 31, United States Code, Section 5316, by failing to report the transportation of United States currency from within the United States to a place outside the United States. In 1982 through October 11, 1984, Section 5316 provided, in pertinent part:

> (a) . . . a person or an agent or bailee of the person shall file a report under subsection (b) of this section when the person, agent, or bailee knowingly—
> (1) transports or has transported monetary instruments of more than $5,000 at one time—
> (A) from a place in the United State to or through a place outside the United States...

After October 11, 1994, through the dates relevant to this case, Section 5316 provided, in pertinent part:

> (a) . . . a person or agent or bailee of the person shall file a report under subsection (b) of this section when the person, agent or bailee knowingly—
> (1) transports or has transported or attempts to transport or have attempted to transport monetary instruments of more than $10,000 at one time—
> (A) from a place in the United States to or through a place outside the United States. . . .

TESTIMONY REQUESTED

The prosecution requests permission to interview the following individuals concerning their knowledge of the activity of Daniel James Fowlie and other members of the drug trafficking and drug profits exporting organization in the Kingdom of the Netherlands:

1. Ernst Vorage, Rotterdam — Mr. Vorage's testimony is expected to include, among other matters, statements that: (a) he saw Daniel Mack Fowlie, Gus Fowlie, Gary Foster, and other couriers arrive in the Kingdom of the Netherlands carrying suitcases with more than $10,000 in United States currency concealed therein; and (2) on at least one occasion he saw the money removed from the suitcases and paid to Daniel James Fowlie at Tencoil Europa.

2. Dirk De Smalen, Rotterdam — Mr. De Smalen is expected to testify, among other matters, that: (1) he was hired as the managing director of Tencoil Europa, Daniel James Fowlie's purported oil importing business in Rotterdam; (2) Daniel James Fowlie refused to operate the business in accord with recognized methods of operation; (3) no oil importing contracts were ever completed; (4) that Daniel James Fowlie relied on cash transaction, instead of transactions based on standard banking instruments; (5) he advised Daniel James Fowlie it was illegal to transport currency as he did; and (6) that exorbitant expenses were incurred by Tencoil Europa and no income was earned by Tencoil Europa.

3. P.S.C. Windhouwer, Mathenesserlaan 250, 3021 H.R. Rotterdam — Mr. Windhouwer is expected to testify, among other matters, that: (1) he acted in the nature of an escrow officer in connection with Daniel James Fowlie's purchase of a building in Rotterdam; and (2) Daniel James Fowlie attempted to pay him, in his capacity of escrow officer, with hundreds of thousand of dollars of United States currency for the building.

4. H.J. Schroder, Amro Bank, Coolsingel 119, Rotterdam — Mr. Schroder is expected to testify, among other matters, that he is an officer of Amro Bank in Rotterdam and is aware of the exchange of United States currency for currency of the Kingdom of the Netherlands by Daniel James Fowlie and/or others at Tencoil Europa. He is also expected to identify and explain bank records previously obtained from Daniel James Fowlie and/or Tencoil Europa.

5. P. Nab, sint Agathastraat 19, S.B. Rotterdam — Mr. Nab is expected to testify, among other matters, that he was employed by the contractor that remodeled a building in Rotterdam for Daniel James Fowlie and that Daniel James Fowlie paid for the substantial remodeling bills with currency.

6. Bernard K. Brourverens, 28 Parklaan, Rotterdam — Mr. Brourverens is expected to testify, among other matters, that: (1) he worked for a travel agency in Rotterdam used by Tencoil Europa; (2) Tencoil Europa's monthly bills for travel were thousands of dollars; (3) payments were made in currency; and (4) that he was told by Tencoil Europa staff that his travel agency would be paid as soon as the money courier from the United States arrived in the Netherlands. Mr. Brourverens is expected to identify certain travel documents previously obtained from Daniel James Fowlie and Tencoil Europa.

7. Robert Pellogrom — Mr. Pellogrom is expected to testify among other matters, that: (1) he worked for Tencoil Europa and arranged for exchanges of large amounts of United States currency at Rotterdam banks for Daniel James Fowlie; (2) Daniel James Fowlie represented to him that he had smuggled marijuana; and (3) he helped package and/or saw large shipments of marijuana at Daniel James Fowlie's ranch in California.

8. Peter DeVette, Rotterdam Police Department — Mr. DeVette is expected to testify, among other things, that the business records of Tencoil Europa reflect hundreds of thousands of dollars of expenses paid in currency and computer printouts prepared by him from Tencoil's business records that reflect Tencoil expenses in excess of a million in U.S. dollars and no income being generated by Tencoil.

It is also expected that some or all of the above witnesses will testify that: (1) Tencoil Europa's bills

were not paid in a timely fashion; (2) Daniel James Fowlie represented that payment would be made upon the arrival of a courier form the United State; and (3) payment was so made.

All of these witnesses live and work in or around Rotterdam, except Robert Pellogrom. Mr. Pellogrom is spending time in Southern France and/or the Amsterdam area. All of these witnesses, including Mr. Pellogrom, have been contacted through Peter DeVette, a police officer employed by the Rotterdam Police Department and/or Rob Wallace, an United States Customs Attache with the United States Embassy in Den Haag. They are aware of the current locations of the witnesses and know how to contact them. They are currently working on the scheduling of the witnesses for interviews between November 28 and December 5, 1990 in Rotterdam.

INTERVIEW SCHEDULING REQUESTED

All witnesses to be interviewed on or between Wednesday, November 28, 1990, and Wednesday, December 5, 1990, in or around Rotterdam.

INTERVIEW PROCEDURE REQUESTED

In connection with these interviews, the prosecution requests:

(1) That Special Assistant United States Attorney James D. Dutton attend such interviews as well as one or more of the following:

1. Joseph Rowland, Internal Revenue Service;
2. Stanley J. Fullerton, Federal Bureau of Investigation; and
3. Robert Mattivi, United States Customs.

(2) That an interpreter provided by the Government of the United States be present to interpret as necessary at the interviews; and

(3) Such interviews to take place at the Rotterdam Police Department, or respective business offices of the witnesses to be interviewed, or other mutually convenient locations.

DEPOSITION PROCEDURE REQUESTED

At this time all the witnesses have agreed to come to the State of California to testify at the trial (trial estimated to last six weeks, first day of trial scheduled for January 15, 1991). In the event that any of the witnesses cannot attend the trial in the State of California, the prosecution would like to take the deposition of any such unavailable witness during the last two weeks of December, 1990 or the first two weeks of January, 1991.

In connection with these possible depositions, the prosecution requests that:

1. The depositions be taken at the Office of the United States Customs Service, Casuriestraat 5, Fourth Floor, 2511 VB's, Den Haag, Kingdom of the Netherlands.

2. The depositions be taken in English (all witnesses speak English and have been previously interviewed in English with minor assistance from an interpreter).

3. An interpreter provided by the government of the United States be present to interpret as necessary.

4. A stenographic reporter provided by the government of the United States record a verbatim account of the entire proceeding.

5. The depositions also be recorded on video cassette so the testimony of the witnesses may be viewed by the jury at trial.

6. The witnesses be placed under oath.

7. Prosecutor James D. Dutton, as well as James Brustman, the attorney for defendant Daniel James Fowlie, be present and question the witnesses.

8. The attorneys attending be allowed to question directly the witnesses. If the government of the Kingdom of the Netherlands declines to allow direct questioning, the prosecution requests that the prosecutor and the defense lawyer each be allowed to present questions to the witnesses through an official appointed by the government of the Kingdom of the Netherlands. It is essential that the defense lawyer be allowed to question the witnesses, directly or through the appointed official, if the depositions are to be used as evidence at trial.

9. Telephones, in a private setting, be made available to the defense lawyer, as well as reasonable breaks in the proceedings, so that he may telephone the defendant in the United States to discuss the testimony being given and questions to be asked if Daniel James Fowlie does not attend the depositions in person.

10. Investigators employed by the government of the United States be allowed to be present during the depositions to assist the prosecutor in the proceedings.

11. After the depositions have been transcribed, the original or a copy of each deposition be made available to the relevant witnesses through channels acceptable to the government of the Kingdom of the Netherlands for review and signing by the witnesses before an official of the government of the United States or Kingdom of the Netherlands so that the depositions can be used at trial.

ATTENDANCE OF PETER DEVETTE AT TRIAL
IN THE STATE OF CALIFORNIA

Mr. DeVette has evaluated the business records Tencoil Europa. Many of the records are in Dutch. Mr. DeVette has compiled a complex computer data diskette and printouts that summarize the Tencoil business records. The prosecution plans to introduce such summary printouts into evidence at trial. It is necessary for Mr. DeVette to testify at the trial as to method of compiling the computer data as well as explaining such computer printouts to the jury. Mr DeVette will also be used to explain certain key business documents of Tencoil that were written in the Dutch language.

The Office of the United States Attorney greatly appreciates the cooperation of the government of the Kingdom of the Netherlands in arranging these interviews during the week commencing November 28, 1990, and other matters requested herein.

U.S. Department of Justice
Washington, DC 20530

BY AIRBORNE EXPRESS

Mrs. M.T.E. Ford-Classen Chief
Office of International
Judicial Assistance
Constitutional and Criminal
Law Department
Ministerie Van Justitie
Schedeldoekshaven 100
2511 EX 's-Gravenhage
The Netherlands

Dear Mrs. Ford-Classen:

Re: Supplemental Request to the Netherlands for Assistance in the Prosecution of Daniel James Fowlie

In May, 1989, a treaty request was made for assistance in the prosecution of Daniel Mack Fowlie. A supplemental request is submitted for assistance in the companion criminal case, United States v. Daniel James Fowlie.

(5) P. Nab
(6) Bernard K. Brourverens
(7) Robert Pellogrom
(8) Peter De Vette

The prosecutor would like to interview the witnesses between November 28 and December 5, 1990. Moreover, if any witnesses cannot attend the trial in California scheduled for January 15, 1990, the prosecutor would like to take their depositions in late December or during the first two weeks of January 1991. In addition, the prosecutor requests the presence of Mr. De Vette at the trial in California.

Sincerely,

M. Form Letter: Law Enforcement Request for Mail Cover

U.S. Postal Inspection Service
Regional Chief Postal Inspector
U.S. Postal Inspection Service
Western Region Headquarters
Attention: MOSC
San Bruno, California 94098-0100

Dear Sir:

This letter is a request to initiate a mail cover in your region for first class (and third class) mail for thirty days, commencing on [date mail cover would begin], for the mailing address of [address to be targeted]. The mail cover is requested to include the following named addressees: [list the target's name, any known aliases, and any front persons or nominee owners used by the target that may be receiving mail at the target address]. The purpose of this mail cover is to locate the whereabouts of [name of target] to obtain information regarding the commission of a felony, *i.e.*, money laundering, a violation of California Penal Code, Section 186.10.

Background surrounding this request is as follows:

[In succeeding paragraphs set forth information summarizing the target's criminal activities; the reasons for believing that pertinent information as to his criminal activities or his location will be ascertained through the use of a particular requested class(es) of mail cover; and give reasons for believing that the target is using aliases or front persons or nominee owners.[1] Also, set forth the status of the target's criminal case if one has been instituted (*i.e.*, complaint or indictment filed, arrest warrant issued, etc.)]

The information should be returned to Officer
[Address]

If any other information is needed, please contact Officer by telephone at [telephone number].

Very truly yours,
[Requsting Officer]

[1] Be aware that your written request is subject to disclosure pursuant to discovery procedures.

CHAPTER THREE — NET WORTH AND SOURCE AND APPLICATION OF FUNDS ANALYSIS

CHAPTER THREE — NET WORTH AND SOURCE AND APPLICATION OF FUNDS ANALYSIS

Income may be established by either the direct or indirect approach. The **direct approach,** or specific items method of proving income, relies upon specific transactions such as sales and expenses to determine income. The **indirect approach** relies on circumstantial proof of income by using the **net worth** method or the **source and application of funds** method.

In investigations of financial crimes, a subject's books and records are frequently not available, requiring the use of the indirect approach through net worth or source and application analysis. Even though these methods are considered circumstantial proof of income, courts have approved their use in determining income in civil and criminal cases on the theory that proof of unexplained funds or property in the hands of a subject may establish a *prima facie* statement of income. The focus of these analyses is to show by circumstantial evidence that the subject's unexplained income during the time period in which he was engaged in criminal activity was derived from such activity. Both types of analysis are admissible at trial to circumstantially show the defendant acquired income illegally. The facts underlying the analyses, and conclusions derived therefrom, can also be used to establish probable cause in an affidavit in support of a search warrant.

A. Net Worth Analysis

The **net worth** method is based on the theory that increases or decreases in a person's net worth during a period, adjusted for living expenses, results in a determination of income.

1. Definition

Proof of a suspect's unexplained income is accomplished by selecting a "base year" from which to calculate a suspect's assets and liabilities and thus establish an initial evaluation of the suspect's net worth. For each succeeding year, the investigator calculates the suspect's income from

legitimate sources, as well as the suspect's expenses. The investigator then determines the suspect's net worth for the target year. From this overall net worth analysis, a figure for income from illegal sources (unexplained income) is calculated by determining the increase in the suspect's net worth over the applicable time period which cannot be explained by the suspect's legitimate sources of income.

The formula for computing funds from unknown or illegal sources is:

Assets (less)	Liabilities (equals)	Net Worth
Net Worth (less)	Prior Year's net worth (equals)	Net worth Increase
Increase (plus)	Living Expenses (equals)	Income
Income (less)	Income from known (legitimate) sources (equals)	Funds derived from unknown (illegal) sources

2. Sources of Net Worth

An individual's assets, liabilities, and living expenses can be determined from a variety of sources, such as:

- Interviews with subject's associates to provide information on subject's financial habits;
- Review of public records, including court documents.
- Banking and credit card records.
- Official records, including vehicle registration and, where available, state tax records.
- Traditional investigative sources, including surveillance and informants.

The above list is intended to be suggestive, not exhaustive; a detailed discussion of investigative resources is contained in the section of this manual under Financial Investigative Resources (See Chapter Two, pp. II-45-112).

Assets are usually valued at cost. The use of fair market values will tend to cause distortions of income if appreciation or depreciation occurs between time periods. However, if the

suspect values inventories with a different method, and the method is consistently applied according to proper accounting techniques, then the investigator should follow it as well.

3. Example

	12-31-92	12-31-93	12-31-94
ASSETS (base year)			
Cash on hand	$1,000	$0	$0
Bank account balnace	1,500	4,750	5,225
Jewelry	1,000	6,000	12,000
Boat	17,500	17,500	17,500
Automobile	0	0	18,250
Real estate		150,000	150,000
Total Assets	**$21,000**	**$178,250**	**$202,975**
LIABILITIES			
Note payable — finance company	$275	$275	$275
Loan	0	2,400	1,200
Mortgage on real estate	0	94,000	88,000
Total Liabilities	275	$96,675	89,475
Net Worth	$20,725	$81,575	$113,500
Less: Prior year's net worth		- 20,725	- 81,575
Net worth increase (decrease)		$60,850	$31,925
Add: Personal living expenses			
Credit card payments		+ 1,460	+ 3,000
Other personal living expenses		+ 11,000	+ 10,000
Income		$73,310	$44,925
Less funds from known sources:			
Interest on bank accounts		- 250	- 475
Wages		- 25,200	- 22,200
TOTAL FUNDS FROM KNOWN SOURCES		**$47,860**	**$22,250**

4. Living Expenses

If the net worth statement is being developed for trial, a stipulation of living expenses should be sought from the defense. In some cases courts have allowed some minimal estimated living expenses. Case law should be explored for the latest decisions.

Living expenses are expenditures made which technically are not classified as assets or liabilities. Living expenses include, but are not limited to:

- Household expenses.
- Auto repairs.
- Insurance premiums.
- Contributions.
- Medical expenses.
- Taxes paid.
- Entertainment expenses
- Gifts to others

The investigator should look carefully at these categories as they may reveal patterns of money laundering. Gifts are a source of leads in this area.

B. Source and Application of Funds Analysis

1. Definition

The **source and application of funds** analysis, also known as the expenditure method, is an indirect method of determining known sources of funds and is often used by financial investigators because it is an easy method to understand and use. It is also easier for jurors to understand than the net worth method.

Source and application compares known expenditures with all known receipts during a particular time period. When using this method, we determine where the subject's money came from (the source) and what he did with the money (the application). The legitimate sources of funds are subtracted from the actual expenditures for the years in question. The balance then represents income from illegitimate sources.

There is a similarity with net worth analysis in that the same items of account are used. Source and application differs from net worth in that only increases and decreases in assets and

liabilities are considered along with living expenses. When the subject has assets and liabilities that remain unchanged, they are not listed on the statement.

When there are a number of assets and liabilities that remain unchanged over the period, this method will be preferable to net worth analysis because it is simpler and therefore a more understandable presentation can be made. Additionally, the source and application method is of more use in cases where the subject's income is spent on lavish living and there is little, if any, net worth.

The indirect method is used as a primary method of establishing funds from unknown or illegal sources only when a direct or specific item case cannot be made. This will occur when books and records are not available because there are none, they are inadequate or they are withheld.

2. Items Used in the Computation

In a source and application analysis, items to be considered in the computation are:

a. Expenditures
   - increases in cash on hand or bank accounts;
   - increases in other assets (personal and business);
   - decreases in liability balances;
   - personal living expenses.

b. Known sources
   - decrease in cash on hand or bank accounts;
   - sale or exchange of assets;
   - salaries or business profits;
   - tax refunds, interest, dividends, or insurance proceeds.
   - loans, gifts, or inheritances received;
   - unemployment or public assistance receipts;
   - other known sources.

Any excess of the expenditures over known sources of funds results in funds from unknown or illegal sources.

3. Example

Funds Applied	**1993**	**1994**
Increase in bank balance	$5,000	$10,000
Increase in savings account	20,000	15,000
Purchase of securities		30,000
Purchase of residence	200,000	
Purchase of automobile	40,000	
Purchase of fur coat		10,000
Loan repayment-auto		15,000
Loan repayment-residence	100,000	
Living expenses	50,000	60,000
Total Funds Applied	**$315,000**	**$240,000**

Source of Legitimate Funds	**1993**	**1994**
Cash on hand	$5,000	$8,000
Automobile loan	5,000	
Interest on bank account	500	750
Mortgage on residence	100,000	
Salary	20,000	5,000
Total sources of Legitimate Funds	**$130,500**	**$33,750**
Income From Unknown or Illegitimate Sources	**$184,500**	**$206,250**

4. Cash on Hand

Cash on hand is coin and currency in the subject's possession (including on his person, in a safety deposit box, at his residence or in a nominee's hands). It does not include money in an account in a financial institution.

It is important to determine the cash on hand at the beginning of the period or the subject will contend that an accumulation of cash from previous periods was the source of the funds

expended in the period. Establishing and documenting a firm cash on hand starting point is perhaps the most important and most difficult phase on any indirect or circumstantial method of establishing income.

Sources that may be used to document cash on hand include:

- admissions of the subject during questioning or a written document such as a net worth statement;
- low earnings in pre-prosecution years as shown by employer's records or tax returns or receipt of public assistance;
- financial statements presented for credit or other purposes at a time before or during the period of investigation;
- bankruptcy before prosecution periods;
- evidence of prior indebtedness, compromise of overdue debts;
- installment purchases;
- repossessions.

In many instances, the opening cash on hand figure cannot be readily determined. It may have to be computed from financial information obtained for the years prior to the period under investigation. Information that discloses cash on hand at some prior date may be used to compute current cash on hand by showing all sources of funds and their application during the interim period. The result would be the maximum amount of cash on hand that the subject could claim as a defense.

5. Other unaccounted for sources of funds

In a source and application case, the investigator has the responsibility for investigating all leads generated by the investigation which are reasonably susceptible of being checked. Besides loans, gifts, and inheritances, other sources such as pensions, annuities, veterans' benefits, accident settlements, insurance proceeds, and public assistance should be checked. No list is complete; the investigator must use imagination together with knowledge of the subject to exhaust all possibilities.

C. Defenses

An exhaustive examination of all possible sources of income also anticipates defenses. Some of the more common defenses raised in source and application cases are:

1. Cash on hand

A subject will frequently claim that he had a large amount of cash on hand that the investigator did not know about or failed to consider. This defense should be anticipated in all cases and attempt made to negate it in the investigation as detailed above.

2. False loans, gifts, and inheritances

The subject may claim nonexistent loans, gifts, and inheritances as a legitimate source of funds. These items should be covered in any interrogation of the subject. This defense can be overcome by showing the alleged lender was financially unable to lend the amount.

3. Holding funds and assets as nominee

When the subject claims that he is holding funds included in the computation as nominee for another, investigation will be necessary to eliminate the other as a possible source. Where the alleged nominor lacks the resources to be the true owner of such property, the defense will fail.

4. Jointly held assets of the subject and spouse.

It is not uncommon for the subject and spouse have separate sources of funds but to hold their assets jointly. If those assets are included in the expenditures computation, the subject could claim that they were acquired with funds of the spouse. Where funds are so commingled that it is not possible to trace the invested or applied funds of either party, the computation must be made to include the expenditures of both and by deducting the legitimate sources of both spouses, to arrive at the illegal amount.

D. Case Law

Admissibility of Net Worth/Source and Applications of Funds Analyses and Underlying Factual Data in Federal Cases:

United States v. Jackson, 983 F.2d 747, 766 (7th Cir. 1993)

United States v. Webster, 960 F.2d 1301, 1308-09 (5th Cir.), *cert. den.*, 113 S. Ct 355 (1992)

United States v. Isabel, 945 F.2d 1193 (1st Cir. 1991)

United States v. Roth, 912 F.2d 1131 (9th Cir. 1990)

United States v. Hoyland, 903 F.2d 1288 (9th Cir. 1990)

United States v. Murillo, 709 F.2d 1298 (9th Cir. 1983)

CHAPTER FOUR — CONFIDENTIAL INFORMANTS AND UNDERCOVER OPERATIONS

CHAPTER FOUR — CONFIDENTIAL INFORMANTS AND UNDERCOVER OPERATIONS

A. Confidential Informants

1. The Prosecutions's Need for Informants

It is important that prosecutors understand the necessity of using informants. They must not only understand the importance but must also be willing and able to convey this understanding to a judge, a jury, and the general public. Most police officers understand this. In fact, police officers are generally encouraged to gather informants and must rely upon others to provide them with information regarding criminal activities in their community. Generally, there are few problems presented by cases where information is gathered from anonymous or citizen informants. These informants "volunteer their information fortuitously, openly, and through motives of good citizenship." Thus, judges and juries are quite willing to believe anonymous or citizen informants. They can easily trust them.

Problems sometimes arise when officers find it necessary to base some or all of their investigation upon the evidence obtained from informants who themselves have been involved in, or are close to, some kind of criminal activity. Because our justice system requires that a witness in court have personal knowledge concerning those facts about which he testifies, it follows that many informants are criminals. It is a simple fact of life that many individuals who can qualify as witnesses in many serious matters are the criminals themselves. This poses many problems.

Jurors often do not like people who "sell out" or "rat" or "snitch" on their friends, even if the informant's friend's conduct is far more serious than that of the informant. For this reason, jurors sometimes believe defense arguments of entrapment or outrageous police conduct when an informant plays a key role in the case, even if those arguments lack any basis in fact. Thus, prosecutors need to make the point that successful prosecutions oftentimes require the use of informants.

In the words of Judge Learned Hand in *United States v. Dennis*, 183 F.2d 201, 224 (2d Cir. 1950), "Courts have countenanced the use of informers from time immemorial; in cases of conspiracy, or in other cases when the crime consists of preparing for another crime, it is usually necessary to rely on them or upon accomplices because the criminals will almost certainly proceed covertly." Snitches, informants, co-conspirators and accomplices therefore are indispensable weapons and witnesses in a prosecutor's arsenal and are necessary to protect the community against criminals.

2. Definition of an Informant

One reason for the confusion commonly found in any discussion of informants is the lack of precision in defining the term "informant." In many legal contexts, "informant" is clearly intended to apply to an undisclosed informant who acts as a police agent. But even if his identity is disclosed and he testifies, he many still be termed an informant. There are several categories of informants. A prosecutor must know what these categories are, the reasons for the distinctions between them and the differing rules which apply to each.

a. Anonymous Informants

An individual whose identity is unknown to any member of law enforcement and who has provided information concerning some type of criminal activity is an anonymous informants. Typically, this type of informant is the anonymous telephone tipster. This type of informant provides little or no problem regarding confidentiality or management as the police have no control over that individual, nor do they even know who he or she is. "Crime Stopper" tips are usually anonymous but are provided code numbers to collect rewards.

CAVEAT: Prosecutors should make an inquiry of the police officers involved in the case to learn if the informant truly is anonymous, and not merely described as such.

b. Passive Unpaid Citizen Informants

An individual who has no connection with criminal activity who has observed or has access to information about such activity and is willing to relate it to law enforcement may be categorized as a citizen informant. This type of informant is not paid or compensated in any way by law enforcement for his efforts. A typical example is a witness to a crime who relays his observation to police officers. This informant's identity is generally not held in confidence. In some cases, the safety of a citizen informant will depend upon confidentiality, such as in gang or narcotics prosecutions.

c. Active Unpaid Citizen Informants

Generally, in every community there are individuals who are "cop groupies," people who want to be policemen or who are amateur sleuths and spend a great deal of time providing information about crimes to police officers. Usually, they are not offered, nor do they ask for, any form of compensation other than the thrill of being part of the law enforcement process. In many cases, such individuals, following the suggestions and encouragement of the police, will endeavor to learn about certain individuals or activities within their neighborhoods.

Some citizen informants, such as air freight employees or motel clerks, continually report "unusual" activity to the police. They may conduct their own investigations in an effort to help the police. If they do so at the suggestion, encouragement, or directions of the police, they may be considered police agents and present problems at suppression hearings.

d. Unwitting Informants

An unwitting informant is a person who relays information to a police officer or another informant while the officer or informant is working in an undercover capacity, and the capacity is unknown to the information provider.

Although an unwitting informant may have never requested confidentiality, the police may still want to keep the informant's identity secret to preserve the anonymity of the person who

received the information. In some instances, the mere revelation of the identity of the unwitting informant might tend to disclose the identity of the undercover operative. In many cases, however, the unwitting informant will be identified and may be charged as a codefendant.

e. Paid Informants

A paid informant is an individual who received money from law enforcement in return for information regarding criminal activity. The paid informant passes on information heard or gathered as a result of his or her own efforts. The type and the amount of compensation received depends on the nature of the information provided and the risk of danger to the informant.

f. Criminal Informants

A criminal informant is an individual who has been or might be prosecuted. The informant may provide information about criminal activity in which he was or is engaged or may simply identify others involved in unrelated criminal activity.

g. Jailhouse Informants

A "jailhouse" informant is an inmate in custody who provides information or testifies about matters another defendant told him while both were in custody.

For purposes of the discussion which follow, "informant" means a person who, by virtue of his surroundings or association, has access to information relevant to criminal matters, which he provides in confidence to a law enforcement agency. Such persons "...are often criminally disposed or implicated, and supply their 'tips' to the authorities on a recurring basis, in secret, and for pecuniary or other personal gain." *People v. Ramsey*, 16 Cal. 3rd 263, 268 - 269 (1976). This definition encompasses paid informants, criminal informants, jailhouse informants, and confidential informants.

B. Detection of Informant Involvement

When a confidential informant has provided information in the course of an investigation, an inquiry of the investigating officer is necessary to uncover unusual problems and to ensure the prosecution discharges its duty to discover any substantial material evidence favorable to the defendant.

In most cases in which a confidential informant has contributed information in the course of an investigation, that fact is clearly disclosed in the police reports. However, occasionally the existence of an informant or the fact information came from an informant is not mentioned. On rare occasions, police officers have indicated there were no informants involved in a misguided attempt to prevent disclosure of the identity of the informant. Besides the ethical problems this may pose for prosecutors, all judicial rulings and convictions of defendants may be endangered.

There are two circumstances where the existence of an informant should be suspected. The first occurs when the reports indicate actions or suspicions by officers based upon meager information detailed in their reports. For example, a report may be written as an ordinary traffic stop; yet officers made inquiries or conducted searches not justified by a simple traffic infraction.

The second situation in which the existence of an informant should be suspected is dependent upon the nature of the case. The possible existence of informants should always be considered in narcotics cases, gang-related crimes, conspiracies, and secret or military organization cases.

Whenever prosecutors handle cases in which the existence of a concealed informant is suspected, they must inquire of the investigating officer. The investigating officer's identity and response should be entered in the progress report in the case file. The officer should be asked to reveal any information about any informant involvement during the investigation or subsequent prosecution.

A prosecutor has a continuing duty to disclose any substantial material evidence which may be favorable to, or tend to exonerate, a defendant.

The fact that an informant provided information during the course of an investigation may be discoverable by the defendant, especially if the information constitutes material evidence favorable to the accused.

Active concealment by a prosecutor or an investigation officer of the existence of an informant and/or agreement to cooperate was condemned in *United States v. Kojavan*, 8 F.3d 1315 (9th Cir. 1993).

It is the duty of all prosecutors handling cases to make appropriate inquiries to determine if there is a concealed informant. Even where an informant's identity is to be disclosed and he or she will be called as a witness at a hearing, a thorough inquiry of the investigating officer is required. Because concealed informants are themselves usually criminally involved and because of the opportunity for mistakes and abuses in their relationships with police agencies, there are many potential problems which can arise when an informant will testify. Thus, the scope of the inquiry must be much broader and should include all areas of the informant's activities and relationships which might be explored on cross-examination by the defense attorney.

1. Inquiries Regarding Informant Involvement

Once it is ascertained that a confidential informant has provided information, potential problem areas must be discussed with the officers handling the case. Informant inquiries should be made at the earliest opportunity by any prosecutor handling the case and may occur at any stage: issuing, preliminary hearing, trial or evidentiary hearing.

As a general rule, informant inquiries should be made only with the officers handling the case and not through direct communication with the informant. In situations in which a prosecutor

does communicate directly with an informant, the prosecutor should never do so unless a police officer or DA investigator is present. This includes an informant's attempts to contact a deputy district attorney by telephone.

Information from informant inquiries must be documented in the progress notes of a case. Documentation should include the date of inquiry, the name of the police officer providing the information, and a synopsis of the information provided.

The likelihood of the identity of the informant being disclosed, or the informant being called to testify, are factors bearing on the extent of the inquiry. In cases where the informant will neither be disclosed nor be offered as a witness, the required inquiry may be limited to those areas which may tend to disclose substantial material evidence favorable to the defendant or which may tend to exonerate him. The prosecution must inquire into those areas which are most likely to contain such information.

Inquiries into the activities and relationship between the informant and the police should be arranged with the investigating officer as soon as it becomes clear the informant was involved in the case. The investigating officer will often be the officer who supervised the informant. If not, he will direct inquiries to the proper officer. The inquiry should be made by the prosecutor who will conduct the hearing in which the informant will testify.

Information gained, especially unusual facts revealed, should be noted in the progress notes of the case. The prosecutor making such an inquiry must ensure good documentation to inform prosecutors who handle the case at a later time, and to demonstrate that the inquiring prosecutor acted properly.

The following areas of inquiry are quire extensive because the potential problem areas are so numerous. Any areas where a problem is perceived should be explored carefully. (If the

confidential informant has provided information used only as information for probable cause in a search warrant, a prosecutor's inquiry may be less extensive.)

2. Recruitment

- How and when did the informant begin supplying information?
- What was his motive for becoming an informant?
- Was he trying to mitigate his responsibility for another crime, as is often the case?
- Was anyone close to him released or given some form of favorable treatment in anticipation of, or as a result of, his cooperation?
- Were there other motives, such as fear of associates, revenge, diverting suspicion from himself, money or repentance?

3. Benefits

Informant benefits include any advantage the informant was offered, promised or received in exchange for the information provided. These include money, leniency regarding the arrest and/or filing of charges against the informant, a relative, or a friend, leniency regarding filed charges, witness protection benefits, room and board, use of automobiles or any other advantage gained by the informant in exchange for his cooperation with law enforcement.

An important informant benefit is anonymity. Prosecutors must find out if the informant was promised that his identity would not be disclosed or that he would never have to testify. Promised anonymity requires careful, prompt analysis because such a promise may mean that charges will not be filed or that filed charges must be dismissed because the informant is an essential witness who can never be used.

The investigating officer must be directed to reduce to writing all benefits and/or promises of benefits made to potential informants. Investigators must be informed that when they negotiate with suspects to seek their cooperation as informants, any benefits promised as to handling the

criminal case may be binding on the prosecution, whether the prosecutor was aware of the deal or not. With this in mind, the following are some matters which should be covered when considering benefits:

- What benefits have law enforcement officers offered?
- Is there documentation of the benefits offered, which is customarily kept by law enforcement agencies?
- What has the informant already received?
- Was he given money or some other benefit?
- How much of the benefit has he received to date?
- Finally, the investigating officer should be instructed that no further promises should be made unless the assigned trial deputy has been contacted beforehand.

4. Criminal History and Pending Charges

The investigating officer should provide the informant's entire criminal history:

- Review the informant's criminal record. Although the defense must be informed of the informant's felony convictions, a prosecutor should be familiar with all the criminal history, especially those incidents which may have led to the informant's involvement with the defendant and the police.
- Is the informant charged in any pending criminal case?
- Find out all cases pending, from traffic infractions to felony appeals.

If the informant has cases pending which were not known to officers, the officers should be asked again whether they made any general promises of leniency or favorable treatment, such as an officer's promise to "take care of" all the informant's cases.

5. Reliability

Ask for details of the informant's activity in other cases which established his

reliability. Determine the kinds of cases, the kind of information provided, whether the information was investigated by law enforcement to determine its accuracy, and whether arrests or convictions resulted from the information.

- Were there any court rulings in which the informant was found credible or not credible?
- Were there any occasions known to the officers when the informant knowingly provided false or misleading information?
- Ask how frequently law enforcement has had contact with, and supervision of, the informant. If a person ceases to be an informant for a long period, his or her credibility may have to be re-established.
- Finally, to what extent will the law enforcement agency be able to corroborate the informant's testimony?

6. Informant Statements

The investigator should provide details on the role of the informant and the information given by the informant about any charged defendant. Particularly important are statements attributed to a defendant. The prosecutor should examine all statements carefully and should be alert for material matters which might be favorable to a defendant or which contradict statements of the informant contained within a police report or an affidavit for a warrant.

A prosecutor should never assume that a police officer will provide all necessary information regarding the informant's involvement or the informant's statements. The prosector's inquiry should focus on uncovering material evidence which should be disclosed and on any information which may detract from probable cause supporting a search warrant, supporting arrest of the defendant or supporting a bindover at the preliminary hearing or may cause evidentiary problems at trial. Unfortunately, there have been examples of officers being less than candid in providing informant information during discussions with prosecutors.

7. Role and Information

A prosecutor must ask for detailed facts on the role of the informant and the information given by the informant in the current investigation. The prosecutor also must know the substance of all information supplied by the informant.

8. Attorney

- Ask if the informant is currently represented by an attorney. Has the investigator cleared his contact with the informant with the attorney? It is very important that an informant's attorney be fully aware of his client's activity as an informant.
- If the informant is represented by an attorney, even though no cases have been filed against the informant, obtain the name and telephone number of the attorney from the officers.
- If an informant in custody does not know his attorney's name, the prosecutor should be able to obtain the information from a court clerk.

9. Entrapment

The investigating officer may provide informant information which indicated entrapment of a defendant where the conduct of the informant would have been likely to induce a normally law-abiding person to commit an offense. It is legally impermissible for an informant to place pressure on a suspect by overbearing conduct such as badgering, cajoling, importuning or any other affirmative act likely to induce one to commit the crime. If the conduct of the informant supports the defense of entrapment, the prosecutor should document whether an informant acting as a police agent was instructed on the law of entrapment.

10. Bad Motives

The investigating officer should be asked if there are any specific facts which bear adversely on the informant's probable accuracy in the case under consideration. For example, did the informant have a grudge against the defendant? Did he have some special motive relative to

this investigation? Was he given some unusual benefit for his activity in the case? Such matters must often be disclosed.

These areas for suggested inquiry are, as stated, designed to uncover any information which we may have a duty to disclose to the defense counsel. If such information is discovered, but would tend to disclose the identity of the informant, the case must be reevaluated according to case issuance guidelines.

C. Issuing Cases Involving Informants

At the issuance state of a case, the most common informant problem involves disclosure of the informant's identity. If an informant was used during an investigation, prosecutors should assume a disclosure motion will be filed asserting the most plausible, reasonably foreseeable grounds for disclosure of the informant's identity. A determination should be made at issuance whether the police will disclose the identity of the informant and, if so, under what circumstances. This determination should be recorded in the case progress notes which are not discoverable. The case should then be reviewed to determine whether a defense motion to disclose can be successfully opposed as a matter of law or by the use of an *in camera* hearing.

1. Issuance When Police Will Dislose

If the police are willing to disclose the informant's identity if ordered by a court, the case may be issued. If issued, the investigating officer should be informed to keep track of the informant's whereabouts including current work and residence addresses and telephone numbers. The witness list or the progress notes should include the name of the officer responsible for serving the informant and assuring his attendance at court proceedings.

2. Issuance When Police Will Not Disclose

If the police state they will not disclose the informant's identity, even if ordered by a court to do so, and assert a privilege to withhold such information, the following principles apply in deciding whether to issue the case:

- If it appears certain that disclosure will be ordered by the court and the only appropriate sanction would be dismissal of all charges, the case should not be issued. This might occur where the informant could supply evidence which might exonerate the defendant and nondisclosure would deny him a fair trial.
- If the police agency indicates the informant's identity will no be disclosed, but the failure to disclose would not reslut in dismissal of the entire case, all counts should be issued. In this situation, a court may dismiss some, but not necessarily all, of the the charged counts.
- In a related matter, if the informant's identity is ordered disclosed but the informant cannot be found, the police must document efforts made to keep track of the informant. Cases have been dismissed because the prosecution refused to reveal the informant's address.

D. Use and Control of Informants as Witnesses

In most situations, informant selection, use, and development is accomplished by a law enforcement agency prior to the involvement of the prosecuting attorney and under a police department's guidelines and regulations. The primary purpose for using informants, especially those involved in committing crimes, is to develop a criminal case against the more culpable criminals — the heads of criminal organizations or more serious offenders. There is little justification for using informants simply to increase the number of arrests and without regard for prosecuting the most culpable offenders. Police officers should be informed and reminded of these considerations.

It is appropriate that police agencies operate independently of the prosecuting attorney when recruiting and controlling informants, particularly given a prosecutor's ethical constraints and the liability concerns raised when prosecutors act as investigators. However, police officers using informants should frequently be warned not to make agreements or promise benefits which invade prosecutorial discretion. They should also be warned of the legal consequences.

Prosecutors will generally be concerned with informants as witnesses in their cases. However, there are limited situations when prosecutors should be involved during the early stages of the investigation. Such involvement will occur at any time the primary investigating agency is the prosecuting office and in special investigations and prosecutions where there is an ongoing cooperative relationship between the prosecuting attorney and the investigating police agency.

In these situations, the assigned prosecutor may assist in developing the terms of the informant agreement.

Prosecutor involvement in developing agreements should ensure that appropriate considerations are negotiated with the informant and that appropriate sanctions are contemplated, made known to the informant, and imposed if the informant later fails to comply with the agreement, or commits crimes while acting as an informant.

Once a criminal case has been presented to the prosecuting attorney, law enforcement contacts and agreements with informants on the case must be approved by a prosecutor. Police officers should make no decision concerning provision of any benefit to a criminal defendant, or any person who may reasonably become a criminal defendant, without the concurrence of the assigned prosecutor who has been made aware of all of the facts, circumstances, and ramifications in every case involving an informant.

1. Interviewing the Informant or Codefendant

In any case in which an informant will testify, it is imperative that the informant be fully interviewed by the prosecutor who will conduct the hearing. The same is true when it is anticipated that a codefendant who has been given any benefits by the prosecution will testify.

A prosecutor should never interview or communicate with an informant or co-defendant alone. A peace officer, the investigating officer or a prosecuting office investigator should witness all communications with an informant. Some cases may require tape recording every communication with an informant. In addition, the attorney for an informant must be present unless both the informant and the attorney consent to the attorney's absence.

An informant interview should cover the same items already covered with the investigating officer as described earlier. It is wise to verify the informant's evidence believed to be true. In the case of a co-defendant, this may be the first opportunity to learn about his or her background and criminal involvement. The prosecutor should cover with the codefendant the same areas described in the prior section.

A prosecutor should do everything reasonably possible to determine if an informant or codefendant has ever "double-crossed" law enforcement officers or may be likely to do so. Some informants are treacherous and have ruined the careers of unsuspecting peace officers and prosecutors.

A prosecutor should always communicate with informants and codefendants as if they were on the record in court. A prosecutor should never become unprofessionally friendly with an informant or codefendant.

Some cases are so sensitive that every communication with the informant or codefendant should be tape recorded. However, it is not easy to identify such cases, and unnecessary tape

recordings of informants making wild, irrelevant statements during meetings with officers or prosecutors can ruin otherwise strong prosecution cases.

In general, prosecutors should not tape record an informant interview until they or police officers have spoken to the informant at least once to find out what information the informant has. This is because informants often begin by describing events in a disjointed manner which is not chronological. A tape recording will give the cross-examiner a field day at a later trial even though the informant may have been entirely truthful.

There should be a written report of every informant communications which is not tape recorded. Often, in the course of an interview, an informant or codefendant will ask for some benefit for his or her testimony. At the initial interview, the prosecutor must make the informant aware that no promises or representations will be made. However, the prosecutor can make an agreement that the informant's initial statement will not be used against him or her.

In the initial interview, the prosecutor should anticipate discovery motions and cross-examination questions. Preparation can prevent a multitude of informant problems. Another problem which should be anticipated is locating the informant when the need arises. The informant and the investigating officer should maintain contact with each other. Cases have been lost because of the prosecutor's inability to produce and informant. To protect an informant's address, it is often necessary to agree to produce the informant for an interview on defense request.

2. Contact With an Informant

Even though the identity of an informant has been disclosed, release of his address to the defense should usually be opposed. In such cases, the prosecutor should be aware of the identity of the law enforcement officer who has the responsibility to ensure the availability of the informant. It has been standard practice in the past to include the officer's name on the witness list as well as a notation that the officer is responsible for serving process on the informant.

If the court orders disclosure of an informant's identity, merely disclosing the address of the informant is insufficient. Once the court has ruled that an informant is material, the prosecution must demonstrate a good-faith effort to locate this informant so he or she is available as a witness. However, this duty exists only where the informant is a potentially material witness on the issue of guilt.

Although it is not required that the informant actually be produced, a "reasonable effort" to locate the informant must be demonstrated.

3. Prosecuting Attorney Recruitment and Control of Informants

In the limited situations when the prosecuting attorney is directly involved during the early stages of informant recruitment, the prospective informant must be interviewed to determine the value of the information and the informant's willingness to work. Prior to conducting the initial interview, the prosecutor must enter into a written agreement detailing the purpose of the interview.

If the informant/defendant is represented, his or her attorney must be a party to the agreement.

CAVEAT: No negotiation can take place regarding a pending case of an informant who is represented by counsel without consent of his attorney. A violation of this rule may result in dismissal of all charges against the informant/defendant and sanctions against the prosecutor who violates this rule.

The same considerations discussed in connection with informants as witnesses or codefendants apply to interviews with informants during initial recruitment.

a. Informant Contacts

- A prosecutor should never contact an informant without the presence of a law enforcement officer or DA investigator. To avoid inadvertent contacts, *i. e.*, unsolicited telephone calls, the prosecutor should have a plan for deflecting calls to the assigned investigator or to arrange for the investigator to monitor the prosecutor's telephone conversations with the informant.
- No promises should be made and the conversation should be recorded. Generally, informants should plead to charges which have been brought against them (or should be brought against them) in accordance with the normal disposition policies of the District Attorney. Informants should not be provided any sentencing benefit other than that their cooperation will be made known to the sentencing judge. A prosecutor should not make promises during the initial interview, other than the informant's statement will not be used against him.
- A prosecutor should cease contact or discussions with any criminally involved informant who is unwilling to provide information without a promise of benefits.
- The informant must be truthful and law abiding. A law enforcement officer's or prosecutor's first priority is to determine that a prospective informant will be truthful and not violate the law while acting as an informant. The prosecutor must impress upon the informant, as part of the informant agreement, that the informant has an obligation to be truthful and obey all laws. Failure to do so will terminate the agreement and erase all agreed benefits. The informant must be informed of this, orally and in writing. If a prosecutor believes an informant to be a liar, the informant should not be used.
- Identify the targets of the investigation. The prosecutor and investigator need to identify the persons or organizations with whom the informant is capable of conducting criminal transactions and learn exactly what the informant is willing to do. Then it must be determined whether the informant will provide testimony or not.
- Corroboration: Once the interview has been conducted, the prosecutor and case investigator need to check intelligence sources to determine whether or not the informant's material has prosecutorial value.

- Determine Timing Issues: The prosecutor and case agent need to determine how soon the informant will be able to begin work and how soon the informant will be able to produce results.

b. Evaluation

Following the interview, the information needs to be evaluated personally — "Is the informant worth the effort?" In conducting the evaluation, the prosecutor and case investigator should ascertain:

- Is the potential informant on probation or parole? Is he performing satisfactorily?
- Is there a potential risk for the personal safety or security of the informant?
- What measures need to be taken to ensure the potential informant's safety?
- What is the potential benefit to the prosecution for the utilization of this informant and does that outweigh the risk of that person's reinvolvement in the criminal process? Does the informant have a history of violence? If so, avoid using him.
- What is the length of time that the informant is going to be needed in terms of days?
- Is the informant to remain in custody or will the informant remain unguarded at any point? If in custody on a violent offense, the informant should not be released.
- Is the informant going to be needed as a witness during the prosecution of the case? Is the informant willing to testify?
- Will the law enforcement agency involved be able to corroborate the informant in all particulars? Will the prosecutor have to rely on the informant's "credibility"?
- Is the potential informant either dependent on drugs or currently participating in a drug treatment program? If drug dependent and still using, is there any circumstance in which the informant can be used?
- What is the complete criminal history of the informant?

c. The Confidential Informant Agreement

Once a decision has been made to use the individual as an informant, a cooperation agreement **must** be prepared which will spell out the rights and obligations of both sides.

The written agreement must:

- **Spell out** in no uncertain terms what it is the informant will have to do before he will be entitled to receive and benefit from the prosecution, emphasizing that the primary obligation of an informant is to tell the truth.
- **List** in detail what benefits, if any, the informant is going to receive so that in any case in which he or she is a witness there will be no doubt about those benefits.

The agreement should spell out exactly what it is the informant will receive if successful in carrying out the bargain. As stated before, the benefit will generally be confined to making the informant's cooperation known to the sentencing judge and nothing more. Likewise, if charged or chargeable with a crime, the informant should plead to the charged offenses in accordance with the normal disposition policy and should be so informed of that requirement during initial discussions.

d. Written Instructions for the Informant

The agreement and instruction to the informant need to spell out the methods the informant can use, which should be acknowledged in writing by the informant and his or her attorney. Necessary instructions include:

- The informant will never be allowed to operate without the direct control of a controlling agent.
- If the informant is going to participate in controlled buys, that prospect needs to be included.
- If the informant is simply going to point the finger of suspicion at a target, that plan must also be made part of the agreement.

- Are on-body recordings involved or is the informant going to be taped in telephone or direct conversations which must be transcribed?
- Will the informant later become identified as a testifying witness?
- The informant must be truthful and candid no matter who asks the questions — an investigator, a prosecutor, a judge or a defense attorney; and, if necessary, the informant must submit to a polygraph examination at any time requested by the prosecutor or any police officer working under the prosecutor's direction.
- The informant must be willing to submit his or her person, home and/or automobile to a search at any time of the day or night whenever requested to do so by a police officer or by some other person acting under the prosecutions's direction.
- The informant must also be willing to submit his or her blood, breath or urine for testing at any time of the day or night whenever requested to do so by a law enforcement official.

CAVEAT: Evidence obtained from an informant under these circumstances may not be admissible against the informant in some subsequent criminal proceeding if the court finds that submitting the sample was involuntary.

Should the informant desire to terminate the agreement prior to completion, he or she may do so; however, the prosecution will no longer be obligated to perform any part of the agreement until or unless the informant has entirely performed as agreed.

E. The Use of Undercover Officers in Money Laundering Investigations

Money laundering operations often involve a complex conspiracy which is most effectively dismantled by the use of proactive investigations. Undercover officers can be used in several different roles which involve certain legal and political risks and different probabilities of success.

There are three main roles that the undercover officer (UC) can assume:

- UC poses as a money launderer (Reverse Sting).
- UC provides government money to be laundered by the criminal organization.
- UC infiltrates the organization with the sole purpose of obtaining information on the methods used for the laundering of money.

1. UC Poses as Money Launderer

In this scenario the UC is set up as a money launderer for narcotics trafficking organizations. The UC is often introduced to the targets within the organization by a confidential informant (CI). After trust is established, the UC offers to launder the money obtained from the sale of drugs. The UC should be a person who is well versed in the area of finance and banking and who may convincingly pose as a realtor, mortgager, business person or banker. This operation should be coordinated with the financial community.

Several federal operations have used a technique aimed at drug revenues which enter the international banking system through domestic banks. The undercover operation starts with the laundering of drug revenues of around $100,000 cash and gradually works up to larger amounts. The UCs try to extend the time period to complete the process of laundering the money as they are taking in increased quantities of drug money. The longer the time period is extended, the more money the UCs will be able to have in the laundering pipeline when they shut down the operation and seize the money.

The big political risk and policy consideration in this type of proactive investigation is the fact that the government is facilitating criminal activity. The UCs are supplying the means to launder drug revenues and, therefore, they are contributing to the success of a drug distribution organization. Most federal agencies believe that they must seize at least twice as much money as they allow to be laundered for this operation to be an acceptable political risk.

Another policy consideration in operations where the UCs supply the means to launder drug revenues is that the actions of the UCs themselves constitute felonious activity. The UCs exposure to prosecution for these felonious acts must be analyzed on a state by state basis. However, under the law of some states, including California, an argument can be made that the officers could not be charged with attempted money laundering because they lack the requisite specific intent. A further analysis is necessary as to whether an officer is committing a crime when he aids and abets a money launderer by permitting drug money to flow through a government-operated financial institution.

If, as part of the undercover operation, officers open an undercover account at a bank, they must seek an exemption from the currency transaction reporting requirements for deposits or withdrawals of cash over $10,000. The reason that an exemption is necessary is that, when a CTR is filed by the bank on the undercover account, other law enforcement agencies or regulatory agencies may start a criminal or regulatory investigation.

In order to request an exemption from the CTR requirements, state and local law enforcement agencies should contact the Office of Financial Enforcement at (202) 622-0400 for general information as to how to proceed to obtain an exemption.

A letter must be written to the Director of the Office of Financial Enforcement, Department of the Treasury, both from the bank and from law enforcement, which describes the undercover account by the fictitious name and the account number. In its letter, the requesting law enforcement agency should be able to state that it has notified the federal agencies in its area that may be involved in money laundering investigations; for example, the FBI, IRS, Customs; and that there have been no objections. The turnaround time for the approval by the Office of Financial Enforcement is usually not more that thirty days. The approval for the exemption is good for one year and can be extended upon request.

Spin-off cases, or so-called "wall" cases, can be developed by surveilling the cash couriers and developing independent probable cause for the issuance of a search warrant for the money stash houses. These cases must not compromise the larger undercover investigation on the other side of the "wall."

Also, there have been operations where UCs infiltrate a drug trafficking organization and pose as money couriers. The UCs pick up the cash from the stash houses and deliver it to the operatives on the money laundering side. Once there is sufficient insulation to protect the cash courier operation, arrests and cash seizures are made. This type of operation has less political and legal risks because the UCs play a reduced role in the money laundering chain.

2. UC Provides Government Money to be Laundered by the Criminal Organization

In this type of undercover operation the UCs use "official government funds" which are represented to the target as drug proceeds. The fact that the money used is not, in fact, a product of a specified unlawful act or drug trafficking proceeds could present a legal problem that, again, must be analyzed on a state by state basis. (*See* Part I, Ch. 1, p. I-37 for a discussion of sting provisions.)

In 1988 Congress enacted 18 U.S.C., § 1956(a)(3)(A), which allowed the government to charge money laundering based on the intent of the defendant even though the actual cash being laundered was not the proceeds of a specified unlawful act. The intent of Congress was not only to shut down the defense that the money laundering offense could not be committed with government funds but also to decriminalize the acts of the UCs who provided the money to the criminal organization.

In states where the money laundering statute defines the offense of money laundering as conducting or **attempting** to conduct a qualified transaction, a defendant who accepts government funds from a UC, who represents the money as proceeds of specified unlawful activity and then makes a transaction through a financial institution, is guilty of attempted money laundering, which is defined by statute as a substantive offense.

An important policy consideration in these investigations is the potential loss of government funds. If the UCs hand over a large sum of government money to a money launderer, they should not only expect to lose the customary seven to 20 percent commission, but they should also be aware that the entire amount is in jeopardy the moment it leaves the government's hands.

In a recent joint Federal and State money laundering operation, a UC posed as an operator of a marijuana plantation in Hawaii. The UC asked the target how to launder his illegal profits of marijuana trafficking. The UC established that the target had laundered money in the past by secreting it into straw corporations set up by the attorney. The issue of predisposition to engage in criminal activity can be established by the target's own description of his prior performance. The target then told the UC that he would introduce him to another subject that could help him launder his money. Again, the UC established not only the predisposition of the second subject, but also that he had the knowledge and means of laundering large amount of cash. It is important to establish both **predisposition** and **ability** before government funds are turned over to the criminal organization. The issues of both entrapment and potential loss of government funds must be analyzed at the inception of the investigation.

3. UC Infiltrates the Criminal Organization

The UC role of receiver of information, rather than active participant, should not be overlooked. Often times this limited role leads to a more active involvement; however, the goal of this type of investigation should be clearly defined. The UC who infiltrates a criminal organization should be an individual with a talent for listening and encouraging conversation.

The UC should keep the following things in mind and attempt to tape all conversations:

- The UC should have a working knowledge of the elements of the state money laundering statutes and attempt to get admissions from the targets which relate specifically to intent and knowledge.

- The UC should anticipate any possible defenses (*i.e.*, entrapment, lack of knowledge) and obtain information that could be used at trial to combat them.
- The UC should attempt to identify assets, held by the criminal organization, which may be placed in the names of family members or straw owners.
- The UC should seek a full description of the methods that the organization used to launder their illegal profits, shield their assets, avoid reporting requirements, and stash their cash.
- The UC should always be building probable cause for search warrants relating to businesses, residences and bank accounts that are related to the criminal organization.

4. Conclusion

The use of undercover officers in proactive money laundering investigations is an effective method of not only learning who the money launderers are, but also learning the intricacies of converting illegal drug trafficking profits into seemingly legitimate assets. An effective UC operation can reveal the complex series of money laundering transactions which is often so difficult to unravel from the outside.

CHAPTER FIVE — WARRANTS, SUPBOENAS AND DEMANDS

CHAPTER FIVE — WARRANTS, SUPBOENAS AND DEMANDS

A. Introduction

Search warrants, financial search warrants, seizure warrants, grand jury subpoenas, investigative demands and similar investigative tools are essential to the proper investigation of a money laundering case. Understanding their use — both preparation and execution — is essential to a successful investigation. The prosecutor's role here is to ensure that the warrant or subpoena is properly prepared and that it will serve the purpose for which it is issued.

The investigative tool used in any particular case depends on the stage of the proceeding, source of the information sought, and laws of individual states. In some states, prosecutors use grand juries as their primary investigative tool in complex cases. Some states, such as California and Illinois, assign a more limited role to grand juries, and prosecutors depend instead on search warrants to obtain the same information. Other states, such as Arizona and New Mexico, use demand letters for some information-gathering, such as bank information. Jurisdictions that have the use of both search warrants and grand jury subpoenas may choose either depending on the task. If banking information is desired, preparing a subpoena is easier than a search warrant and, with the proper admonition, the fact that it was issued can be kept confidential. Search of a target's house or seizure of records from his accountant may require a search warrant. The key is if you can trust the provider to diligently search its records and not disclose the existence of the subpoena, a subpoena may suffice. But, if the situation demands that you must sort through the records, either because of the subject, location or type of document, then a search warrant is the method of choice.

1. Search Warrants

Of the investigative tools available, search warrants are not only the most difficult to obtain, they can be the most problematic to execute as well. Information must first be gathered to

establish probable cause. That information must be conveyed to a magistrate, the warrant obtained, then executed, all within tight constitutional and statutory constraints. To help the prosecutor get past the pitfalls, a detailed discussion on preparation and execution of financial search warrants will be found beginning at page II-159. A sample affidavit for a search warrant to search a residence of a drug dealer for evidence to be used in a net worth analysis is included at page II-180. Also included is a sample affidavit to be used to obtain records from Western Union on wire transfer information at page II-198.

2. Grand Jury Supboenas and Demand Letters

In certain jurisdictions, the prosecutor may apply for a judicial non-disclosure order in conjunction with subpoenas, pen registers or eavesdropping orders. These orders become vital to any on-going investigation where the public disclosure of the subpoenaed documents or the existence of a pen register or wire taps may be made. Failure to obtain these orders can terminate the investigation almost before it begins. The reasons supporting the issuance of the non-disclosure orders are compelling and can include the safety of officers and informants, grand jury secrecy, and the investigation's integrity. Such orders, where available, should be pursued without hesitation. Ideally, they should remain in effect until further order from the issuing court.

While the form of a grand jury subpoena will vary from state to state, we have included a sample grand jury subpoena *duces tecum* for bank records at page II-170.

3. Records and Documents

Search warrants and grand jury subpoenas should include the seizure of all financial records that pertain to a suspect and/or his business. The seizure of financial records showing personal and business expenditures, sources of income and revenue, and assets and liabilities of the suspect over the time period of the illegal activities assists the investigator in his analysis of the suspect's financial condition over the time period. (See Net Worth And Source And Application Analysis, Part II, p. II-113 of this manual). Sample language for subpoenas or warrants directed to various entities is found at page II-220.

Care in selecting the right documents to subpoena is a vital consideration. An over-broad subpoena can result in litigation or late, cursory compliance. Even worse, if every document in existence is subpoened and actually received, the deluge may drown out the investigative trail. The opposite danger is that the subpoena is drawn so narrowly that relevant documents are overlooked. The check lists contained in this section should, therefore, be used as a starting point only. Often, a talk with the subpoenaed party can help in discovery of what documents there are and in working out a reasonable schedule for their production. These precautions will ensure more effective subpoena compliance.

The form of the records to be subpoenaed or seized pursuant to a search warrant has become a critical issue now that records are no longer stored only on paper. The existence of the computer and electronic organizers has broadened the traditional concept of "documentary" evidence. If there is reason to believe that electronic records exist, the subpoena or search warrant must call for them.

If computer evidence is included in the search warrant, there will be need for an executing officer who is trained in the seizure of such evidence. Computers can be password-protected to destroy the evidence an attempt is made to seize it. The U.S. Secret Service is trained in this area and should be willing to help.

If the warrant did not include computer data because it was not known it existed until the search, a separate search warrant for the computer evidence will be needed. In most cases, the search warrant authorizes seizure of evidence of the specified crimes and of "the means of committing those crimes." This clause could justify seizure of the computer and its paraphernalia as the "means" of committing the crime. In any event, the law in of the relevant jurisdiction should be throroughly reviewed.

4. Warrant Execution and Document Control

During the execution of records warrants, it is typical to seize great volumes of documents.

If all of the seized documents are lumped together, it will be difficult to ascertaing where each specific document was stored, even though the location of a particular document may be the key to proving the guilt of a particular party.

Document organization and control should begin during the execution of the subpoena or records warrant. Money laundering cases are generally document-intensive and, without tight controls, it is easy to overlook, misplace or lose potentially valuable evidence. Early attention to document management will facilitate analysis, integration, and retrieval goals.

Thus, the execution of the warrant is a critical part of the investigative process. Certainly, search warrant executions are viewed as "field work" for the investigator as opposed to the attorney. It is important as well for the attorney not to be present during the execution of a search warrant to avoid the possibility of becoming a witness in the case. However, when records are involved, the attorney's role as advisor is crucial. A pre-execution meeting to discuss the search is particularly useful as is attorney access during the search. The execution plan should include a map of the room indicating where each desk, file cabinet, or computer is located, so that each document seized can be accounted for according to its location.

The execution team should also be reviewing the documents to ascertain that they are within the scope of the warrant and to determine if the documents provide probable cause for an additional, derivative search warrant.

In the chapter on Financial Investigation Resources, there is a discussion on obtaining financial records out-of-state by a foreign state's search warrant and by use of the Uniform Act to Secure the Attendance of Witnesses from Without a State in a Criminal Proceeding. An example of a "piggyback affidavit" in support of a search warrant prepared by the cooperating state is included at p. II-101. Forms for obtaining out of state witnesses are included at p. II-213. The Uniform Act provides for the subpoena of witnesses whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action or proceeding. This out-of-state subpoena may be used to compel grand jury attendance of custodians of records sought in an investigation.

1. Introduction

The crime of money laundering can often be a paper-intensive activity. Because of the large sums of money involved, records must usually be kept by money launderers to keep track of the money trail. Therefore, it should come as no surprise that a successful money laundering prosecution will often depend on the investigator's ability to seize financial records and assets of the criminal enterprise.

2. Definition and Purpose of a Financial Serach Warrant

Financial search warrants are specialized, carefully written documents often used by law enforcement in investigations of money launderers, as well as of illicit, non-traditional financial institutions (*e.g.*, money transmitters, casas de cambio, and giro houses), to seize the financial records and assets of the criminal enterprise.

Financial search warrants can be used at any stage of the investigation. Many different factors determine the time to execute the warrant; when to execute is ultimately the decision that should be made by the prosecutor in charge of the investigation on a case-by-case basis.

3. Drafting of the Financial Search Warrant

Extreme care must be exercised in drafting the financial search warrant papers. Many otherwise successful prosecutions have been derailed because of poorly drafted warrants. Therefore, it is strongly suggested that the warrant and the affidavit in support both be written by a prosecutor with significant experience in this area, and reviewed by at least one other prosecutor with similar or greater experience, before being presented to the issuing judicial officer.

a. Contents of A Financial Search Warrant Application

A financial search warrant application, like any other search warrant application, consists of (a) the warrant order authorizing the search of the premises and the seizure of records and

assets; and, (b) the main affidavit in support of the warrant. Frequently, one main affidavit is used to execute search warrants at multiple locations. However, a separate search warrant order must be prepared for each location to be searched.

b. The Main Financial Search Warrant Affidavit

The main affidavit in support of a financial search warrant must contain sufficient information to establish reasonable cause to believe that (a) one or more crimes have been committed; (b) the financial records and assets to be seized are connected to the commission or attempted commission of the crimes enumerated in the affidavit; and, (c) are likely to be at the locations to be search.

An affidavit in support of a financial search warrant should contain, at minimum (a) a description of the affiant's experience;[1] (b) an account of the criminal activity alleged in the affidavit in sufficient detail to let the judge know what is going on;[2] (c) a precise and detailed description of the place or places to be searched; (d) an "expertise" statement for the affiant asserting that, based on his experience in investigating the types of crimes alleged in the warrant, certain records can be expected to be found at the search sites; and, (e) an itemized list of the property to be seized.

(1) The Affiant's Experience

The affiant should identify his experience, training, and investigative background. The affiant with good law enforcement credentials has credibility with the reviewing judge from the outset.

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[1] The criminal procedure law of each state usually defines who can apply to the court for a search warrant. This is particularly important when you are part of a task force of agents from different local, state and federal agencies.

[2] There is a tendency sometimes to "throw the kitchen sink" into a search warrant affidavit to impress the judge. There is a danger in doing that. First, an unnecessarily lengthy affidavit may confuse the reader (judge). Second, if there is success in seizing evidence to indict individuals for money laundering or other financial crimes, there may come a time later in the case when the affidavit will be turned over to the defense attorney. There may be information in it which should be kept confidential, and which was not needed to get the warrant signed. It is importatnt to remember, the standard for a warrant is probable cause, not proof beyond a reasonable doubt.

(2) Criminal Activity Detailed

This is the section of the affidavit where evidence developed throughout the investigation of the crimes alleged in the affidavit is presented.

In a financial search warrant, the evidence of the crimes should first be summarized before providing more detail. In fleshing out the criminal activity, providing too much detail should be avoided. When complicated financial transactions are involved, too much unnecessary detail tends to confuse rather than inform.[3]

Evidence of the crimes alleged in this part of the affidavit can include information about physical surveillance, consensual recordings, telephone records, pen registers, wire taps, trash retrieval, undercover contacts and informants. Some of this information can be used to provide current, "non-stale" evidence that the criminal activity under investigation for some time is still ongoing.

When information derived from an informant is used in the affidavit to detail the criminal activity or to describe the places to be searched, the writer must include the informant's background to show his or her past reliability and some other evidence corroborating that information.[4]

(3) Precise Description of Places to be Searched

The places and things to be searched should be described in sufficient detail and particularity so that an officer unfamiliar with the location could easily find and identify it.

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[3] In a financial search warrant, unlike one involving drugs only, the prosecutor in charge of the case and familiar with its details is the best person to answer any legal questions the judge may have. Thus, it is suggested that he accompany the affiant before the judge to get the warrant signed.

[4] In those states that apply the *Aguilar-Spinelli* test, the affidavit must establish both the basis of the informant's knowledge and the informant's veracity and credibility. *See* Aguilar v. Texas, 378 U.S. 108 (1964); Spinelli v. United States, 393 U.S. 410 (1969). At the federal level, and in some states, the "*Aguilar-Spinelli*" test has been replaced with a "totality of circumstances" test. *See* Illinois v. Gates, 462 U.S. 213 (1983).

Recent video camera or photographic surveillance of the places to be searched can provide the necessary details. Also, whenever an undercover agent has visited the places to be searched, the drafter of the affidavit should debrief him about his observations and insert them in the affidavit. He should also ask the agent to prepare an accurate diagram of the inside of the premises. Care should be taken to ensure that the verbal description and the diagram are the same.

(4) Affiant's Conclusion Based on His Expertise That Evidence Can be Expected to be Found at the Places to be Searched

An affiant's experience investigating other financial crimes, and money laundering cases in particular, will have taught him a great deal about how money launderers operate, what financial records they create and keep, and how they hide their assets. The affiant's expertise in this area will always be considered by the judicial officer reviewing the warrant affidavit in determining whether probable cause exists.

(5) Detailed Description of Items to be Seized

The affidavit's description of the records and assets to be seized should be as specific as possible about each item. If serial numbers or other specific descriptions are available to the drafter, they should be included. Property to be seized should be particularized by a specific description of the property or in connection to the underlying crimes cited in the affidavit and on the search warrant order itself.[5] An acceptable financial search warrant will combine specific and more general language, such as "books, records, ledgers, receipts, and other tangible evidence pertaining to the acquisition, concealment and/or transfer of money and/or assets obtained through, or used in, the illegal transmission of money."

In this technological age, it is highly probable that the criminal activity being investigated involves computers. A complete financial search warrant should authorize the seizure of computer records and equipment. The property-to-be-seized section of the affidavit should include the computer software, the computer manuals and the computer itself.[6]

[5] States can differ in their particularity requirements; therefore, it is suggested that the relevant state's case law be checked before drafting the warrant.

[6] A computer expert should be at all search sites that are expected to be computerized. Valuable information can be lost forever if a computer is turned off improperly. A less desirable alternative is to have a computer expert on stand-by to be consulted over the telephone.

The main affidavit in support of a financial search warrant may contain exhibits. It can also incorporate other affidavits, particularly from financial auditors and other experts used to analyze the criminal activity under investigation. Good, clear, surveillance photographs of the outside of the premises to be searched should be obtained prior to drafting the warrant. So long as the investigation is not compromised, the investigator should gain access to the inside of the premises and prepare a diagram. The photographs and the diagram should be attached to the affidavit. Where an undercover operation precedes the warrant application, relevant documents and transcripts or excerpts of taped conversations with the targets may also be annexed to the affidavit.

(6) Stale Information in an Affidavit

The affidavit in support of a financial search warrant will often contain information obtained early in the investigation. It is always a good idea to update, whenever possible, some of that information before presenting the affidavit to a judge.

If the old information cannot be updated without compromising the search warrant, all is not lost. Courts will generally treat financial records and other documentary evidence differently than they do narcotics or weapons because they recognize that this kind of property is more likely to be at the locations to be searched for longer periods of time.

4. The Financial Search and Seizure Warrant Order

A search warrant is an order issued and signed by a judicial officer upon a finding of probable cause directing a police officer to search particularly described places for designated property of a specific kind. In the case of a financial search warrant, the designated property consists of specific financial records of a criminal enterprise and its assets.

The search warrant order normally contains a caption with the name of the issuing court. It also contains the name and title of the applicant (the affiant), and a statement that proof by

affidavit has been made by the applicant before a judicial officer that probable cause[7] exists to believe that a crime or crimes have been committed,[8] and that certain specific property constituting evidence of those crimes may be found in certain places.

The warrant order should set fourth the crimes alleged to have been committed by statutory section and name and must list the places to be searched with the same particularity as in the affidavit. The warrant order must also describe the financial records and assets to be seized with the same specificity as the affidavit.

The warrant order should include a command to police officers in general,[9] not just the applicant, to make a search of the premises and seize the specified property and assets. The warrant may include a request allowing it to be executed at any time of the day or night if you establish reasonable cause to believe that the property and assets will be moved or destroyed if not seized right away.

5. Preparing to Execute the Warrant

After the financial search warrant has been signed by the judge, it is absolutely essential that all law enforcement personnel participating in the execution of the search warrant hold a briefing meeting before the search occurs. This meeting should take place sufficiently in advance of the time of execution to give an opportunity to deal with last minute issues that will inevitably come up. Moreover, the prosecutor in charge of the investigation should conduct the meeting and discuss all possible scenarios with the agents. All details should be reviewed, including that each officer involved in the operation knows his assigned duty. The execution of the warrant is not the time for an agent to find out what he is supposed to be doing that day.

[7] States may differ on which constitutional "probable cause" standard is necessary to support the issuance of a warrant. Some states require only reasonable cause; others require substantial probable cause.

[8] The more crimes alleged in the affidavit, the more records that may be seized. Thus, for example, if, in investigating a money launderer probable cause to believe that tax crimes are also being committed is developed, other business and tax records of the enterprise under investigation — that were not subject to seizure because they were not connected to money laundering — may now be siezed.

[9] Normally, the warrant order is addressed to any local or state police officer in the state in question, and it may include federal agents if they are part of a task force executing the warrant.

All contingencies should be anticipated, remembering Murphy's Law. When dealing with money launderers, it is not unusual to find cash and maybe weapons. The procedures to be followed to secure the cash and the guns should be established ahead of time. If arrests are probable, agents in the team should be assigned to handle them so that the rest of the team can fully concentrate on searching the premises.

It is not unusual during the execution of a financial search warrant to come across evidence pointing to the existence of other places and other property related to the investigation that should be seized. At the pre-warrant execution meeting, that possibility should be anticipated and preparations made to amend the warrant or get another one issued quickly. In a case like that, time is of the essence.

6. Executing the Search Warrant

There is a normal tendency to relax once the judge signs the financial search warrant. However, getting the warrant signed is only half the battle. A perfectly valid search warrant can be rendered ineffective if executed improperly.

a. Timeliness of Execution

A search warrant must be executed within a certain amount of time after it is issued. In most states, there is a maximum statutory time period following the issuance of a warrant within which the warrant must be executed. Evidence seized under an expired warrant may end up being suppressed.

b. Physical Presence of the Search Warrant Issued at the Location of the Search

At the pre-execution briefing meeting, a search team member, preferably the team leader, should be designated to bring the warrant itself to the location to be searched. To avoid misplacing the original warrant, a conformed copy is an acceptable substitute. Do not start the search without the warrant. If necessary, premises to be searched may be secured, but the starting of the search should await the warrant's arrival. While proceeding without the warrant may not be unconstitutional, it just invites trouble later.

c. The Search

The first thing that the search team should do upon entering the search location is to secure all the points of entrance and all exits. When searching businesses that deal with the public, there is a good chance that there will be customers present when the search team arrives. All persons in the areas to be searched should be quickly moved away from spots where weapons or valuables can be concealed or where evidence can be tampered with. These people should all be properly identified.

Identifying the owner or person in charge of the business or premises and the employees, is important. A group from the search team should be assigned to do this. Enlist the support of the person in charge of the business or premises to conduce the search as this person can make things go more smoothly. However, one cannot always count on such assistance and the team should be prepared to encounter a hostile attitude.

Once the assigned investigators have identified all the people inside the premises, those not involved with the operation being searched should be asked to leave the premises.

A member of the search team should draw a diagram of the locations being searched, being careful to label each area accordingly, *e.g.*, Room A, Desk 1. Any items removed from that area should bear that area's label for identification later. Photographs should also be taken to show the condition of the areas at the time of the search and the specific location of the evidence at the time of the seizure.

All records seized in inventory sheets should be listed as specifically as possible within the time constraints of the search. After eash is listed, it should be placed in a box labeled to correspond with the inventory sheets (*e.g.*, Box 1, Room 1, Desk A: 4 Ledger Books. Left drawer: 4 checkbooks. Right drawer: Federal/State tax returns).

The more clearly the investigators label the boxes containing the seized materials and the more accurately they correspond to the inventory sheets, the easier the task will be later when it comes time to examine the records. It will do the investigation little good to seize records that can't be located later, or if located, cannot be identified as to place where seized. It is necessary to know where certain records were found (*e.g.*, incriminating memoranda on the desk of the owner of the business searched) to be able to show knowledge of criminal acts by individuals.

A group from the search team should be designated to count all cash seized. This group should be assigned no other tasks. Money seized is very important to the investigation, and it should be preserved it as evidence for trial. Under no circumstances should any member of the search team be left alone with money at any time.

Moreover, while the search operation is ongoing, no members of the search team should be permitted to leave the premises, and no one else should be allowed inside the premises unless there to assist in the search.

As stated earlier, a computer expert should be part of the search team. He will direct the power-off takedown of the computer system to ensure that it is not turned off improperly and valuable information is not lost forever. Among other things, computer experts will check for concealed access codes and will ensure that they system is not damaged while being dissembled and packed by the search team.

As the search is progressing, other members of the search team should be interviewing the employees and the person in charge. Each person should be interviewed separately. Valuable information can be obtained from these interviews, and in most jurisdictions *Miranda* warnings are not required. Moreover, this may be the only chance you will get to talk to these people before lawyers get involved.

At the time of the warrant execution, the prosecutor who drafted the warrant should be in his office and be readily available to answer any of the police officer's questions and, very likely, the questions of attorneys representing the target of the warrant.[10]

Finally, as the last thing before the search team leaves the premises, the search locations should be photographed to document what property was taken and the condition in which the scene was left.

7. Return on the Warrant

In most cases, after the search is concluded, the warrant must be returned to the court that signed it within a reasonable amount of time. If the search team did a good job of labeling the records seized and of preparing on-site inventory sheets, the preparation of the court inventory should not be difficult or time-consuming.

The judge to whom the inventory is brought will compare the items seized to the items listed in the warrant order to make sure that officials did not go beyond the scope of the warrant. At this time that, if the law of the jurisdiction permits it, the prosecutor may want to ask the judge to keep the affidavit in support of the warrant under seal pending the filing of criminal charges, so that no information is leaked to the targets before it is required by law.

8. Conclusion

Financial search warrants can be used in money laundering investigation. Properly drafted and executed, a financial search warrant can be a very potent weapon in the law enforcement arsenal.

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[10] As a general rule, the prosecutor in charge of the investigation should not be at the scene of the warrant execution to avoid becoming a witness at a later proceeding.

However, extreme caution must be exercised to ensure that a specific, detailed, valid warrant is drafted. Most importantly, when seizing records, the investigators must tnot exceed the scope of the search warrant, thereby invalidating an otherwise good document.

1. Subpoena for Business/Corporation Bank Account

STATEWIDE GRAND JURY SUBPOENA DUCES TECUM

IN THE CIRCUIT COURT OF COOK COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS

TO

Attention: Subpoena Department _____GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you attend before the State-wide Grand Jury of the State of Illinois in Chicago, Cook County, on the _____ day of _____ 19___at ____ [a or p.m.] o'clock at the Circuit Court House in Chicago, 26th and California Avenue, in the State of Illinois, Cook County, to give evidence and the truth to speak concerning a certain complaint made before said Grand Jury, against
and that you also diligently and carefully search for, examine and inquire after and bring with you and produce at the time and place aforesaid:

Any and all financial information regarding _____, including but not limited to the information included on the attached Schedule A, for the period beginning _____up to and including the present.

You are not to disclose the existence of this request and any such disclosure could impede this investigation and thereby interfere with enforcement of the law. Compliance can be made by tendering the aforesaid documents to: Chief Judge _____, Courtroom 101, 2650 South California, Chicago, Illinois 60608. Any question concerning this subpoena should be directed to Assistant Attorney Generals _____.

And this you will in no wise omit under penalty of the Law.

Witness, _____ Clerk of our said Court, and the Seal thereof, at Chicago, in said County this ____ day of _____, 19

Clerk

_____, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

SCHEDULE A

This schedule is attached to and made part of a certain Subpoena Duces Tecum issued by the Statewide Grand Jury on [date], to _____.

The following documents and things related to _____ are to be produced.

1. Signature cards for all accounts.

2. Applications for checking accounts, monthly checking statements, and cancelled checks.

3. Applications for savings accounts and transcripts of savings accounts.

4. Copies of deposit slips for checking and savings accounts and deposit items to which those slips relate.

5. Loan records, including applications, records of amounts borrowed, payments, collateral agreements, and ledger sheets.

6. Safe deposit box records, including applications and records of access.

7. Financial statements and credit reports.

8. Copies of promissory notes.

9. Mortgage records and applications.

10. Copies of Certificates of Deposit along with related deposits and disbursements of funds.

11. Investment and/or custodian accounts.

12. Records of purchase of bearer bonds.

13. Safekeeping register records.

14. Records of transfer or collection of funds by wire.

15. Receipts of delivery of securities.

16. Copies of applications for purchase of manager's checks, cashier's checks and/or treasurer's checks, together with the checks that were purchased and related documents showing the manner in which these checks were purchased.

17. Credit card applications, monthly statements, and records of purchase and payments.

18. Retained copies of Currency Transaction Reports relating to the above and records documenting each transaction.

19. Copy of the bank's Currency Transaction Report "Exempt List" and any documentation received or internally generated justifying the exemption.

20. Bank security/surveillance film showing any of the above-named individuals transacting business at the bank (dates and times to be supplied at a later date).

2. Subpoena for Individal Bank Account

STATEWIDE GRAND JURY SUBPOENA DUCES TECUM

IN THE CIRCUIT COURT OF COOK COUNTY
THE PEOPLE OF THE STATE OF ILLINOIS

TO_

Attention: Subpoena Department_____GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you attend before the State-wide Grand Jury of the State of Illinois in Chicago, Cook County, on the _____ day of _____ 19_ at ____ p.m. o'clock at the Circuit Court House in Chicago, 26th and California Avenue, in the State of Illinois, Cook County, to give evidence and the truth to speak concerning a certain complaint made before said Grand Jury, against
and that you also diligently and carefully search for, examine and inquire after and bring with you and produce at the time and place aforesaid.

Any and all financial information regarding _____, Social Security Number _____, including but not limited to the information included on the attached Schedule A, for the period beginning _____up to and including the present.

You are not to disclose the existence of this request and any such disclosure could impede this investigation and thereby interfere with enforcement of the law. Compliance can be made by tendering the aforesaid documents to: Chief Judge _____, Courtroom 101, 2650 South California, Chicago, Illinois 60608. Any question concerning this subpoena should be directed to Assistant Attorney Generals _____.

And this you will in no wise omit under penalty of the Law.

Witness, _____ Clerk of our said Court,

and the Seal thereof, at Chicago, in said County this

____ day of _____, 19

Clerk

_____, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

SCHEDULE A

This schedule is attached to and made part of a certain Subpoena Duces Tecum issued by the Statewide Grand Jury on (date), to _____.

The following documents and things related to _____ are to be produced.

1. Signature cards for all accounts.

2. Applications for checking accounts, monthly checking statements, and cancelled checks.

3. Applications for savings accounts and transcripts of savings accounts.

4. Copies of deposit slips for checking and savings accounts and deposit items to which those slips relate.

5. Loan records, including applications, records of amounts borrowed, payments, collateral agreements, and ledger sheets.

6. Safe deposit box records, including applications and records of access.

7. Financial statements and credit reports.

8. Copies of promissory notes.

9. Mortgage records and applications.

10. Copies of Certificates of Deposit along with related deposits and disbursements of funds.

11. Investment and/or custodian accounts.

12. Records of purchase of bearer bonds.

13. Safekeeping register records.

14. Records of transfer or collection of funds by wire.

15. Receipts of delivery of securities.

16. Copies of applications for purchase of manager's checks, cashier's checks and/or treasurer's checks, together with the checks that were purchased and related documents showing the manner in which these checks were purchased.

17. Credit card applications, monthly statements, and records of purchase and payments.

18. Retained copies of Currency Transaction Reports relating to the above and records documenting each transaction.

19. Copy of the bank's Currency Transaction Report "Exempt List" and any documentation received or internally generated justifying the exemption.

20. Bank security/surveillance film showing any of the above-named individuals transacting business at the bank (dates and times to be supplied at a later date).

D. Form of Search Warrant Itemizing Financial Records Sought from Bank

County of San Diego, State of California

Search Warrant

No._____

The People of the State of California, to a sheriff, constable, marshal, policeman, or any other peace officer in the County of San Diego:

Proof, by affidavit, having been this day made before me by Francis H. EATON, #125, a peace officer employed by the San Diego District Attorney, that there is substantial probable cause for the issuance of the search warrant pursuant to Penal Code Section 1524, you are, therefore, commanded to make search at any time of the day, good cause being shown therefore, of the financial institution, including all record storage areas and records therein assigned to or part of the business known as Bank of America, (addresss), San Diego, California, County of San Diego; the bank is contained in a one story commercial building having a primarily tan stucco exterior with stone trim. The number _____ appears above the front door which faces south. There is a sign with the name "Bank of America" above the front door; for the following property to wit: All financial records and documents of financial transactions involving the accounts in the name of Joan and/or John Smith, for the time period between January 1, 1992, to September 30, 1993. The financial records and transactions means original financial records and duplicate reproductions of documents recording financial transactions involving the described amount including all of the following:

1. All signature cards and attachments;

2. All canceled checks;

3. All deposit slips and underlying source documents, including, but not limited to, checks, drafts, money orders and documents evidencing deposits;

4. All debit and credit memos;

5. All records pertaining to wire transfers sent or received by John or Joan Smith;

6. All correspondence pertaining to accounts;

7. All loan documents for open or closed bank loans or mortgages, including applications ledgers, repayments, credit reports, correspondence, and security documents;

8. All safe deposit box entries and applications;

9. All documents pertaining to open or closed credit card accounts, including but not limited to, BankAmerica account number _____, in the name of Joan Smith and/or James Smith. Documents include, but are not limited to, applications for credit card, monthly statements, copies of charges, copies of documents evidencing payments on account;

10. All records of certificates of deposit, purchased or redeemed;

11. All records of open or closed IRA, Keogh, and other retirement plans;

12. All retained copies of cashier's checks, bank checks, traveler's checks, or money order documents evidencing the purchase or negotiation of such instruments, including, but not limited to Bank of America cashier's check #_____, dated August 4, 1993, in the amount of $6,315.10, payee United Title, and purchased by Joan Smith.

13. All financial logs and underlying records pertaining to transactions by John Smith or Joan Smith required to be maintained under 31 U.S.C., § 103.29 or otherwise kept concerning the purchase of cashier's checks, money orders, bank checks or drafts or traveler's checks for cash in amounts between $3,000 and $10,000; and, if you find the same, or any part thereof, to bring it forthwith before me at the Municipal Court of San Diego, State of California, or to any other court in which the offense in respect to which the property or things is triable, or retain such property in your custody, subject to the order of this Court, pursuant to Section 1536 of the Penal Code, and to dispose of said property pursuant to law when the property is no longer of evidentiary value.

It is further ordered that the officers and employees of the financial institution known as Bank of America are to withhold notification to the customers, John Smith and Joan Smith, of the existence of this search warrant, pursuant to Government Code Section 7475.

Given under my hand and dated this _____ day of _____, 19___.

E. Affidavit For Search Warrant for Residence of Drug Dealer for Information to Establish Net Worth or Source and Application Analysis

Table of Contents

MUNICIPAL COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
SAN DIEGO JUDICIAL DISTRICT

STATE OF CALIFORNIA) **AFFIDAVIT FOR SEARCH WARRANT**
) ss.
COUNTY OF SAN DIEGO) **NO. _____**

I, _____, do on oath make complaint, say and depose the following on this ____ day of_____ , 1995:

A. Description of Premises, Vehicles, and Persons

I have substantial probable cause to believe and I do believe that I have cause to search the following described premises, vehicles, and persons.

[For purposes of this sample affidavit the premises will be the suspect's personal residence, described in the affidavit either as premises or residence]

[Describe premises, vehicles and persons to be searched fully]

[For purposes of this sample affidavit the persons to be searched are the narcotic trafficking suspect, John Phelps, and his wife Jane Phelps]

B. Experience and Training

[Set forth a comprehensive recital of training and experience in areas of narcotics, money laundering, and financial crime cases—*e.g.*, include approximate number of cases worked in each category of cases, classes attended, fact that you have discussed the *modus operandi* of narcotic traffickers and money launders with experts in your own department and outside your department, fact that you have debriefed numerous narcotic traffickers/money launders concerning their *modus operandi* as to asset accumulation, record keeping, intent to avoid a paper trail in financial transactions, use of safe deposit boxes, placing title to property in nominee ("straw") owners, etc. If there is a particular aspect of the case where you do not have the expertise in which to set forth an opinion, speak to an expert in that area and relate his expertise and opinion on the subject matter (*e.g.* New York Police Department Detective Jones, who has worked in excess of 50 Jamaican Posse Narcotic Trafficking Cases over the last five years, informed me that Jamaican male narcotic traffickers will use females to make deliveries of controlled substances to courier companies to facilitate their trafficking activities).]

C. Factual Overview

[For purposes of this affidavit—purchases of cocaine by a confidential reliable informant (CRI)]

1. [Set forth reliability of CRI, *e.g.*, CRI has given affiant information on five prior occasions during the past year that has proven to be accurate and has resulted in the recovery of controlled substances and arrests for violations of state narcotics laws on each occasion. CRI has never given the affiant inaccurate or misleading information.]

2. [Establish CRI's familiarity with cocaine, *e.g.*, affiant questioned informant regarding the appearance, packaging, price and use of cocaine. Based on affiant's training and experience, affiant believes that CRI knows what cocaine looks like and the manner in which it is packaged.]

3. [Set forth details of the purchases of cocaine by CRI from John Phelps (also known as the "suspect") at John Phelps residence.]

4. [Sample paragraphs based on CRI's observations to help establish asset accumulation by suspect and the existence of financial records at the residence:]

Affiant debriefed CRI right after his first purchase of cocaine from the suspect which occurred within the last 30 days and right after CRI's second purchase of cocaine from the suspect which occurred within the last six days. CRI informed affiant:

a. On the occasion of the first purchase, CRI observed an open metal file cabinet located in the rear bedroom that stored numerous manila folders appearing to contain financial records.

b. On the occasion of the second purchase, informant observed a check book on the kitchen table with the name of suspect and his wife, Jane Phelps, as holders of the account.

c. On the occasion of the second purchase, suspect informed CRI that he (suspect) had to leave to meet a tenant at his apartment complex located on Fallon Street.

d. On the occasion of the second purchase, CRI saw a computer, a monitor, a printer, and floppy disks on a table located in the rear bedroom of the residence.

e. CRI informed affiant that the suspect has been a kilo dealer of cocaine for the past two years. CRI saw a white powdery substance, packaged in a clear wrapping and in excess of

two pounds, which the CRI believed to be cocaine located on the kitchen table of suspect's residence on the occasion of the second purchase.

[A CRI or an undercover officer should try to find out as much as he/she can concerning a suspect's assets, expenditures, lifestyle, record keeping, etc. for the purposes of establishing probable cause to seize documents, preparing of net worth/application of funds analyses, and locating assets for asset forfeiture.]

5. [Set forth paragraph concerning the need to keep the CRI's identity confidential.]

D. Financial Information

[Range Rover—Value—Cash Payment]

1. During affiant's surveillance of the suspect's residence on the occurrence of the first purchase of cocaine by CRI, affiant observed a late model green Range Rover, California license number 2XXX123, parked in the driveway of the suspect's residence. Department of Motor Vehicles (DMV) informed affiant that a 1993 Range Rover, California license plate number 2XXX 123, was registered to John Phelps and Jane Phelps at the suspect's residence address. DMV further informed affiant that the Range Rover was purchased new in a "no lien" transaction by the Phelps in August, 1993 from Rover Motors, located in Del Mar, California. A "no lien" transaction means that there is no loan entered into as part of the purchase of the vehicle that is secured by a lien. The purchase price of a "no lien" vehicle is paid in currency, by negotiable instrument, or a combination thereof. Rover Motors showed affiant the records of the sales transaction which revealed the purchase price of the 1993 Range Rover to be $47,650 with an initial $8,000 downpayment on the vehicle made in cash by John Phelps on July 30, 1993.

[Porsche—Value—No Lien Transaction]

2. During affiant's observations of suspect's residence during the occasion of the second purchase of cocaine by CRI, affiant observed a white female (matching the description of Jane Phelps from soundex California Drivers License number N7777777, issued to a Jane Phelps at the suspect's residence address), in a late model red Porsche, California License number 2ABC123. DMV informed affiant that a 1992 Porsche, California License number 2ABC123 was registered to John Phelps and Jane Phelps at the suspect's residence address. DMV informed

affiant that the Porsche was purchased new by the Phelps in October of 1992 in a "no lien" transaction. Affiant checked with two Porsche dealers in the San Diego Area and was informed that a Porsche of the same year and model of the Phelp's Porsche would not have been sold new in 1992 in California for any amount less than $52,000.

[Suspect's Residence—Value]

3. A property database check revealed John Phelps and Jane Phelps to be the owners of parcel number _____, 1 Flamingo Way, Del Mar, California (subject premises) by grant deed recorded June 4, 1992. A check of the San Diego County Recorder's Office records revealed that United Title Company was the title company involved in the sales transaction. A representative for United Title Company showed affiant documents from the escrow file for the June 1992 purchase of 1 Flamingo Way which revealed that the property was purchased by the Phelps for $450,000, paid in part by a $200,000 down payment consisting of 2 cashiers checks in the sum of $5,000 and $195,000. The balance of the purchase price was funded by a Bank of America loan.

[Apartment Complex—Nominee Owner]

4. A property database check revealed a Ralph and Rhonda Phelps to be the owners of parcel number_____, 1225 Fallon Avenue, Del Mar, California. The property records check revealed a quitclaim deed dated May 12, 1993 conveying all of John Phelps' interest in the property to Ralph and Rhonda Phelps.

[Set forth the information showing that Ralph and Rhonda Phelps are the father and mother of John Phelps]

On April 10, 1994, affiant inspected 1225 Fallon Avenue from the outside of the building and from the common hallways of the building and found that 1225 Fallon Avenue to be a six unit apartment building.

[Surveillance by Officers to Establish Suspect's Banking Connections]

5. Affiant, and Officers Smith, Bradley, Hazel, and Smedley conducted surveillances of the suspect's residence and John and Jane Phelps on the following dates and times:

Tuesday, February 22, 1994	7:00 a.m. to 1:00 p.m.
Wednesday, February 23, 1994	1:00 p.m. to 8:00 p.m.
Friday, March 4, 1994	6:00 a.m. to 9:00 p.m.
Saturday, March 5, 1994	9:00 a.m. to 4:00 p.m.
Monday, March 14, 1994	7:00 a.m. to 1:00 p.m.
Wednesday, March 16, 1994	1:00 p.m. to 8:00 p.m.
Thursday, March 31, 1994	7:00 a.m. to 7:00 p.m.

The surveillances revealed that the suspect appeared to conduct business at the following five banks on the following days in that he visited each respective bank carrying a large envelope wich he did not return with on each respective occasion:

DATE	NAME OF BANK	ADDRESS
February 22, 1994	Bank of America	R Street, Del Mar
February 23, 1994	Bank of America	Ulrich Street, San Diego
March 4, 1994	Union Bank	B Street, San Diego
March 4, 1994	First Interstate Bank	G Street, Del Mar
March 14, 1994	Bank of America	Ulrich Street, San Diego
March 16, 1994	Union Bank	B Street, San Diego
March 31, 1994	Wells Fargo	E Street, Del Mar
March 31, 1994	Bank of America	R Street, Del Mar

[U.S. Postal Inspection Service Mail Cover]

6. Affiant requested and obtained a United States Postal Inspection Service Mail Cover as part of the Phelps investigation. The U. S. Postal Inspection Service provided affiant with Xerox copies of the address side of envelopes and packages addressed to either John Phelps or Jane Phelps at the premises for a 30-day time period between March 1 and March 30, 1994. The mail cover revealed correspondence being sent to John Phelps or Jane Phelps from the banks listed above and Security Pacific National Bank.

The mail cover also revealed correspondence being sent to John Phelps from Smith and Barney, a nationally known stock brokerage/investment company with offices located on A Street, San Diego, California. The mail cover also revealed correspondence from John Tenant, at 1225 Fallon Street, Unit 5, Del Mar, California.

[Currency Transaction Report Information]

7. Banks are required to file a Currency Transaction Report (CTR) (IRS Form 4789) with the Internal Revenue Service on all cash deposits, withdrawals, exchanges of currency, or transfers in excess of Ten Thousand Dollars ($10,000.00) pursuant to 31 U.S.C. § 5313 and 31 C.F.R. §103.22, *et seq*. The Financial Investigation Program for the California Department of Justice maintains a database on CTRs filed by California-based financial institutions. According to the Financial Investigations Program of the Department of Justice a CTR was filed by Union Bank, located at 111 "B" Street, San Diego, California, regarding a transaction by John and Jane Phelps on February 6, 1992, where $15,673 in cash was exchanged for a cashier's check in the same amount. $15,600 of the cash exchanged for the cashier's check consisted of $100 bills. Based on my training experience, affiant knows that narcotic traffickers frequently transact business or transport monies in $100 bill dominations because of space considerations and to facilitate the counting of the money.

[California Franchise Tax Board--Filing of Income Tax Returns]

8. Information supplied by the California Franchise Tax Board show that John Phelps, Social Security Number 000-00-0000, and Jane Phelps, Social Security Number 000-00-0001, filed individual income tax returns for the State of California for the years 1990 through 1993.

[Known Expenditures of The Phelps]

9. A tabulation of known expenditures by the Phelps show expenditures in 1992 of $52,000 (Porsche purchase) and $247,650 in 1993 (Flamingo Road residence purchase and Range Rover purchase).

E. Employment

[Surveillance re: Lack of Employment]

1. The surveillance of John and Jane Phelps and referred to in paragraph D5 gave no indication that either John or Jane Phelps were gainfully employed or self-employed in a legitimate business except that John Phelps visited the 1225 Fallon Avenue Apartment Complex on March 16 and March 31, 1994 (he remained inside such apartment complex for approximately 20 minutes on each occasion).

[Employment History—California Employment Development Department]

2. On May 15, 1994, affiant was informed by the California Employment Development Department (EDD) that the department did not have any employer records showing John Phelps, Social Security Number 000-00-0000, Jane Phelps, Social Security Number 000-00-0001 being employed over the past two years.

An EDD representative informed affiant that EDD keeps record of an individual's present or past employment(s) for a time period of approximately two years. EDD requires that each person, group of persons or entity that employs one or more persons for a wage or salary must register with the EDD as an employer and list identifying information as to each and every employee.

F. Affiant's Expertise Relating to this Investigation

Based on affiant's training and experience and the facts set forth in this affidavit, affiant believes the following:

[Presence of Contraband]

1. Contraband and or illegal drugs will be found at the premises at this time.

[Presence of Packaging and User Material]

2. John Phelps, as a narcotic trafficker, will keep measuring instruments and packaging equipment, as well as paraphernalia for the use of narcotics at his residence to facilitate the packaging and sale of narcotics and to use for the consumption of narcotics by himself (sellers of narcotics will commonly be users of narcotics) and his customers (for purposes of testing the contraband and for personal use).

[Records of Distribution, Etc.]

3. Cocaine and other narcotic traffickers maintain books, records, receipts, notes, ledgers, diaries, airline tickets, money orders, and other papers relating to the transportation, ordering, sale, and distribution of controlled substances; that cocaine and/or other narcotics traffickers, commonly "front" (deliver cocaine and/or other narcotics on consignment) cocaine and/or other narcotic to their clients; that the aforementioned books, records, receipts, notes, ledgers, etc., are maintained frequently at their residences where the cocaine and/or other narcotic traffickers have ready access to them.

[Photographs, Tapes]

4. Affiant has found that drug traffickers take or cause to be taken photographs, video tapes, and/or make audio tapes, of themselves and/or their associates with their illicit product, and that these traffickers commonly maintain these photographs and/or tapes in their possession.

[Firearms on Premises]

5. Persons dealing in narcotics trafficking frequently arm themselves with firearms and ammunition and keep them available at their premises, in their vehicles, or on their persons. This phenomenon is primarily due to the large amounts of cash or valuable contraband involved in the drug trade and the fact that narcotic traffickers tend to resort to violence to resist robbery, to settle disputes, or thwart capture by law enforcement. Accordingly, presence of firearms, along with the other described evidence, will tend to circumstantially establish sales of narcotics and provide a basis for alleging a violation of P.C. 12022(a) (Armed with firearm in commission of a felony.)

[Monitoring Telephone Calls During Search]

6. People engaged in the sale of narcotics frequently transact their business over the telephone, often utilizing telephone answering machines and/or pagers, in order to maintain steady contact with customers and suppliers. Most commonly, buyers will call the premises in order to confirm the presence of contraband and to place orders. Intercepting such calls will tend to provide additional evidence of the sale of controlled substances and will tend to identify the seller of such contraband. Callers requesting controlled substances will ask for the seller by name and come to the premises following a ruse invitation by an officer conducting the search[1]. Callers to

[1]Be sure to include an order to intercept phone calls as part of search warrant (e.g., order to intercept all incoming telephone calls received at the premises to be searched pursuant to this search warrant for the duration of the time that the agents and officers arepresent at the premises for the execution and service of this search warrant).

the premises who are calling for legitimate and innocent reasons will generally identify themselves to police officers and act as witnesses who can be used to establish the identity of those in control over the premises.

[Narcotic Profits and Placement of Monies in Financial Institutions]

7. Affiant believes that John Phelps acquired great profits from the sale of cocaine. Cocaine is illicitly distributed by narcotic traffickers for pecuniary gain. Narcotic traffickers commonly have large sums of money on hand from the profits they make on sales of their drugs, and at times, place the monies in other locations such as banks, safes and safe deposit boxes. The purpose of placing these monies in other locations is to avoid theft of the monies by other narcotic traffickers and/or to prevent detection and seizure by law enforcement personnel. When narcotic traffickers deposit monies or other valuables in accounts, CDs, safe deposit boxes or otherwise with financial institutions, the narcotic traffickers will frequently keep records of bank accounts, CDs, or other investments in financial institutions, as well as safe deposit box keys, at the residences where they will have ready access to such information or items.

[Laundering of Proceeds Derived From Narcotic Trafficking]

8. Subjects involved in narcotic trafficking amass large sums of money from their illicit activities. When narcotic traffickers amass large sums of money from the sale of drugs, they attempt to legitimize their profits. To accomplish this goal, narcotic traffickers, among other activities, utilize domestic financial institutions to obtain cashier's checks, traveler's checks, and other negotiable instruments, deposit drug proceeds into bank accounts, and wire transfer funds from one financial institution to another. Narcotic traffickers will also purchase real estate, stocks, bonds, and other securities as well as high priced items of personal property (*e.g.*, cars, boats, airplanes, oriental rugs, precious gems, jewelry, gold coins, or antiques.)

[Nominee or Straw Owners]

9. In order to avoid seizure of assets under asset forfeiture laws and to frustrate a determination by law enforcement that the narcotic trafficker has substantial unexplained income, the narcotic trafficker will often place assets derived from the sale of narcotics in the names of nominee owners. Nominee or straw owners can be family members, girlfriends/boyfriends, or

friends. Affiant believes that John Phelps placed his parents, Ralph and Rhonda Phelps, as nominee owners of the Fallon Avenue Apartment Complex to conceal the fact that the true owner of the complex is John Phelps. Even though assets are in the name of nominee owners, the narcotic trafficker, in this case, John Phelps, continues to use the asset or otherwise exercises dominion and control over the asset.

[Use of Front Business to Launder Drug Proceeds]

10. Narcotic traffickers will often acquire or otherwise operate through nominee owners a "front business" in an effort to "legitimize" drug proceeds. The drug profits are legitimized by commingling legal business proceeds of the front business with drug proceeds or otherwise hold out the drug proceeds as revenue from the legal front business.

[Concealing Drugs or Valuables at Residences, Businesses and Safe Deposit Boxes]

11. Persons involved in drug trafficking often conceal in their residences and businesses, caches of drugs, large amounts of currency, financial instruments, precious metals, jewelry, and other items of value and/or proceeds of drug transactions; and evidence of financial transactions relating to obtaining, transferring, or secreting, assets (*e.g.*, real estate, securities, vehicles, high price luxury items, etc.) obtained from engaging in narcotic trafficking activities. Many of these items, such as U.S. currency, negotiable instruments, jewelry, precious metal or gems, and records of financial transactions are frequently found contained in safe deposit boxes for the reasons set forth in paragraph F7.

[Records Maintained by Taxpayer Based on California and Federal Tax Law at Suspect's Residence]

12. Based on information obtained from the California Franchise Tax Board and state and federal law affiant has found:

a. A deficiency assessment and/or audit must be instigated by the State Franchise Tax Board as to California State Income Tax Returns within four years of the filing of the return except in the case of a filing of a false or fraudulent return in which case the time limit is extended. (Revenue and Taxation Code § 19057.)

b. A California State felony tax prosecution must normally be commenced within six years of the commission of the offense. (Revenue and Taxation Code § 19704.)

c. A taxpayer must maintain such records as will enable him to file a correct return. A taxpayer normally has the burden to produce records at a audit or other proceeding to justify the taking of deductions on his California Income Tax Return. (Revenue and Taxation Code § 17551; 26 IRC § 446; 26 CFR § 1.446-1.)

Based on the facts set forth in the affidavit, including this paragraph F12 and the fact that the Phelps filed State Income Tax Returns for the years 1990 through 1993, affiant believes that the suspect has retained financial records to justify his tax returns for at least a four-year time period relative to the filing date of each respective income tax return. In affiant's training and experience, where narcotic traffickers have amassed significant assets and have filed income tax returns, copies of the tax returns and supporting financial documents are normally kept at the narcotic trafficker's residence.

[Net Worth/Source And Application of Funds Analyses to Establish Cause to Seize Financial Documents]

13. Net worth/source and application of funds analyses show that a suspect's known expenditures and/or accumulation of assets substantially exceed his legitimate sources of income to prove that the suspect is engaged in illegal money-generating activities, such as narcotic trafficking. The net worth analysis compares a suspect's net worth (cost value of total assets minus total liabilities) at a time just before the suspect has commenced his purported criminal enterprise to his net worth at the approximate time of his arrest. The source and application of fund analysis focuses on the suspect's expenditures during the time period of the purported illegal activities and compares such expenditures with his legitimate sources of income. Both analyses require evaluation of bank records, credit card records, loan records, documents evidencing ownership of assets, and other documents evidencing the financial profile of the suspect during the course of the purported illegal activity, as well as a time period prior to the illegal activity to trace sources of funds and to evidence changes in life-style.

Other than assisting in the net worth/source and application of funds analyses, a financial profile of a suspect prior to the purported criminal activity evidences changes in life-style, asset accumulation, and expenditures between the time period prior to the illegal activity and the time period of the illegal activity that are consistent with a person generating income from illegal

activities (*e.g.*, narcotic trafficking), as compared to a person earning income from legitimate sources.

Evidence of a suspect's expenditures, asset accumulation, and lifestyle just after the purported cessation of the illegal income generating activity often shows a decrease in expenditures, asset accumulation, and a decline in lifestyle as compared to the time period of the illegal activity that is consistent with a person no longer generating illegal income.

Documents evidencing or otherwise tracing the source of funds used to purchase, finance, or otherwise pay for assets held by the suspect during the time period of the criminal activity are essential to the net worth/source and application of funds analyses. These documents enable law enforcement to trace the source of funds for assets held by the suspect during the time period of the criminal activity to their original source and assist law enforcement to distinguish between assets purchased with funds derived from illegal sources from assets derived from legitimate sources. These documents also help law enforcement identify and quantify a suspect's assets at the time of the commencement of the criminal activity.

Evidence of a defendant's expenditures, asset accumulation, source of funds for asset accumulation and expenditures, financial life-style, net worth/source and application of fund analyses, and underlying financial documents necessary for such analyses are admissible evidence under federal case law in narcotic trafficking and money laundering cases.

[Time Period of Suspect's Involvement in Narcotic Trafficking]

14. Affiant believes that John Phelps has been trafficking in narcotics from at least January 1, 1992 to the present.

G. <u>Description of Items to be Seized</u>

Based on affiant's training and experience and the facts set forth in this affidavit, affiant believes that John Phelps is keeping the following property or things at his residence and such items are evidence tending show the commission of felony narcotic trafficking (H&S Code §§ 11351, 11352) and/or felony money laundering (Penal Code § 186.10) and/or used as the means of committing narcotic trafficking or money laundering, and/or providing evidence of intent to

conceal or prevent the discovery of the commission of narcotic trafficking or money laundering:

1. Cocaine;

2. Diluents (cutting agents) including, but not limited to, inositol, vitablend, mannitol, procaine, lanocaine and powdered sugar;

3. Measuring instruments and packaging equipment, including but not limited to scales, balances, funnels, plastic bags of various sizes, sealing equipment, measuring spoons and paraphernalia of use for narcotics such as straws, mirrors, pipes, syringes and razor blades;

4. United States or foreign currency, negotiable instruments, gold or other precious metals, jewelry or precious gems, art, antiques, oriental rugs, or other valuable items of personal property;

5. Financial and accounting records from January 1, 1991, to the present, including ledgers, memoranda and notes, journals, financial statements, loan applications and documents, credit company reports or statements, negotiable instruments, airplane tickets or other travel records, bank or financial institution account statements and records, bank signature cards, bank books, check registers, cancelled and uncancelled checks, deposit, withdrawal, exchange, or transfer documents, credit card charge slips and statements, receipts, credit and debit memoranda, and state and federal tax records tending to evidence the crimes of narcotics trafficking and money laundering;

6. Financial records and other documents evidencing the obtaining (including documents tracing the original source of funds before or after January 1, 1991), secreting, transfer and/or concealment of assets held in the name of John Phelps, Jane Phelps, Rhonda Phelps, or Ralph Phelps at any time from January 1, 1991, to the present, or held in the names of other person(s) or entities tending to evidence the crimes of narcotics trafficking or money laudering.

7. Personal diaries, telephone and address books, and supplier and customer lists tending to evidence the crimes of narcotics trafficking or money laundering;

8. Computer hardware, including drives, printers, modems, keyboards and display screens, computer software, computer hardware and software instruction manuals, computer data storage media (*e.g.*, floppy disks, CD roms, and tapes) computer generated printouts, and computer index files, and other evidence which show the accumulation of assets and expenditures derived from

proceeds of narcotic trafficking, or show the distribution of narcotics and the names or identities of persons included in such distributions;

9. Safe deposit box records, keys, or rental documents for the same;

10. Videotapes, undeveloped films, photographs or pictures of John Phelps or Jane Phelps; films, photographs or pictures of John Phelps and/or others ingesting narcotics, or surrounded by narcotics or monies; audio or video tapes, and telephone recordings of John Phelps or Jane Phelps or other which evidence communications regarding the distribution of narcotics;

11. Firearms, ammunition, firearm cleaning equipment, receipts for the purchase of firearms, ammunition, cleaning equipment and target range usage and photographs or films which indicate possession or use of the same; and

12. Any and all evidence of occupation, possession, right to possession or use of the premises located at 1 Flamingo Way, Del Mar, California, including, but not limited to contracts for purchase, mortgage payment records, rent receipts, rent contracts, utility and telephone bills, mail correspondence, credit card applications and records, vehicle registration and photographs.

[Dominion and Control]

Based on affiant's training experience and the facts set forth in this affidavit, affiant believes that the financial records and the other documents described in paragraphs G5 and G6, the photographs described in paragraphs G10 and G12, and the items described in paragraph G12 will show the identity of persons exercising dominion and control over the cocaine and related paraphernalia believed to be present at the premises.

H. **Records/Property Maintained/Transported in Vehicles**

Based on affiant's training and experience as set forth in this affidavit, affiant's experience in similar narcotic trafficking and/or money laundering investigations where the principles kept and/or transported cash, assets, business and financial records pertaining to their illicit activities in vehicles, the facts contained herein, including numerous trips in vehicles by John Phelps to financial institutions to apparently conduct business transactions, it is affiant's opinion that John Phelps keeps cash and/or assets and/or financial records relating to his narcotics trafficking and

money laundering operation in the subject vehicles described herein.

I. Documents/Property on Persons

Based on affiant's training and experience and the facts set forth in this affidavit, including numerous narcotic trafficking and money laundering investigations where principals of such investigations kept financial records pertaining to their criminal activities on their person, as well as where such principals have kept monies and/or other assets derived from their illegal activities on their person; it is affiant's belief that John Phelps keeps on his person financial records, and/or monies or negotiable instruments, or valuable items of personal property pertaining to or derived from narcotic trafficking or money laundering as set forth herein.

J. Criminal Violations

1. It is a violation of Penal Code section 186.10 (felony money laundering) to exchange currency in excess of $5,000 for a negotiable instrument at a bank where the transactor knows that the currency is derived from narcotic trafficking.

2. Based on the facts known to your affiant as set forth herein, your affiant has reasonable cause to believe that John Phelps committed the following felonies under California law: Sales/ transportation of cocaine (H&S Code § 11352), possession for sale of cocaine (H&S Code § 11351), and money laundering (Penal Code § 186.10).

3. Affiant believes that the items sought in the search warrant are evidence of the above felony offenses, were used as the means of committing such felony offenses, or evidence the intent to conceal or prevent the discovery of the commission of such felonies. Based on the facts and information set forth in this affidavit, affiant believes that grounds for the issuance of a search warrant exist under Penal Code section 1524.

4. I, the affiant, HEREBY PRAY that a warrant be issued for the seizure of said items, or any part thereof, from said residence, vehicles, or person at any time of the day, good cause being shown therefor, and that the same be brought before this magistrate or retained subject to the order of this court.

5. This affidavit has been reviewed for legal sufficiency by Deputy District

Attorney_____.

GIVEN under my hand and dated this _____ day of _____, 1994.

DETECTIVE_____, #100

Subscribed and sworn to before me

this ____ day of _____, 1994, at

_____ a.m./p.m.

_____
Judge of the Municipal Court
San Diego Judicial Court

F. SAMPLE AFFIDAVIT TO OBTAIN WIRE TRANSFER RECORDS FROM WESTERN UNION

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

SAN DIEGO JUDICIAL DISTRICT

STATE OF CALIFORNIA) **AFFIDAVIT FOR SEARCH WARRANT**
) ss.
COUNTY OF SAN DIEGO) **NO. _____**

I, Francis H. Eaton, #125, do on oath make complaint, say and depose the following on this ____ day of March, 1994:

A. Description of Items to be Seized/Location

I have substantial probable cause to believe and I do believe that I have cause to search the financial institution, including all record storage areas and records wherever located in any form, including but not limited to electronically stored data, therein assigned to or part of the business known as _____, agent of Western Union Financial Service, Inc.,_____(address), for the following property, to wit: All wire transfer or transaction records involving either Joan Smith, SSN 000-00-0000, James Smith, SSN 000-00-0001, or their respective aliases, Maria Alvarez or Ernesto Alvarez, where any such named person is the sender, addressee, or beneficiary of a wire transfer or transaction received, sent, or otherwise occurring at the above referred to place of business, as well as all such records pertaining to transactions connected to Western Union money transfer preferred customer Joan Smith, Account No._____ for the time period between January 1, 1992 to December 31, 1993, further described as follows:

All documents evidencing wire transfers, including but not limited to, receipts or information electronically stored;

All documents evidencing payment for wire transfers to Western Union or payment by Western Union to addressees or beneficiaries of wire transfers, including but not limited to, checks, drafts, money orders and documents evidencing cash payments;

All documents evidencing financial transactions not entailing wire transfers, including but not limited to receipts, summaries, logs, checks, drafts, money orders, documents evidencing cash payments or information electronically stored;

All correspondence, applications (no matter what time period) pertaining to preferred customer Joan Smith's account.

I believe that the above-described documents are kept, retained, or otherwise stored as part of the business records of the above-described financial institution. The wire transfer or transaction records described above are either the original records or duplicate reproductions.

B. **Experience and Training**

I am a peace officer employed by the San Diego District Attorney's Office (hereafter designated SDDA) and have been so employed for one (1) year. My title is District Attorney Investigator and I am currently assigned to the Major Narcotics Unit (MNU) and have been so assigned for about three months. Prior to my current position as a DA Investigator I was a Special Agent for the US Department of Justice, Drug Enforcement Administration for the past twenty-two years. From January 1991 through March 19, 1993, I was the supervising Special Agent for DEA San Diego Group 3, more commonly referred to as "OPERATION GREEN ICE," a "money laundering" investigation with world-wide implications. During my years with DEA, I have received training and attended classes and seminars in Washington, D.C., relative to "money laundering" and financial investigations. I have also, while supervising the Task Force known as "OPERATION GREEN ICE," been closely associated with IRS Special Agents assigned to the Task Force who have provided me with their expert opinions on how to track "money launderers" using their financial documents. These same IRS agents have over ten years experience and have had specialized training in financial investigations. Prior to my assignment in San Diego (I arrived in April 1988), I had tours of duty in Los Angeles; Brussels; Belgium; Indianapolis; Miami; Paris; France; and finally San Diego, California. During these various assignments I have investigated the trafficking of controlled substances at all strata of the trafficking chain. I have had formal training and extensive experience in controlled substance investigations and I am familiar with the manner in which controlled substances are packaged, marketed and consumed. I have received training in the identification of all types of controlled substance by sight and odor. I have made in excess of 300 arrests for violations involving such substances. In the course of my career with the DEA, I have become familiar with the ordinary meaning of controlled substance slang and jargon,

and I am familiar with the manners and techniques of traffickers as practiced not only locally, but on a world wide basis. Prior to my years as a Special Agent for the DEA, I was a Deputy Sheriff for the County of Sacramento for five years and two months, assigned to the uniformed patrol division. As a patrolman working a single-man patrol car, I made numerous narcotics arrests for violation of the California Health and Safety Code.

C. **Summary of Investigation**

1. On September 28, 1993, members of the San Diego Police Department (SDPD), including Detective Felipe ARROYO, #3098, and Detective Ron FEATHERLY, #3403, executed state search warrant #18500 at (suspect's residence address), in San Diego, California. Public records show that the owners of (address) San Diego, are James Smith and Joan Smith, husband and wife. This search warrant was issued based on the fact that an ongoing narcotics investigation revealed that the resident, Joan Smith, had been identified as the person who had shipped out of California twenty (20) pounds of marijuana via United Parcel Service (UPS) on September 18, 1993, to an individual living in the state of Michigan. The recipient of the package was Janice Jones, who has been identified as Joan Smith's sister. A UPS employee informed affiant that Joan Smith has delivered at least ten (10) similar packages just before closing time to UPS for out-of-state shipment between July and September, 1993.

2. As a result of the search conducted on September 28, 1993, at (suspect's address), Joan Smith was arrested for shipping twenty (20) pounds of marijuana to Michigan. This investigation also revealed that Joan Smith had a storage unit at (address), San Diego, County of San Diego. Detective F. ARROYO obtained a telephonic search warrant for this storage unit and discovered approximately sixty-seven and a half (67.5) pounds of marijuana inside the storage unit.

3. James Smith and/or Joan Smith have safe deposit boxes at two banking institutions. Detective F. ARROYO also obtained search warrant #18503 for the bank safe deposit boxes and subsequently recovered approximately $50,900 in cash from these deposit boxes.

4. On September 29, 1993, Detective R. FEATHERLY, #3403, obtained a court order from Honorable Judge Laura Hammes, of the San Diego Superior Court, in order to seize the

bank accounts of Joan and James Smith. The court order was served and a savings account containing $28,885.07 was seized.

5. Search Warrant #18629 was served on the Clairemont Branch of Bank of America by Detective Felipe ARROYO, on November 8, 1993. Documents received from this search warrant showed that the Smith's had checking account #_____ and savings account #_____ with the bank.

D. Incorporation of Prior Affidavits by Reference

1. I have read and considered the attached four (4) page affidavit prepared by SDPD Narcotics Section Detective Felipe ARROYO, #3098, requesting a search of bank records held by Bank of America, 4002 Clairemont Mesa Blvd., San Diego, California in the name of Joan and James Smith. I hereby request incorporation herein by reference of said affidavit identified by the #18629 appearing on the front page of the affidavit (Exhibit #1).

2. I have read and considered the attached eight (8) page affidavit prepared by SDPD Narcotics Section Detective R. FEATHERLY, #3403, requesting a search warrant be issued for the Smith residence located at (address in San Diego, California). I hereby request incorporation herein by reference of said affidavit identified by the #18500 appearing on the front page of the affidavit (Exhibit #2).

3. I have read and considered the attached five (5) page declaration and affidavit to seizure warrant prepared by SDPD Narcotics Section Detective R. Featherly, #3403, requesting a seizure of proceeds of bank accounts #_____and #_____in the names of James Smith and Joan Smith held by the Bank of America. I hereby request incorporation herein by reference of said affidavit identified by date of September 29, 1993, and issued by Honorable Judge Laura Hammes of the San Diego Superior Court (Exhibit #3).

4. Furthermore, I hereby request incorporation herein of telephonic search warrant #18504, attached hereto, obtained by SDPD Narcotics Section Detective F. ARROYO, #3098, on September 28, 1993, and issued by Honorable Judge David Gill of the San Diego Superior Court, for the storage unit located at (address). (Exhibit #4).

5. I hereby request incorporation herein of search warrant #18503, attached hereto,

obtained by SDPD Narcotics Section Detective F. Arroyo, #3098, on September 29, 1993, and issued by Honorable Judge Kasimatis of the San Diego Municipal Court, for the safe deposit box located at the Bank of America branch located at (address), San Diego, California, in the name of Joan Smith (Exhibit #5).

6. I have read and considered the attached eight (8) page affidavit prepared by SDPD Narcotics Section Detective R. FEATHERLY, #3403, requesting a search warrant to be issued for storage space # located at Jerome's Storage, 5000 Ralph Road, San Diego, California, attached hereto. I hereby request incorporation herein by reference of said affidavit and identified by the #18512 appearing on the front page of the affidavit and signed by the Honorable Judge Frank A. Brown of the San Diego Municipal Court on October 1, 1993 (Exhibit #6).

E. <u>Further Investigation</u>

1. Research of criminal indices by Detective F. ARROYO of the San Diego Police Department has revealed the following: A 1980 Volvo, black, bearing California license _____, and registered to James Smith of (suspect's address), San Diego, California, was stopped for a traffic violation in Lasalle County, Illinois, on May 5, 1993 at 6:10 p.m. Illinois State Trooper D.L. Gillette interviewed the sole occupant/driver, Manual Ceballos. The trooper learned that Ceballos had flown to San Diego, California, from Michigan to visit James Smith, a school friend, and had been asked by Smith to drive the Volvo back to Michigan. A consent search of the Volvo by Trooper Gillette revealed 87.0 pounds of marijuana concealed in a suitcase in the trunk of the Volvo. M. Ceballos was arrested and the marijuana seized as evidence. The Volvo was later retrieved by James Smith.

2. Western Union receipts seized by San Diego Police Department agents pursuant to a search warrant executed on the safety deposit box of Joan Smith on September 29, 1993, show that Janice Jones (Joan Smith's sister and recipient of the aforementioned twenty (20) pounds of marijuana) wired in excess of $23,000.00 from Michigan between February and August 1993 to Torreon, Coahiula, Mexico, an area in Mexico known to affiant to be a center for cultivation of marijuana and opium poppies as well as a staging area for cocaine smuggled into the Coahiula area by aircraft from South America.

F. **Financial Information**

[Currency Transaction Report]

1. Banks are required to file a Currency Transaction Report (CTR) (IRS Form 4789) with the Internal Revenue Service on all cash deposits, withdrawals, exchanges of currency, or transfers in excess of Ten Thousand Dollars ($10,000.00) pursuant to 31 U.S.C. § 5313, and 31 C.F.R. § 103.22, *et seq*. The Financial Investigation Program for the California Department of Justice maintains a data base on CTRs filed by California-based financial institutions. According to the Financial Investigations Program of the Department of Justice, a CTR was filed by Union Bank, located at 1201 Fifth Avenue, San Diego, California, regarding a transaction on June 12, 1992 by James and Joan Smith where check(s) were cashed for $15,673.00, of which $15,600.00 consisted of $100 bills. Based on my training and experience, affiant knows that narcotic traffickers frequently transact business or transport monies in $100 bill denominations because of space considerations and to facilitate the counting of the money.

[Review of Expenditures]

2. Affiant and Investigative Auditor Steve Swinger of the California Attorney General's Office have reviewed receipts, other documents evidencing payment, escrow documents, and bank records obtained from the execution of search warrants described herein or obtained from Union Title Company. The review of these records show:

a. Large cash payments made by either James Smith or Joan Smith in 1992, including $8,600.00 for a car and $8,024.00 to a travel agency for a round trip flight to Zurich, Switzerland;

b. Large cash payments by either James or Joan Smith in 1993, including $4,400.00 for electronic equipment to Circuit City, $2,462.00 for a car, $1,200.00 toward a one week stay at Capri Beach, and $1,025.00 for mobile phone and accessories;

c. Purchase of real property in August of 1993 for $65,000.00. Escrow documents and an interview with Steve Larson, representative of the escrow company, Union Title, revealed that James and Joan Smith made a down payment of $200,000 in cash to Union Title and indicated to Steve Larson that the remaining down payment would also be in cash at close of escrow. The

Smiths were told by Steve Larson that he could not accept such a large amount in cash. The Smiths, thereafter, obtained a $6,315.00 cashier's check from Bank of America and a $5,000.00 money order from Great Western Bank.

d. Use of money orders for payment of dentist bills and real property taxes in 1992. Payment in person of utility bills in 1992, and payment of a $1,583.00 credit card bill for account #_____ in person on June 17, 1992;

e. Cash payments of telephone bills and payment of various other utility bills in person and through the use of cashier's checks in 1993;

f. Review of cancelled checks for the Smith checking account between March and September of 1993 show limited check negotiation activity evidencing that much of their ordinary living expenses were not being paid by check during such time period.

[Tabulation of Known Expenditures]

A tabulation of known significant expenditures[1] by the Smiths show expenditures in 1992 of $69,065.00, and expenditures in 1993 up to October 1, 1993 of $90,224.00. It should be noted that affiant believes that the above amounts represent only a part of the Smiths' expenditures due to incomplete records, undocumented cash expenditures, and undocumented personal expenditures, as well as the fact that only significant known expenditures were tabulated for purposes of this affidavit;

g. Mortgage payments for the Smith residence, in excess of $1,000.00 each, paid by wire transfers in 1992 and 1993;

h. Large deposits into bank accounts including a deposit of $43,477.00 on June 29, 1992. There were cash deposits in excess of $12,434.00 between December 1992 and March 1993 and a $2,500.00 cash deposit on May 16, 1993;

i. Joan and James Smith took a three-week trip to Switzerland in July 1992 and a one-week trip to Cancun, Mexico, an ocean resort vacation destination.

3. On September 29, 1993, San Diego Police Department detectives, pursuant to Search Warrant #18503, seized $31,850.00 in cash from the Smiths' safe deposit box located at Clairemont Mesa Boulevard Branch of Bank of America. On October 1, 1993, San Diego Police

[1] Mortgage expenditure figures derived from partial receipts starting in 1991— per year expenditure extrapolated from these receipts.

Department detectives, pursuant to Search Warrant #18503, seized $19,050.00 in cash from the Smith's safe deposit box located at the Genesee Branch of Union Bank. On September 29, 1993, San Diego Police Department detectives served a state seizure order on $28,885.00 found in the Smith's savings account #_____ with the Clairemont Mesa Boulevard Branch of Bank of America.

[Suspect's Employment History]

4. San Diego Police Department Officer Don Hanson of the Narcotic Task Force, Drug Enforcement Administration, interviewed Joan Smith on September 28, 1993. She told Officer Hanson that she was a registered nurse, but that she had not worked for the past five years. She said she had been separated from her husband for a couple months and did not know his whereabouts. When asked how she supported herself, she said her husband bought and sold used cars. Certificates of title or other indices of ownership seized pursuant to search warrants in this case show James Smith having an ownership interest in approximately seven, pre-1986 vehicles. She said that she had not filed any income tax returns for the past two years. When questioned further about her financial status, she stated she wanted an attorney and declined to answer any more questions.

[California Franchise Tax Board:Non-Filing of Returns]

5. Information supplied by the California Franchise Tax Board show that James Smith and Joan Smith did not file individual tax returns for the State of California for calendar years 1991 and 1992. A California resident is required to file an income tax return under Revenue and Taxation Code section 18501 (predecessor statute being section 18401) in 1991 and 1992 where an individual has gross income in excess of $8,000.00 or the joint gross income of a husband and wife exceed $16,000.00 in the taxable year. The Smiths did file California income tax returns for 1990.

G. <u>Western Union Wire Transfer Information</u>

1. Affiant and investigative Auditor Steve Swinger of the Office of the California Attorney General have reviewed receipts, wire transfer documents, Western Union preferred customer cards, and reports of Michigan Law Enforcement pertaining to documents seized in the

execution of search warrants served on the residence of Joan Smith on September 28, 1993, and Bank of America Safety deposit box on September 29, 1993, a review of those records show:

a. Joan Smith or James Smith were using Western Union wire transfers in 1992 and 1993 to make mortgage payments on their residence located in San Diego, California. Some of these transfers were transacted through the Western Union located at (address) San Diego, California.

b. Maria Alvarez sent $700.00 by Western Union wire transfer from (address) to Ernesto Alvarez on December 30, 1992, (Money transfer control number:_____). Maria Alvarez has the same address as the residence address of James and Joan Smith, (_____, San Diego, California). Maria Alvarez and Ernesto Alvarez are believed by affiant (based on his training and experience and the information set forth in this affidavit) to be agents or aliases of Joan and James Smith.

c. Two money transfer receipts were located during the execution of the September 28, 1993 search warrant showing money transfers between Joan Smith to James Smith as the Recipient. For example: Western Union money transfer dated June 1, 1993, in the amount of $1,500.00, control number_____ sent by Joan Smith to James Smith; on June 2, 1993, Joan Smith sent $500.00 to James Smith via Western Union money transfer control number_____. Joan Smith sent monthly "Quick Collect Payment" money transfers via Western Union to Guardian Savings & Loan. The destination location of all described money transfers are requested from Western Union.

d. Two (2) Western Union money transfer preferred customer cards in the name of Joan Smith, account number _____and account number _____ were seized from Joan Smith on September 28, 1993 pursuant to search warrant.

H. **Affiant's Experience Relating to this Investigation**

[Amassing of Money Laundering of Proceeds]

1. Based on my training and experience, affiant has reason to believe that narcotic traffickers derive large amounts of money from sales of drugs which they attempt to launder (make narcotic proceeds look like legitimate income) through the techniques utilized by the Smiths as set forth herein.

[Failure to File Income Tax Returns or Understating Income on Filed Returns]

2. Based on my training and experience, affiant knows that expenditures substantially in excess of reported gross income on tax returns (in this case no reported income for years 1991 and 1992) usually mean that the individual is engaged in an illegal income-generating enterprise, like narcotic trafficking. Money derived from narcotic trafficking will not usually be reported on a tax return.

[Cash in Safe Deposit Boxes]

3. Based on my training and experience, affiant avers that narcotic traffickers frequently keep large amounts of cash in safe deposit boxes in lieu of their residences or bank accounts in an attempt to avoid seizure by law enforcement agents, and have large amounts of cash available to facilitate their illicit business, and to avoid a financial transaction paper trail.

[Use of Wire Transfers]

4. Based on my training and experience and the information set forth herein; affiant avers that persons engaged in illegal activity will often use wire transfers to pay obligations in an attempt to avoid an obvious paper trial as would be caused by paying by checks drawn from their banking account.

[Wire Transfers Between Geographic Locations]

5. Based on my training and experience and the information set forth herein, where co-conspirators of a narcotic trafficking organization are located in different geographical regions (e.g. California, Michigan, Mexico), co-conspirators will often make payments to facilitate the drug trafficking operation between themselves by wire transfer to avoid the obvious paper trial caused by a personal check or inconvenience of physically transporting currency great distances.

[Documents Needed for Net Worth/Source and Application of Funds Analyses]

6. Net worth/source and application of funds analyses show that a suspect's known expenditures and/or accumulation of assets substantially exceed his legitimate sources of income to prove that the suspect is engaged in illegal money-generating activities, such as narcotic trafficking. The net worth analysis compares a suspect's net worth (cost value of total assets minus total liabilities) at a time just before the suspect has commenced his purported criminal enterprise,

to his net worth at the approximate time of his arrest. The source and application of fund analysis focuses on the suspect's expenditures during the time period of the purported illegal activities and compares such expenditures with his legitimate sources of income. Both analyses require evaluation of bank records, credit card records, loan records, documents evidencing ownership of assets, and other documents evidencing the financial profile of the suspect during the course of the purported illegal activity, as well as a time period prior to the illegal activity to trace sources of funds and to evidence changes in life-style.

Other than assisting in the net worth/source and application of funds analyses, a financial profile of a suspect prior to the purported criminal activity evidences changes in life-style, asset accumulation, and expenditures between the time period prior to the illegal activity and the time period of the illegal activity that are consistent with a person generating income from illegal activities (*e.g.*, narcotic trafficking), as compared to a person earning income from legitimate sources.

Evidence of a suspect's expenditures, asset accumulation, and lifestyle just after the purported cessation of the illegal income generating activity often shows a decrease in expenditures, asset accumulation, and a decline in lifestyle as compared to the time period of the illegal activity that is consistent with a person no longer generating illegal income.

Documents evidencing or otherwise tracing the source of funds used to purchase, finance, or otherwise pay for assets held by the suspect during the time period of the criminal activity are essential to the net worth/source and application of funds analyses. These documents enable law enforcement to trace the source of funds for assets held by the suspect during the time period of the criminal activity to their original source and assist law enforcement to distinguish between assets purchased with source of funds derived from illegal sources from assets derived from legitimate sources. These documents also help law enforcement identify and quantify a suspect's assets at the time of the commencement of the criminal activity.

Evidence of a defendant's expenditures, asset accumulation, source of funds for asset accumulation and expenditures, financial life-style, net worth/source and application of fund analyses, and underlying financial documents necessary for such analyses are admissible evidence under federal case law in narcotic trafficking and money laundering cases.

[Participation in Drug Trafficking/Money Laundering]

7. Based on my training and experience and the information set forth in this affidavit, I believe that the Smiths have been participating in a drug trafficking/money laundering operation from at least January 1, 1992 until Joan Smith's arrest in September, 1993, on narcotic trafficking charges.

I. Criminal Violations

1. Based on the facts known to your affiant as set forth herein, your affiant has reasonable cause to believe that James Smith and/or Joan Smith committed the following felonies under California law: conspiracy to sell/transport marijuana and money laundering (Penal Code §§ 182/186.10 and Health and Safety Code § 11360), money laundering (Penal Code § 186.10); and transactions involving drug proceeds in excess of $25.000.00 (Health and Safety Code § 11370.9).

2. Based on the facts known to your affiant as set forth herein, your affiant has reasonable cause to believe that James Smith committed the following additional felonies under California law: possession for sale of marijuana (Health and Safety Code § 11359); and sale/ distribution/transportation of marijuana (Health and Safety Code § 11360). (Joan Smith pleaded guilty to Health and Safety Code section 11359 on February 2, 1994 in Case number _____).

3. Affiant believes that evidence of the above felony offenses will be revealed by examining the records sought in the search warrant. Based on the facts and information set forth in this affidavit, affiant believes that grounds for the issuance of a search warrant exist under Penal Code § 1524.

[Confidentiality Order]

4. Affiant requests that the court order Western Union Financial Services agent, _____, (address), including Western Union Financial Services main office and any of its agents not to notify James Smith, Joan Smith, or any of their agents, that a search warrant has been served on their wire transfer or transactions records. Affiant expects to execute additional search warrants for business documents and other relevant evidence, and affiant is

aware, based upon my training and experience, that suspects in a criminal investigation will often attempt to impede an investigation by destroying relevant documents when they become aware that they are a target. Affiant believes that if the Smiths become aware of the existence of this search warrant, they will destroy, or attempt to destroy any records which could connect them to this current investigation.

5. I, the affiant, HEREBY PRAY that a search warrant be issued for the seizure of said records, or any part thereof, from said institution, at any time of the day, good cause being shown therefor, and that the same be brought before this magistrate or retained subject to the order of this Court.

6. This affidavit has been reviewed for legal sufficiency by Deputy District Attorney Julie Korsmeyer and Deputy Attorney General James D. Dutton.

GIVEN under my hand and dated this ____ day of April, 1994.

_____
FRANCIS H. EATON, #125

Subscribed and sworn to before me
this ____ day of March, 1994, at
_____ a.m./p.m.

_____
Judge of the Municipal Court
San Diego Judicial Court

G. Uniform Act to Secure The Attendance of Witnesses from Without a State In Criminal Proceedings

Jurisdiction	Code
Alaska	AS 12.50.010 to 12.50.080.
Arizona	A.R.S. §§ 12-4091 to 12-4096.
Arkansas	Ark.Stats. §§ 43-2005 to 43-2009.
California	West's Ann.Penal Code, §§ 1334 to 1334.6.
Colorado	C.R.S. '73, 16-9-201 to 16-9-204.
Connecticut	C.G.S.A. § 54-22.
Delaware	11 Del.C. §§ 3521 to 3526.
District of Columbia	D.C.C.E. §§ 23-1501 to 23-1504.
Florida	West's F.S.A. §§ 942.01 to 942.06.
Georgia	Code, §§ 38-2001a to 38-2008a.
Hawaii	HRS §§ 836-1 to 836-6.
Idaho	I.C. § 19-3005.
Illinois	S.H.A. ch. 38, §§ 156-1 to 156-6.
Indiana	IC 35-6-2-1 to 35-6-2-5.
Iowa	I.C.A. §§ 819.1 to 819.5.
Kansas	K.S.A. 22-4201 to 22-4206.
Kentucky	KRS 421.230 to 421.270.
Louisiana	LSA-C.Cr.P. arts. 741 to 745.
Maine	15 M/R.S.A. §§ 1411 to 1415.
Maryland	Code, Courts and Judicial Proceedings, §§ 9-301 to 9-306.
Massachusetts	M.G.L.A. c. 233 §§ 13A to 13D.
Michigan	M.C.L.A. §§ 767.94 to 767.95.
Minnesota	M.S.A. §§ 634.06 to 634.09.
Mississippi	Code 1972, §§ 99-9-27 to 99-9-35.

Missouri	V.A.M.A. §§ 491.400 to 491.450.
Montana	MCA 46-15-11 to 46-15-114.
Nebraska	R.R.S.1943, §§ 29-1906 to 29-1911.
Nevada	N.R.S. 174.395 to 174.445.
New Hampshire	RSA 613:1 to 613:6.
New Jersey	N.J.S.A. 2A:81-18 to 2A:81-23.
New Mexico	1978 Comp. §§ 31-8-1 to 31-8-6.
Mew York	McKinney's CPL § 640.10.
North Carolina	N.C. Gen.Stat. §§ 15A-811 to 15A-816.
North Dakota	NDC §§ 31-83-25 to 31-83-31.
Ohio	O.R.C.A. §§ 2939.25 to 29.39.29.
Oklahoma	22 Okl. St. Ann. §§ 729
Oregon	ORS 136.623 to 136.637.
Panama Canal	Zone 6 C.Z.C §§ 4331 to 4336.
Pennsylvania	42 Pa.C.S.A. §§ 5961 to 5965.
Puerto Rico	34 L.P.R.A. §§ 1471 to 1475.
Rhode Island	Gen. Laws 1956, §§ 12-16-1 to 12-16-13.
South Carolina	Code 1978, §§19-9-10 to 19-9-130.
South Dakota	SDCL 23A-14-1.
Tennessee	T.C.A. §§ 40-17-201.
Texas	Vernon's Ann. C. C. Part 24.20.
Utah	U.C.A.1953, 77-45-11 to 77-45-17.
Vermont	13 V.S.A. §§ 6641 to 6649.
Virgin Islands	5 V.I.X. §§ 3861 to 3865.
Virginia	Code 1950, §§ 19.2-272 to 19.2-282.
Washington	RCWA 10.55.010 to 10.55.130.
West Virginia	Code, 62-6A-4 to 62-6A-6.
Wisconsin	W.S.A. 976.02.
Wyoming	W.S.1977, §§ 7-11-407 to 7-11-409.

IN RE: : IN THE CIRCUIT COURT

A : FOR

SPECIAL INVESTIGATION : (NAME OF COURT)

EX PARTE PETITION FOR THE CERTIFICATION OF NECESSITY OF APPEARANCE OF OUT-OF-STATE WITNESS BEFORE THE GRAND JURY FOR (NAME OF COURT/COUNTY/CITY)

The State of _____, by its attorneys, _____, Attorney General, and _____, Assistant Attorney General, petitions this Court pursuant to the Annotated Code of (fill in state), (fill in citation) _____, for certification under seal of this Court that the Custodian of Records for _____ is a material witness and in possession of information relevant to an investigation presently being conducted by the Grand Jury for (court/county), and in support thereof says:

1. On (date) _____, Governor (fill in Governor's name) _____, authorized the Attorney General, pursuant to the Constitution of (state), (citation) ____, to investigate allegations of possible criminal conduct by (target/suspect) _____.

2. The Criminal Investigations Division of the Attorney General's Office has developed information that (target/suspect) _____ embezzled in excess of (amount) from his employer in (location/city/state/county).

3. (target/suspect) used the stolen money to gamble at a number of casinos including _____ Casino in Las Vegas, Nevada.

4. The Grand Jury for _____ has issued a subpoena for the appearance of the Custodian of Records of _____ Casino to produce records of gambling activities.

5. The Custodian of Records for _____ Casino can be summoned only through the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, (citation) ____.

6. Nevada has made provisions for commanding persons within its borders to attend and testify at Grand Jury proceedings in other states, including (state) pursuant to the N.R.S. 174.395 to 174.445.

7. The witness's presence before the Grand Jury will be required for only one day and will not cause undue hardship. The State of _____ will tender said witness the requisite statutory witness and travel fees. Pursuant to Courts and Judicial Proceedings Article (article number), the witness will be protected from arrest and service of civil or criminal process in connection with matters which arose before his entrance into (state/city/county) in response to the Grand Jury subpoena.

8. In support of this Petition and attached hereto is an Affidavit from _____, the Assistant Attorney General charged with responsibility for conducting this investigation.

WHEREFORE, the State of _____ respectfully requests certification under seal of this Court that the Custodian of Records for _____ Casino is a material witness possessing relevant information in connection with a duly authorized investigation being conducted by the Grand Jury for _____ and that its presence will be required on (date), at 10:00 A.M., in order to testify regarding the subject matter of this investigation; and

The State of _____ further requests that the original Petition and supporting Affidavit be sealed and maintained by this Court for safekeeping, and a true test copy of said Petition and Affidavit be supplied to the Assistant Attorney General supervising the investigation so the said Petition and Affidavit can be disclosed to the foreign court if said court so requires.

_____

Judge

Circuit Court for _____

IN RE: IN THE CIRCUIT COURT

A : FOR

SPECIAL INVESTIGATION : (NAME OF COURT)

CERTIFICATION

Upon application of _____, Attorney General, and _____, Assistant Attorney General of the State of _____, who have been duly authorized to conduct the present Grand Jury investigation and in accordance with the Annotated Code of _____, Courts and Judicial Proceedings _____ it is this ___ day of, CERTIFIED, that the Custodian of Records of _____ Casino:

1. Is located in the State of _____, which by its laws has made provision for commanding persons within its borders to attend and testify in Grand Jury proceedings in other states pursuant to the N.R.S. 174.395 to 174.445.

2. Is a material and necessary witness in a Grand Jury investigation presently being conducted by the Grand Jury for _____ and possesses information and documents material to that investigation.

3. Will be required to appear for no more than one day beginning _____.

4. Will be tendered the requisite statutory witness and travel fees by the State of _____.

5. Will be supplied suitable transportation by the State of _____ upon request.

6. Upon coming into the State of _____ in obedience to the summons, will be protected under the (citation), from arrest or service of civil or criminal process in connection with matters which arose before _____, from arrest or service of civil or criminal process in connections with matters which arose before its entrance in the State of _____ under the summons.

_____
Judge

Circuit Court for _____

IN RE: : IN THE CIRCUIT COURT

A : FOR

SPECIAL INVESTIGATION : (NAME OF COURT)

AFFIDAVIT

STATE OF _____, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that the foregoing is a true copy of a Certification, duly executed by the Honorable _____, Judge of the Circuit Court for _____.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the seal of the Circuit Court for _____ this __ day of _____.

_____

Clerk

Circuit Court for_____

STATE OF _____, COUNTY OF _____ TO WIT:

I, _____, Judge of the Circuit Court for _____, do certify that the foregoing attestations of the Clerk of the Circuit Court for _____are in due form and by the proper officer.

GIVEN MY HAND, this _____ day of _____.

_____

Judge

Circuit Court for _____

STATE OF _____, COUNTY OF _____ TO WIT:

I, _____, Clerk of the Circuit Court for _____, do hereby certify that the Honorable _____, who has certified and signed the above attestations, was, at the time of so doing, a Judge of the Circuit Court for _____, duly commissioned and qualified; and that to all acts done by him in that capacity full faith and credit are due and ought to be given; and that his signature thereto is genuine.

IN TESTIMONY WHEREOF, I hereto subscribe my name and affix the Seal of the Circuit Court for _____, on this ___ day of _____.

_____
Clerk

Circuit Court for _____

TRUE COPY
TEST

_____ CLERK

IN RE: : IN THE CIRCUIT COURT

A : FOR

SPECIAL INVESTIGATION : (NAME OF COURT)

AFFIDAVIT

STATE OF _____, COUNTY OF _____ TO WIT:

I, _____, do hereby swear and depose as follows:

1. On _____, the _____ Attorney General's Office received authorization from Governor _____ pursuant to Article _____ to investigate and prosecute possible criminal conduct by _____.

2. I am the Assistant Attorney General assigned to conduct this investigation.

3. During the course of this investigation, information has been developed that _____ embezzled in excess of $3 million from his employer in _____ City. _____ used the stolen money to gamble at a number of Casinos including Casino.

4. The Custodian of Records for _____ Casino is located in Las Vegas, Nevada, and therefore cannot be served with process to command its appearance for a Grand Jury in _____.

5. The appearance of the said witness will be required for a period of no more than one day. The State of _____ will tender to the said witness the requisite statutory witness and travel fee.

I hereby affirm, attest and confirm, under the penalties of perjury, that the foregoing statements made by me in this Affidavit are true and correct and further the I am competent to testify as a witness to the substance thereof.

Assistant Attorney General
Deputy Chief
Criminal Investigations Division

Subscribed and Sworn to before me this __ day of

_____
Notary Public

My Commission Expires:_____

IN RE: : IN THE CIRCUIT COURT

A : FOR

SPECIAL INVESTIGATION : (NAME OF COURT)

ORDER

It is hereby ORDERED that this Petition and supporting Affidavit be sealed and a true test copy by provided to the Assistant Attorney General supervising the investigation.

DATE_____

_____
Judge
Circuit Court for _____

TRUE COPY
TEST

_____ CLERK

I. Model Schedule of Records to be Obtained by Subpoena or Search Warrant from Various Professional and Financial Sources

1. Accountants

SCHEDULE A

1. Any and all records of the taxpayer in your possession, including, but not limited to, books of account, ledgers, journals, bank statements, check stubs, check registers, canceled checks, deposit slips or loan records.

2. Any and all records in any way pertaining to the preparation of federal and state income tax returns, information returns, requests for extensions, or any other filing on behalf of the taxpayer with any public agency or entity, including but not limited to, workpapers used in the preparation of the returns of filings, retained copies of the returns or filings, and records of the taxpayer in your possession relating to those returns of filings.

3. Any and all correspondence between or related to the taxpayer.

4. Any and all interview notes, data sheets, memoranda, telephone messages and logs.

5. Any and all records of billings.

6. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

2. Attorneys

SCHEDULE A

1. Accounts receivable ledgers.

2. Time records which describe the amount of time spent by you, or any partner, associate, or other member of your firm, in performing services.

3. Any and all entries in records, including, but not limited to, file memoranda, appointment books and calendars for time period specified in the attached subpoena, which memorialize the date, place and time of meetings and/or communications between you, or any partner, associate, or other member, employee or contactor of the firm.

4. Copies of all statements, bills, receipts, and payments, including your firm's bank deposit reflecting such payments, made by and for services performed by you, or any partner, associate, or other member, employee or contractor of the firm.

5. Retainer contracts, letters of understanding and letters of agreement relating to the creation and continuation of any attorney/client relationship.

6. Any and all correspondence, memoranda, or any documents whatsoever by, to or on behalf of clients which have been disclosed to third parties.

7. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOTACCEPTABLE.

3. Bank

SCHEDULE A

1. Signature cards for all accounts.
2. Monthly checking statements.
3. Copies of all canceled checks, including debit memos.
4. Transcripts of savings accounts.
5. Copies of deposit and withdrawal slips for checking and savings accounts.
6. Loan records, including collateral loan records.
7. Loan ledger sheets.
8. Safe deposit box records of access.
9. Financial statements and credit reports.
10. Promissory notes.
11. Mortgage records and applications.
12. Certificates of deposit.
13. Investment and/or custodian accounts.
14. Records of purchase of bearer bonds.
15. Safe-keeping register records.
16. Records of transfer of funds by wire or collection.
17. Receipts of delivery of securities.
18. Any and all correspondence and memos with regard to such transfer or accounts.
19. Copies of items deposited to any checking and savings accounts.
20. All credit card applications and supporting documentation, as well as charge and payment histories, statements, copies of checks (front and back), and correspondence.
21. Any currency transaction reports.
22. All ATM records, including photographs.
23. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages

and instruction manuals used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

4. Boat

SCHEDULE A

1. Sales invoices, contracts, agreements, warranties, applications and similar documents relating to the purchase, sale and/or lease of any new or used boat, trailer, motor, catamaran, jet ski and any related equipment, supplies and accessories.

2. Receipts for any payments received.

3. Invoices and receipts relating to any maintenance work, repair work, storage costs and slip rentals, or slip purchase.

4. Applications and supporting documents (financial statements, tax returns, credit histories, etc.), receipts and payment schedules relating to any loan or financing of boats and related items purchased.

5. Forms 8300.

6. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

5. Car

SCHEDULE A

1. Sales invoices, contracts, agreements, warranties, applications and similar documents relating to the purchase and/or sale or lease of any new or used automobile, van, truck and/or other type vehicle.

2. Receipts for any payments received.

3. Invoices relating to any maintenance work, repair work, body work, and the purchase of parts and accessories.

4. Applications and supporting documents (financial statements, tax returns, credit histories, etc.), receipts, payments schedule relating to any loans or financing of vehicle purchases.

5. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

6. Casino

SCHEDULE A

1. Any and all hotel and gambling records including, but not limited to: credit records, sports books, cash deposits, markers, player rating, records reflecting amount(s) lost or won, including IRS 1099 forms, CTR-C (casino) forms, and expense reimbursement (*e.g.*, complimentaries such as air fare, lodging, meals, etc.).

2. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

7. Corporation

SCHEDULE A

1. All corporate ledgers and journals including the general ledger, cash receipts journal, sales journal, cash disbursements journal, voucher register, and any other ledgers and journals maintained by the corporation.

2. All banking records of the corporation including (a) bank statements, canceled checks, checkbooks, check stubs or registers, check vouchers, deposit slips, and debit and credit memos; (b) all savings account records; (c) all records of certificates of deposit and other time deposits purchased or redeemed; and (d) records of all safe deposit boxes.

3. All records of loans received and made by the corporation, including any and all correspondence related to such loans.

4. All corporate minutes and/or other records of recordings, of any kind whatsoever, of corporate meetings and the corporate charter and by-laws, including any revisions and amendments thereto.

5. All financial statements prepared by or on behalf of the corporation.

6. All retained copies of federal, state and local tax returns, and workpapers used in the preparation of such returns.

7. Corporate stock ledgers.

8. All vendor invoices and statements of account, customer billing invoices and statements of account, vouchers, and other records used in determining gross income, deductions, and the balance sheet reflected on the corporate income tax returns.

9. All commercial insurance files including, but not limited to, premium finance information, correspondence with insurance companies and insureds, all underwriting information, all endorsements, all copies of binders.

10. All records in any way connected with the acquisition and/or sale of real and/or leasehold property by the corporation, either improved or unimproved (including purchase

contracts, settlements sheets, contracts of sale, deed, notes, mortgages, deeds of trust, leases, correspondence, memoranda, and notes of meetings and/or telephone calls).

11. All records in any way connected with the legal or equitable ownership by the corporation of tangible or intangible personal property (including, for example, stocks and bonds).

12. All personnel files of current and former employees and consultants (including any consulting agreements and management contracts and all documents pertaining to such agreements).

13. All United States Information Returns (Form 1096 and Form 1099), Employer's Quarterly Federal Tax Returns (Form 941) and Employer's Annual Unemployment Tax Returns (Form 940) filed by the corporation.

14. All travel and entertainment records.

15. All records of commissions, rebates, discounts, bonuses, gifts, or other payments made by the corporation to any person or entity not an officer, managing partner, or employee.

16. All agreements, contracts, memoranda of understanding, and other such documents, reflecting or containing any agreement between the corporation on the one hand, or any entity of which any such individual is an owner, officer, director, manager, partner, or employee on the other hand.

17. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

8. Credit Cards

SCHEDULE A

1. Applications for credit cards.

2. Contracts, agreements and similar documents relating to any credit cards.

3. Monthly statements reflecting charges and payments and charge slips.

4. Monthly statements reflecting loans and/or money advances along with payments made on such loans and/or advances.

5. Records of payments for traveler's checks, payment insurance, other insurance and similar offers.

6. Records reflecting amounts to or on behalf of the card holder of traveler's checks, towing, bail bonds, insurance benefits and the like.

7. Copies of checks, money orders, cashier's checks or any other instrument used for payment of credit card (front and back).

8. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

9. Estate

SCHEDULE A

1. Any and all records of the estate in your possession, including, but not limited to, books of account, ledgers, journals, bank statements, check stubs, check registers, canceled checks, deposit slips loan records, notes receivable and notes payable.

2. Any and all records relating in any way to the preparation of estate tax returns, federal and state income tax returns, information returns, requests for extensions, or any other filing on behalf of the estate with any public agency or entity, including, but not limited to, workpapers used in the preparation of the returns or filings, retained copies of the returns or filings, and records of the estate in your possession relating to these returns or filings.

3. Any and all correspondence between or related to the estate.

4. Any and all interview notes, data sheets, memoranda, telephone messages and logs.

5. Any and all records of charges and fees attributable to the estate.

6. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, e.g.; Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

10. Insurance

SCHEDULE A

1. Policies:

A. Life (whole life or term)

B. Automobile

C. Homeowners/apartment dwellers including any riders for valuables

D. Health

Include name of insured, date of policy, face value of policy, cash surrender value of policy and names of beneficiaries and dates and amounts of any claims paid.

2. Record of premiums paid, whether monthly, quarterly or annually.

3. Annuities.

4. Loans on policies:

A. Date and amount of loans(s) made against policy

B. Date and amounts of loan repayments including interest

5. Medical histories and reports.

6. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

11. Investments

SCHEDULE A

1. Any and all documents granting signature authority over any accounts including, but not limited to, signature cards, corporate resolutions, etc.

2. Any and all statements, ledger cards, copies of deposited items, or other records on any account which show each transaction in or with respect to that account.

3. Any and all checks, drafts, clear drafts, wire transactions or money orders drawn on, payable to, or deposited into.

4. Any and all items made pursuant to any agreement by — which constitutes a debit or credit to that person's account.

5. Any file maintained or containing financial information regarding.

6. Any and all records regarding ownership of and/or the sale or purchase of securities, money market share, commodities, bonds, bond funds, or real estate investments, including private placement memoranda, partnership agreements, etc.

7. Any and all records regarding any money market accounts, certificates of deposit, margin or commodities accounts.

8. Any and all records submitted by or to the Internal Revenue Service, the (state) Treasury, or any other governmental agency regarding.

9. Any other records relating to the foregoing accounts including any transfer documents, correspondence, notes, authorizations, W-4s, powers of attorney or stock powers.

10. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

12. Loan

SCHEDULE A

1. Applications, contracts, agreements and similar documents relating to any loans, leases, or mortgages made, discounted or assumed.

2. Documents relating to any background investigation of the borrower(s), including, but not limited to, financial statements, credit histories, and tax returns.

3. Receipts for any payments received and copies of checks (front and back) received as payment.

4. Payment schedules including year-ending principal balances due on loans and/or mortgages, and amounts of interest paid.

5. Dates and amounts of real estate taxes and insurance payments made from any escrow or other account

6. Records relating to any collection activity and/or legal action relating to any past due or unpaid balances.

7. Any and all correspondence, memoranda, etc., to or from parties involved in transactions.

8. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

13. Partnership

SCHEDULE A

1. All partnership ledgers and journals including the general ledger, cash receipts journal, sales journal, cash disbursement journal, voucher register, and any other ledgers and journals maintained by the partnership.

2. All banking records of the partnership including (a) bank statements, canceled checks, checkbooks, check stubs or registers, check vouchers, deposit slips, and debit and credit memos; (b) all savings account records; (c) all records of certificates of deposit and other time deposits purchased or redeemed; and (d) records of all safe deposit boxes.

3. All records of loans received and made by the partnership, including any and all correspondence related to such loans.

4. The partnership agreement, including any revisions and amendments thereto.

5. All partnership minutes and/or other records or recordings, of any kind whatsoever, of partnership meetings.

6. Financial statements prepared by, or on behalf of, the partnership.

7. All retained copies of federal, state and local tax returns, and workpapers used in the preparation of such returns.

8. Partnership share ledgers or records.

9. All vendor invoices and statements of account, customer billing invoices and statements of account, vouchers,and other records used in determining gross income, deductions, and the balance sheet reflected on the partnership income tax returns.

10. All records in any way connected with the acquisition and/or sale of real and/or leasehold property by the partnership, either improved or unimproved (including purchase contracts, settlement sheets, contracts of sale, deed, notes, mortgages, deeds of trust, leases, correspondence, memoranda, and notes of meetings and/or telephone calls).

11. All records in any way connected with the legal or equitable ownership by the partnership of tangible personal property (including, for example, stocks and bonds).

12. All records relating to partnership construction loans, agreements, and mortgages, draws, fees, and permanent financing commitments and mortgages (including all correspondence, memoranda, notes, and other materials relating thereto).

13. All personnel files of current and former employees and consultant (including any consulting agreements and management contracts and all documents pertaining to such agreements).

14. All United State Information Returns (Form 1096 and Form 1099), Employer's Quarterly Federal Tax Returns (Form 941) and Employer's Annual Federal Unemployment Tax Returns (Form 940) filed by the partnership.

15. All travel and entertainment records.

16. All records of commissions, rebates, discounts, bonuses, gifts, or other payments made by the partnership to any person or entity not an officer, managing partner, or employee.

17. All agreements, contracts, memoranda of understanding, and other such documents, reflecting or containing any agreement between the partnership and any other person or entity.

18. Any and all records maintained on/by computer or records generated by computer software packages, including, but not limited to, printouts, discs, tapes, and copies of software used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

14. Settlement Company

SCHEDULE A

1. Settlement sheet(s)

2. Escrow ledger/ Account sheet

3. Applications for mortgages and deeds of trust.

4. Records of deposits, down payments and any other money paid, including copies of any checks (front and back) disbursed at settlement.

5. Financial statements.

6. Any and all records maintained on/by computer or records generated by computer software, including, but not limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, e.g., Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

15. Sole Proprietorship

SCHEDULE A

1. All company ledgers and journals including the general ledger, cash receipts journal, sales journals, cash disbursements journal, voucher register, and any other ledgers and journal maintained by the company.

2. All banking records of the company, including (a) bank statements, canceled checks, checkbooks, check stubs or registers, check vouchers, deposit slips, and debit and credit memos; (b) all savings account records; (c) all records of certificates of deposits and other time deposits purchased or redeemed; and (d) records of all safe deposit boxes.

3. All records of loans received and made by the company, including any and all correspondence related to such loans.

4. Financial statements prepared by or on behalf of the company.

5. All retained copies of federal, state and local tax returns, and workpapers used in the preparation of such returns.

6. All vendor invoices and statements of account, customer billing invoices and statements of account, vouchers, and other records used in determining gross income, deductions, and the balance sheet reflected on the company income tax returns.

7. All records in any way connected with the acquisition and/or sale of real and/or leasehold property by the company, either improved or unimproved (including purchase contracts, settlement sheets, contracts of sale deed, notes, mortgages, deeds of trust, leases, correspondence, memoranda, and notes of meetings and/or telephone calls.

8. All records in any way connected with the legal or equitable ownership by the company of a tangible or intangible personal property (including, for example, stocks and bonds).

9. All records relating to company construction loan agreements and mortgages, draws, fees, and permanent financing commitments and mortgages (including all correspondence, memoranda, notes, and other material relating thereto).

10. All personnel files of current and former employees and consultants (including any

consulting agreements and management contracts and all documents pertaining to such agreements).

11. All United States Information Returns (Form 1096 and Form 1099), Employer's Quarterly Federal Tax Returns (Form 941) and Employer's Annual Federal Unemployment Tax Returns (Form 940) filed by the company.

12. All travel and entertainment records.

13. All records of commission, rebates, discounts, bonuses, gifts, or other payments made by the company to any person or entity.

14. All agreements, contracts, memoranda of understanding, and other such documents, reflecting or containing any agreement between the company and any other person or entity.

15. Any and all records maintained on/by computer or records generated by computer software, including, but no limited to, printouts, discs, tapes, and copies of software packages and instruction manuals used and application of software, *e.g.*, Lotus 123, WordPerfect, Wordstar, etc.

NOTE: RECORDS PRODUCED SHOULD BE ORIGINALS ONLY. FACSIMILES ARE NOT ACCEPTABLE.

CHAPTER SIX — THE USE OF TASK FORCES IN INVESTIGATIONS

CHAPTER SIX — THE USE OF TASK FORCES IN INVESTIGATIONS

The scarcity of resources and the complexity of money laundering cases dictate the cooperation of federal, state and local law enforcement agencies and prosecutors. Limited resources must be effectively targeted at a level designed to obtain optimum results. Federal resources, for instance, may be most effectively targeted against national and international schemes, while state resources may be most efficiently used against intrastate, multi-county schemes.

Effective organization of investigative and prosecutive resources is a concern in the money laundering field because money laundering investigations tends to be aimed at larger criminal enterprises and often tend to cross jurisdictional boundaries. Another concern is the efficient utilization of resources. Generally, resource allocation by most jurisdictions for money laundering prosecution tend to be limited.

State and local financial disruption task forces meet the need for effective resource allocation. Task forces encourage state - federal cooperation helping to resolve both resource and jurisdiction issues. For state and local agencies, working with the larger task forces helps to develop state and local investigative and prosecutorial expertise.

The task force may take a variety of forms ranging from informal, single case groupings to the more formal organization operating under a signed agreement. Because the most efficient organization of a multi-agency task force has a formal structure and agreed rules, this section is devoted to describing a task force model that has proven to be effective in organizing and directing resources in the financial crimes area.

Whatever model is chosen, there are certain issues that must be dealt with at the inception of the task force:

- **There must be a designated coordinator of the team.** No matter what form the task force assumes, it must have a designated leader enjoying the full support of the team members, and with the authority to resolve disputes and direct field operations.

- **There should be a division of responsibility.** Both duties and expenses should be fairly allocated to each team member and agency. Equipment supplied should be logged, identified and tracked so as not to loose or misplace cell phones, body recorders and the like. In addition a forfeiture sharing arrangement should be explicit for each member of the team and each case.

- **There must be full and complete communication among team members.** Most problems in multi-agency operations results from poor communication. The OCN[1] model reduces this risk by providing a forum for dispute resolution. Equally important is the avoidance of poor communication by having regular meetings attended by a representative of each agency to keep everyone informed of the investigation status and provide a forum for an exchange of views.

- **Evidence developed during the investigation should be carefully managed with custodial responsibility clearly drawn.** It is important to anticipate evidentiary issues during the investigative stage. Any mistakes made in the handling of evidence will plague the prosecution during the litigation stage. There should be one set of investigative reports prepared according to a given format. Multiple reports concerning the same interviews are usually unnecessary and only serve to create cross-examination material for defense counsel. Copies of each report should be available to each agency. Each agency may have its own summons or subpoena power to obtain documentary evidence. It is important to know what process is available to each agency, which will be used for what documents, and what sanctions are available for non-compliance. It is also important to determine whether any agency loses its summons or subpoena authority

[1] Organized Crime Narcotics program of th United States Department of Justice, Bureau of Justice Assistance.

upon issuance of a grand jury subpoena. Each agency may need to review documentary evidence during the investigation. In making documents available, it is imperative that a procedure be employed to maintain the integrity of the originals to avoid a challenge at trial.

- **The confidentiality restraints of each agency must be addressed.** In multi-agency operations, it is not uncommon to find that several participating agencies have some non-disclosure restrictions. For example, tax secrecy prohibits tax agencies from divulging the contents of any tax return filed by a taxpayer, the banking department may be concerned with bank privacy laws, and grand jury secrecy may preclude dissemination of grand jury testimony. Each confidentiality rule must be understood and respected and a mechanism employed for proper disclosure to the team.

- **All litigation must be coordinated.** There may be multiple sovereignties prosecuting crimes flowing from the investigation. The involvement of assigned prosecutors throughout the investigation and their interaction with each other and the task force is an important factor in securing a successful outcome. There must be an understanding as to which crimes are being investigated and which office is going to prosecute them. Each agency may have the ability to institute civil proceedings to recoup monies owed, impose penalties, revoke licenses or forfeit assets. It is imperative that all civil and criminal litigation be coordinated to minimize the many dangers attendant to parallel proceedings while preserving the ability of all agencies to eventually pursue their civil remedies. Often this is no easy task. The pendency of parallel civil proceedings enables the defendant to seek discovery of the criminal matter that he would not otherwise be entitled to, prematurely exposing the identity of witnesses, creating possible inconsistent testimony, and raising the potential of double jeopardy.

Thus, the requisites to successful operation of a task force are:

- The working agreement, whether formal or informal;
- A clearly stated division of responsibilities; and,
- Well defined goals

America's law enforcement professionals are divided along lines that have a lot to do with tradition and little to do with function. Two types of division are particularly counter-productive. Prosecutors are largely separated from investigators by the tradition that they play different roles in the collection and presentation of evidence with the resulting difference in social status. To make matters more challenging, different personality types are naturally attracted to these different roles. Compulsive attorneys are very good at marshalling evidence and preparing for complex trials. Creative, street-wise, paper-allergic officers are effective at undercover investigations. Putting the two in the same room to agree on priorities can be interesting. Yet the differences in approach can be productive, provided that each is willing to contribute to the common goal.

Divisions among investigative units are equally counter-productive. These take several forms. Law enforcement agencies are divided and sub-divided into geographical units. Federal districts and sub-units within districts, states, counties and municipalities all provide overlapping services. Criminal enterprises know no geographical boundaries, including international boundaries. As technological advances shrink the world, this advantage becomes more pronounced.

Within levels of government, agencies and other sub-units are often created with overlapping jurisdictions and responsibilities. This is particularly evident in money laundering. It is partly unavoidable because of the derivative nature of the offense. It is exacerbated by statutes assigning jurisdiction over new statutes to different agencies, resulting in a crazy quilt of jurisdiction.

Of all the obstacles to the recognition and achievement of common objectives, the most intractable is the tension between short-term measures and long-term strategies. However, state and local law enforcement agencies are also confronted by their need to coordinate with federal agencies that are overly dependent on statistical measures of success. Statistics are the life-blood of Washington overseers who control budgets and policy. Individual agents, especially federal agents, are also encouraged to respond to short term measures due to frequent transfers, short assignments, and the use of statistical measures for promotion. Whether the agent leaves his assignment having made progress on long-term strategies is not easily quantified; whether a particular flashy case was concluded by arrest is. These pressures create a tendency to focus on short-term strategies and on short-term goals in individual investigations, even when it is clear that these approaches are not as effective in the long term.

A. Organizational Solutions: Coordination Modes

Organizational efforts to overcome these systemic obstacles to cooperation take four basic forms: normal cooperation, formal cooperation on a case-by-case basis, task force coordination on a project or large case basis, and multi-agency control group coordination on a long-term basis.

Informal cooperation occurs without supervisory oversight on both case-by-case and long-term bases as a natural result of individual law enforcement professionals' desire to see results. Personal relationships are the backbone of informal cooperation. Informal cooperation may be encouraged by active support and by leaders' visible affirmation of institutional relationships that mirror the natural cooperation that is found at the line level. These are the foundations of higher levels of coordination.

Resource needs in individual cases often require formal cooperation. This case-by-case cooperation takes many forms, generally involving agreements by two or more agencies to provide specified resources for particular purposes. These arrangements may also be encouraged by an

agency policy encouraging multi-agency cooperative efforts. They are often encouraged by statutes that allow law enforcement to control the proceeds of forfeiture remedies. This control lets the agencies plan the expenditure of monies that would not necessarily enhance their short-term sttistics because they need not be justified on this basis since the expenses will be reimbursed from the forfeiture. This freedom from overly restrictive and short-sighted budgetary oversight allows greater emphasis on long-term objectives, including the long-term objective of encouraging inter-agency cooperation.

The task force model is generally employed in large cases or in projects involving a series of related cases. It is generally characterized by leadership by a single lead agency, which may be the agency that first initiated or developed the case, the largest agency available, the agency with the money or resources needed to complete the case, or the employer of the most central or committed agent. The member agencies of the task force are generally those who can contribute to the particular case or project, those who are invited for diplomatic reasons, those included for legal reasons, like jurisdiction, and those who want to be members for whatever reason. The task force model can be very effective at its usual function, but suffers from several difficulties. The lead agency may turn out not to be the best situated to pursue the case to a thorough conclusion. The selection of the largest available agency or the best funded agency as the lead agency often results in domination of planning by that agency and decision making based on agency clout rather than on shared goals. Perception of non-consensus decision making can lead to divisions over strategies and tactics that interfere with the development of the case or break the task force apart.

The control group model is effective in both large cases and long term projects or programs. It has evolved from multi-agency narcotics and fraud programs dominated by state and local agencies but working closely with federal agencies, particularly the OCN program of the U.S. Department of Justice, Bureau of Justice Assistance. The characteristics of the control group model that differentiate it from the task force model are the assembly of member agencies in advance based on usefulness to the project and interest in it, selection of member agencies on the

basis of common goals, decision making based on unanimous agreement, and the agreement of each member agency to contribute resources as needed throughout the life of the program. It is the most useful model for the development of a money laundering program involving three or more agencies.

B. Control Group Operation

The operation of a control group consists of five considerations. These are, in the order in which they occur: the selection of a potential member, the creation of a formal agreement, the make-up of the control group, procedures for the smooth operation of the control group, and reporting to control group members and to member agencies.

Selection of potential member agencies should be based on the long term goals of the program. Diplomacy may play a role in the selection of potential members, and the program goals may need to be molded somewhat to fit the potential members selected. At the conclusion of the process, each potential member must agree to the goals and program ultimately selected, and the goals selected must be compatible with the goals of each member agency. Each agency must agree to contribute meaningful resources to the program so they become vitally interested in the outcomes achieved.

A formal agreement is essential for the accomplishment of the program goals over the long term. The agreement should cover the makeup of the control board, the duties of the control board, a commitment for the provision of resources on a voluntary basis, the method by which an agency may withdraw, and the time period during which the agreement will remain in effect. If joint financing of Board investigations is part of the program, the financial obligations of each member should be defined. The agreement may also cover prosecutive review and assignment of cases, liability for acts done under the direction of the control board, asset sharing, recycling or other disposition of program income, which agency's policies and procedures will apply to agents

assigned to a jointly located group of investigators, if such a group is created, and overtime policies and payment methods. A skeletal Sample Interagency Agreement modeled on the OCN sample agreement is attached.

Financing of the program should be made explicit from the start. The best model is joint funding supplied by the member agencies, whether from appropriated funds, grant funds, revolving funds, other funding sources, or a combination of these. If the Control Board has control of significant funding, it will attract cases that are best handled by joint action because the investigators and agencies involved in those cases will recognize that acceptance of their case by the Board will help assure that its potential will be fully developed. Action of the case agent whose life is wrapped up in the case is the key to attracting the case opportunities that are most strategically significant.

The makeup of the program's control group is critical to its smooth functioning. The control group should reflect conscious efforts to overcome the artificial divisions discussed above. It should contain both prosecutive and investigative agencies. The program should make an effort to include agencies at all levels of government. Experience from the OCN program indicates that control groups may operate with three to 13 members, but work best with under seven members. If more agencies are included in the program, the functional size of an operating group may be controlled by forming sub-committees that are empowered to control certain key functions, like public relations or case screening and financing. Institutional and personal differences sometimes occur. If disagreements or personality clashed emerge, they may be resolved by re-forming working groups or subcommittees staffed to avoid the clash.

The representatives of the constituent agencies are the most important ingredient of the control group. They must have direct knowledge of their agency's relevant operations, authority to commit agency resources, time to be present consistently at meetings, and a diplomatic, non-combative view of the world. These requirements generally indicate that the agency's

representative should be the person closest to line activity that has individual authority to commit agency resources. This in not the Chief, unless the agency is very small, and is usually not the Special Agent in Charge, but may be a Sergeant or Lieutenant or an ASAC. The ideal personality of a representative is a person with goal orientation rather that individual orientation, a belief in consensus, enough self-confidence to avoid personal conflict or one-upmanship, a decisive, but open-minded approach, experience in the field, and the confidence of the agency represented so that the representative's opinion is seen as the agency's position. Care should be taken to avoid self-promotion, stubbornness and enjoyment of discussion as a form of entertainment.

Procedures observed at control board meetings direct its deliberations toward common solutions, nurture the feeling of joint responsibility for the success of the program, and make each effective arrangement on a case the basis of more lasting cooperation. Experience generalized from different programs is useful as a guide, but individual groups must find procedures that are most useful and comfortable for their own program. A few observations follow:

- Meetings of the Board may be held at different intervals, varying from once each month to once each quarter. They should be held on some regular basis that is easily calculable, such as the first Thursday of each month, and should be at a regular time and place. This makes attendance easier, because the members know the schedule without reference to their calendars. Meeting by special call of the Chair or a majority of the members, by phone and by fax must be provided for in the agreement, since investigations will sometimes demand immediate attention between meetings.

- The meetings should be chaired to assure orderly pursuit of the agenda. The Chair may be continuously occupied by one agency representative, which has the advantage of continuity of style and procedure, or rotated among the representatives, which has the advantages of emphasizing the shared nature of the

Board's decision-making process and avoiding domination by one agency's priorities.

- Procedures for meetings should be designed to show its members the greatest respect. They should be focused on getting the most use out of the judgement and experience of the members by functioning efficiently and by taking care of the details for them. Meetings should be announced in writing in advance with written minutes of the prior meeting provided. The agenda should be described to the greatest extent possible, particularly on financial decisions. The members should be given regular written reports of the activity of the program so that they can transmit them back to their agency with the least effort and greatest effect.

The core work of the Board is screening proposals for joint action and overseeing those investigations and prosecutions that it selects for Board involvement and funding. This process begins with agreement on a very general format for the case proposals themselves. Each proposal should be in writing and should address at least:

a. a summary of the case and its historical background

b. the target(s)

    (1) name(s)

    (2) description/identification

c. why there is a need for joint jurisdiction

d. the overall operational plan

    (1) the goals of case

    (2) the proposed strategy of its approach

    (3) the specific investigate actions and prosecutive steps that are planned

    (4) the proposed participating agencies

    (5) the role of each, including proposals assigning:

(a) the lead agency

(b) the lead agent

(c) essential personnel

(d) other resources

(6) the anticipated expenses and budget

(a) by category, *e.g.*, personnel, equipment, operating expenses,

(b) considering contingencies, *e.g.*, if wire approved, if confidential informant proves productive.

A Sample Case Plan outline modeled on the OCN outline is attached.

The process of evaluating case plans should be designed to bring the experience of the Board and the resources of its member agencies to bear. A typical method would be to have the case's lead agent present the plan, explaining its key features and answering questions. This assures candid discussion and immediate access to the facts and gives the lead agent a feeling of what the Board's concerns are and why. It also encourages Board members to volunteer resources to improve the plan and to be creative in their evaluation, since they see the case through the eyes of the agent. A general policy should protect the case from being swallowed by the Board against the will of its key investigative initiators. It may be that the case is far beyond the capacity of the lead agent or the lead agent's agency, and must get new leadership if it is to reach its full potential, but if the lead agent sees the new resources as displacing the work already invested, other investigators will hesitate to bring cases to the Board. Diplomatic assistance is the key.

The Board meeting will generally fall into a pattern over time. A typical pattern would proceed from the written agenda provided prior to meeting and would include adoption of the minutes of the prior meeting, followed by a review of case progress on ongoing cases presented by a representative of the lead agency on the case, or by the lead agent if the case is moving rapidly and needs close attention. At this time the Board would consider whether to terminate any

existing case by conclusion, by referral, or by discontinuance, and revision of allocated funds to the Board. The Board would then consider general coordination issues and new case funding proposals. The new proposals may be approved without modification; approved as modified by adjustments in any aspect of the proposal, including the budget, the choice of lead agency, or other feature; disapproved and referred to another agency or member agency; or deferred. The Board would then conclude by taking up any other business, including financial issues, legal developments, news relating to investigative techniques, and, finally, the date, time, and location of the next meeting.

The Control Board, through its Chair, must create regular reports to the members and their agencies. The reports should be keyed to the agreed upon long term goals of the cooperative program. This will help assure that these goals remain foremost and will keep the program's priorities focused on long term effects and prevent degeneration to short term statistical measures. The reports should be done at least on a quarterly basis and should be given directly to each member, rather than sent to the member's agency through the chain of command. The reports should be compiled in such a way as to be most useful to the members for their own reference in staying familiar with the various ongoing cases, in tracking and memorializing the decisions of the Board that have implications beyond individual cases, and in keeping with their respective participating agency. Each member should have ready access to all available information that would be useful to the agency's decision makers in connection with the program's benefits relative to its budget and resource allocation.

C. Conclusion

Modern illegal enterprises require law enforcement coordination on a much more sustained level than is presently common. This is especially true of money laundering enforcement. Numerous systemic factors present obstacles to effective coordination. Control group organization offers on effective model for long term coordination. Experience indicates that this form of

organization has the flexibility to coordinate very different types and levels of contribution among agencies that cross the various artificial boundaries of investigator/prosecutor, geography, level of government, and jurisdiction. It offers an organizational form that can encourage long term strategies while addressing the financial needs of significant cases.

A word on the actual practice of resource organization is in order. Effective organization of investigative and prosecutive resources is both science and art. We have discussed the issues in logical terms, drawing conclusions from observations and making use of experience. This section has addressed the science of organization, but success requires more than science. The agency that is consistently successful at keeping its energy directed at well-selected long term end results operates from the heart as much as from the mind. The agency that can work with another agency as a patrol officer works with a partner and can generalize that relationship to include more than one other agency is moving toward the coordination required of the future. This cannot be learned by reading it. It will be internalized only be experience. May your experiences in seeking ways to work with your fellow law enforcement professionals be fruitful, even when they must be frustrating, even painful, as well.

INTERAGENCY AGREEMENT

AMONG (NAMES OF ALL PARTICIPATING AGENCIES)

ETC, AS NEEDED.

THIS AGREEMENT AMONG THE ABOVE PARTICIPATING AGENCIES OF THE (NAME OF PROGRAM) SHALL BE EFFECTIVE WHEN SIGNED BY THE CHIEF EXECUTIVE OFFICERS OF THE PARTICIPATING AGENCIES. IT IS AGREED THAT:

1. EACH OF THE AGENCIES WILL PARTICIPATE IN A CONTROL GROUP BY DESIGNATING ONE SPECIFIC INDIVIDUAL AT THE COMMAND LEVEL TO SERVE ON THE CONTROL GROUP AND ACT ON BEHALF OF THE DESIGNATING AGENCY. EACH MEMBER OF THE CONTROL GROUP SHALL HAVE ONE VOTE AND SHALL VOTE ON:

- APPROVAL/DISAPPROVAL OF CASES TO BE INVESTIGATED AS PART OF THE PROGRAM;

- AMOUNT OF AND USE OF FUNDS TO BE AUTHORIZED FOR SPECIFIC CASE INVESTIGATIONS;

- KEY DECISIONS CRITICAL TO THE MANAGEMENT OF CASE INVESTIGATION STRATEGIES AND ACTIVITIES; AND

- ALL OTHER JOINT ACTION OF THE PROGRAM.

ALL VOTES OF THE CONTROL GROUP ARE UNANIMOUS AMONG THOSE PRESENT SO LONG AS A QUORUM IS PRESENT.

2. EACH AGENCY WILL PROVIDE WHATEVER RESOURCES ARE AVAILABLE AT THEIR DISPOSAL TO SPECIFIC CASES AS APPROPRIATE FOR EFFECTIVE INVESTIGATION OF SAME, AS APPROVED BY THE CONTROL GROUP.

3. PARTICIPATION IN MULTI-AGENCY INVESTIGATIVE EFFORTS OF THIS PROGRAM IS VOLUNTARY; IN THE EVENT A PARTICIPATING AGENCY WISHES TO WITHDRAW FROM THIS AGREEMENT, WRITTEN NOTIFICATION OF THIS DECISION WILL BE PROVIDED TO ALL PARTIES TO THIS AGREEMENT PRIOR TO WITHDRAWAL.

4. PARTIES TO THIS AGREEMENT SHALL COOPERATE IN FOLLOWING PROCEDURES RELATING TO CASE MANAGEMENT, REPORTING REQUIREMENTS, FISCAL GUIDELINES AND OTHER APPROPRIATE POLICIES AS ADOPTED BY THE CONTROL GROUP AND AS CONSISTENT WITH PROGRAM GUIDELINES.

5. [OTHER CLAUSES OR STIPULATIONS AS DESIRED, INCLUDING PROSECUTIVE REVIEW AND ASSIGNMENT OF CASES, LIABILITY FOR ACTIONS OF JOINTLY CONTROLLED AGENTS, SHARING OF ASSETS, RECYCLING OF PROGRAM INCOME, CROSS-DESIGNATION, OVERTIME POLICIES, ETC.]

6. THE TERM OF THIS AGREEMENT SHALL BE FROM (DATE _____) TO (ENDING DATE _____).

BY: (CHIEF EXECUTIVE OFFICERS OF EACH AGENCY)

_____	_____	_____	_____
NAME	TITLE	AGENCY	DATE

E. Sample Case Plan[1]

ELEMENTS:

BACKGROUND AND SUMMARY OF CASE

TARGET(S) OF CASE

NAME

DETAILED IDENTIFICATION INFORMATION

NEED FOR COOPERATION

RESOURCE NEEDS

JURISDICTION

STATUTORY AUTHORITY

OPERATIONAL PLAN

GOALS OF CASE

STRATEGY OF CASE

SPECIFIC INVESTIGATIVE ACTIONS AND PROSECUTIVE STEPS THAT WILL BE INVOLVED IN PURSUING THE CASE

PARTICIPATING AGENCIES

PERSONNEL — FINANCIAL SPECIALISTS, PROSECUTORS, ETC.

OTHER RESOURCES — EQUIPMENT, VEHICLES, ETC.

ANTICIPATED EXPENSES (USE THE EXPENSE CATEGORIES IN THE APPROVED BUDGET TO ESTIMATE CASE EXPENDITURES AND SHOW BASIS FOR CALCULATION, *E.G.*, PERSONNEL, OVERTIME, OPERATING EXPENSE, EQUIPMENT, TRAVEL EXPENSE, ETC.).

[1] Minutes of the Control Group meetings should reflect case approval, amount apporved, any special conditions, and a control number for tracking the case in future reports.

CHAPTER SEVEN — DOCUMENT CONTROL

CHAPTER SEVEN — DOCUMENT CONTROL[1]

Whether it is a long term investigation of multiple targets or a discrete single target project, a money laundering case will involve countless documents: bank records, mail cover reports, utility and telephone information, background information from various sources, seized documents from arrests or search warrants, electronic surveillance log sheets and transcripts, pen register data, Dun and Bradstreet reports, investigators' reports, criminal intelligence database checks, and asset related documentation.

Each document may generate additional leads and evidence to be analyzed and integrated into the investigation and retrieved at a later date for discovery or trial. Analysis, integration, and retrieval are the objectives of a document management system. A document is worthless if its contents cannot be used. Even if a document becomes part of the "utilized intelligence" it is later rendered worthless if it is not retrievable at trial.

There are several methods of document management that one can use. Each is considerably enhanced by the participation of a forensic auditor. One method described below uses Bates stamps, indexes and exhibit lists. This is a manual method, but it is simple and works well. The other method makes use of a computer and is described beginning at page II-306 of this section.

A. Manual Method of Organization

Document organization should begin at the earliest possible time in the case; a system must be developed before documents are received.

1. Initial Document Organization

The first step — before any documents are received — is the establishment of an index system. Documents should be indexed by source and category. An index of categories of

evidence should include all types of evidence expected to be received and a group of numbers assigned to each category. For instance 1 - 20 could be assigned to bank accounts. An example of an index is included at page II-262.

Documents, as they are received, should be Bates stamped or otherwise numbered. A protocol for handling original documents should be developed including procedures to be followed by agents handling evidence. Once an original is received, after being indexed and numbered, it should be copied, filed and handling restricted. It is too easy for originals to get misfiled, lost, damaged or destroyed; all work should be done with copies.

Accordion files should be established for each material witness with folders labeled for each category of evidence, such as police reports, rap sheets, interview notes, and subpoenas.

Accordion files should also be established for each defendant and each anticipated defense witness. As documents are received, they should be copied and placed in a file. (Some items will go in several files.)

When a document is received, sufficient copies should be made for anticipated uses:

- working copy
- defense (discovery) copy
- courtroom copy (kept in the evidence book)
- copy for each additional folder for which it is relevant

2. Exhibit Lists

Exhibit lists should be prepared as documents are received and will include:

- exhibit number,
- file index number,
- document description,
- names of witnesses who will be referring to the exhibit at trial, and
- date entered,
- basis for authentication, and,
- a note of its significance to the case.

This working exhibit list should be prepared by witness. Two different samples are at pages II-264-65.

The working exhibit list should be edited into a trial exhibit list containing only the exhibit number, document description, and offered-received/rejected check list. Only this edited exhibit list is provided to the defense and the court.

3. Discovery

An itemized discovery letter should be prepared each time discovery is produced to the defense. In addition a control set of discovery provided should be maintained.

B. Index to Tentative Exhibit List

1. Attachment Documents — 7 Volumes (#1-200)

1-10	Financial Statements — Emery/Mathis
11-20	Financial Statements of Whalen and Other Whalen Documents
21-30	Post Whalen Prepared Financial Statements
31-40	State of Delaware Documents
41-50	California State Banking Documents
51-60	California Department of Insurance Documents
61-70	California Secretary of State Documents
71-80	Moody's Financial Documents
81-90	Dun & Bradstreet's Financial Documents
91-100	Standard & Poors' Financial Documents
101-110	Wall Street Journal Documents
111-120	Documents from Other Periodicals, *e.g.*, EuroMoney, Fitch, etc.
121-130	Austrian Bank notes/Wechsels
131-140	Ades Documents/Gold Delivery Certificates
141-150	AMA Bond Documents
151-160	Yen Bonds ("M" or Otherwise)
161-170	Big shareholders/Big shareholder meetings
171-180	Inter-Office Memos
181-190	Noe/Porter/Ohio Insurance Department Documents
191-200	Miscellaneous Documents

2. #11-20 Financial Statements of Whalen and Other Whalen Documents

EXH #	DESCRIPTION	WITNESS/ SOURCE
11-A	06/30/86 Balance Sheet for BIG; excess of $200,000,000 assets — gold; Att 42	Whalen/Stacey
11-B	BIG Financial Statement 09/30/86 — assets in excess of $200,000,000 — gold, Att, 42, p. 14559 >; Bennet of Ginnie Springs received from Mende; McColphin S/W, Box 4, Item 11;	Whalen/Stacey/ Bennet of Ginnie Springs/91 SW McColphin
11-C	12/31/86 BIG Balance Sheet, assets in excess of $200,000,000 — gold, Att. 41, p.4528 >;McColphn S/W, Att. 44 of Book 2;	Whalen/Stacey/ McCammon of 1st Fed S&l/Royal/ Dunes/91.S/W of McColphin
11-D	03/31/87 Balance Sheet of BIG, assets in excess of $200,000,000 — gold, Att. 40, p. 014511 >;McColphin S/W, Box 3, Item 18; Att 55 of Book 2; **[COMMENT: Used as a basis for Standard & Poor publication — see Att. 25 and Exhibit 92]**	Whalen/Stacey/91 SW of McColphin
11-E	BIG Balance Sheet dated 09/30/87, $209,165,392.00 — gold, Att 43;	Whalen/Stacey
12	02/06/87 Letter from Turman to Whalen re status of BIG, Inc., Att 40, p. 14507; **[COMMENT: This letter sets forth certain false statements about BIG's condition, such as the gold bouillon is stored in bonded warehouses and that BIG, Inc. is a publicly traded corporation (no mention that the stock trading was suspended), and that the assets on the balance sheet of BIG are not shown on any other corporation]**	Whalen/Stacey
13	Letter to Whalen from Turman dated 03/03/87, Att. 40, p. 14510 **[COMMENT: Letter states that release of financial information has to be authorized by Mende or Turman (shows Turman the #2 guy)]**	Whalen
14	Letter from Turman to Capital Intelligence dated 02/27/87, re credit report, also signed by Whalen, Att. 44, p. 14574; **[COMMENT: Shows Turman is the point man as to the financial dealings]**	Whalen
15	11/13/87 Letter from Whalen to Mende terminating relationship and indicating belief the BIG assets are fraudulent; also tells Mende not to give out any of the financial statements prepared by Whalen, mentions dealing and talking to Turman about the situation, Att. 40, p. 014525; **[COMMENT: Letter also found in '89 SW — see Att. 98 — Gervais or law enforcement can testify to such fact]**	

3. Exhibits Logs

EXHBITS
INPUT

UNITED STATES OF AMERICA
VERSUS

CRIMINAL NO.

CONSOLODATED WITH

BY WITNESS:

GOV. EXHIB.	PAGE	DESCRIPTION OF EXHIBIT	WITNESS	DATE
262	1650	GUZZETTA 100 - INVOICE REPAIRS BOURG DRY DOCK 6/14/84 TO STEVRIC PGS. 1650-1652	KALISH REP-BOURG CO. REP-GUZZETTA	06-14-84
		DTD 06-14-84		ENTERED BY MEM
				DATE ENTERED 08-17-89
265	372	LETTER FROM GUZZETTA ENERGY SUPPPORT TO THOMAS FRANKLIN REG: CORRECTION OF INVOICE	KALISH REP-GUZZETTA	05-28-84
		PAGES 372-374 DTD 05-28-84 DUPLICATE SR G.E. 257		ENTERED BY MEM
				DATE ENTERED 08-17-89
366	323	U.S. COAST GUARD FORMST TO STERVRIC FUEL TRANSFER OF GUZZETTA DTD 2-23-88	KALISH USCG REP-GUZZETTA	02-23-88
		PG. 1047-1057, PG. 1064 IS THE SAME AS PG.331 **DUPLICATE -- SEE G.E. 69	DAVID HENSON	ENTERED BY TJS
				DATE ENTERED 08-23-89

INPUT/WITNESS

INPUT/WITNESS
EXHIBITS
(JUDGE)

UNITED STATES OF AMERICA

VERSUS

CRIMINAL NO. H-91-59
#01-06

JERRY JARAMILLO

CONSOLIDATED WITH

GOV. EXHIB.		DESCRIPTION OF EXHBIT	WITNES	ID	OFF	REC
-1		1800 ST. JAMES PLACE, STE. 500 SEARCH DOCUMENTS				
1-02A		TELEPHONE # - DESIDERIO GUERRA BEEP - 563-9080 FAX - 286-6630				
		HM - 914/337-5209 OFF - 914/395-2373 SAGEMONT LADY - 484-7775				
		FAX - 848-8276				
1-07		(A) PROMISSORY NOTE $95K AND NOTES RE: PURCHASE OF CHIEF'S EXXON				
		(B) FILE: SALE OF CHIEF'S EXXON 04/89				

C. USING COMPUTERS IN LITIGATION[1]

One of the most critical factors in a successful prosecution is organization. The larger and more complex the case, the more critical it becomes to have control of the documents, witnesses, and facts involved. Large complex cases can require a prosecutor's office to spend hundreds or thousands of man hours reading, sorting, summarizing, tabbing and indexing statements, reports, transcripts and documents.

Prosecutors, however, do not have the human or economic resources necessary to use such a time consuming and labor-intensive method of preparing a case for trial. What attorneys and investigators need are methods of organizing a case that shows them what information is available and where it is located. That is what computers can contribute to the preparation and trial of a case. Armed with a computer, attorneys and investigators can almost instantaneously locate and display any document relevant to the case, a witness's statement on a particular issue, and all references to a specific witness or document. In short, computers are efficient, cost-effective tools in the preparation and trial of a case.

There are many ways that computers can assist attorneys and investigators in the preparation and trial of cases. This article will provide some ideas.

1. Preparation for Trial

a. Information Control

Unlike civil cases, criminal cases do not normally have depositions. They do, however, have witness statements, police reports, and surveillance transcripts. If a prosecutor has a copy of these documents on computer disk, itcan then be loaded onto a computer with a full text search and retrieval data base, such as Discovery ZX, Cat-Links or Ready For Trial. These programs will allow the computer to index every word in the database. Once the database is indexed, it may be searched in the same way as a LEXIS or Westlaw search is conducted. Using the search function, a report can be generated that will, among other things:

[1] This chapter was adapted from an article written by Michael Fraleigh, Michigan Assistant Attorney General, that appeared in the January/Februay 1995 issue of the *Financial Crimes Report*.

- print a case chronology,
- identify all witnesses and references to them, and
- identify all references to a particular event or document.

The most effective way to use a full text retrieval system is to computerize the case from the beginning. All statements, reports, and transcripts should be on the computer disk. Material may then be reviewed on the computer. As a review is made notes may be added, identifying text relevant to specific issues, and testimony summarized on the computer. This means that your notes will then always be with the relevant text. In addition, most full text search and retrieval programs will give the option of searching the text, and/or notes, annotations, or summaries.

The reports can show only the document and page number of the language that meets search parameters, or it can include the relevant text. In addition, most programs will allow the report to be saved to the computer's printer, hard drive or a disk. Thus, once a search is completed, the results can be saved for later review, dissemination, or insertion into your trial notebook.

2. Document Control

Many areas of criminal prosecution involve crimes perpetrated or evidenced by large numbers of documents. For these cases document control is essential. One of the most effective method of controlling documents is a combination of a document notebook, consecutive numbering, and a computer. As the documents are logged into evidence or reviewed, each page of each document is given a separate consecutive number (a Bates stamp is an easy way to do this). The numbering system can even include a letter or other designation to indicate the source of the document. The document or a copy of it is then placed in a document notebook. From this point forward the document or any page of a document can be located by reference to its "Bates" number.

As the documents are reviewed they are summarized. The summaries can contain as much or as little information on the document as you want. At a minimum, the following information about each document should be tracked:

- where it is located (*e.g.*, its "Bates," exhibit, and evidence log number),
- what does it say and key words it may contain,
- what issues or individuals is it relevant to,
- where and how it was obtained,
- who authored it,
- who received it, and
- who was given a copy (this item is very helpful in anticipating the defense's use of a document and in resolving a defendant's claim that the prosecution did not provide a document to the defense)

When completed, the document summaries are placed in the full text search and retrieval program. The document summaries can now be searched, indexed, and annotated, in the same manner as the reports, statements, and transcripts.

Instead of summarizing a document, an optical character reader can be used to convert the document into an electronic format for use with the full text search and retrieval program. Once this is done the full text of the document can be indexed, annotated, and searched.

It should be noted that an optical character reader has two drawbacks. First, current technology has problems converting poor quality copies (*e.g.*, copies that are too light or too dark), and some fonts, especially non-standard or foreign fonts. This means that each electronic document will have to be manually reviewed and, to the extent necessary, corrected. Second, optical character readers cannot reproduce hand-written notes, comments. or signatures that may be on the document.

Document imaging can solve some of these problems. A document image is essentially an electronic photocopy of the document. The image will, like a photocopy, reproduce any signatures, notes, or other marks that are on the document. The main drawback is that the text of a document image cannot be searched. The document can, however, be summarized and put into a full text search and retrieval program. Also, some of the full text search and retrieval programs, such as DiscoveryBase, will allow the use of a split screen on the computer to view the document's image during review of its summary or other relevant text.

3. Case Organization

Preparation of a trial notebook is helpful in the preparation of a complex case and can be accomplished on a computer. The outlining feature in WordPerfect can be used to organize and create the trial notebook. Typically the outline consists of the following headings:

I. To Do
II. Chronology
III. Theory of the Case
IV. Opening Statement
V. Voir Dire
VI. My Witness
VII. Defense Witness
VIII. Closing Argument

The notes taken during the review of the reports, statements and documents are then copied to the appropriate sections(s) of the outline. For instance, each witness will have a separate subheading under the main heading "My Witness." The information relating to the witness gleaned from the review of the reports, statements, and documents is copied into this subheading and will be used to plan the actual examination. One of the most useful features of the outline is that information can be entered in any order and rearranged by simply dragging it to the new location. The outline will automatically renumber the outline to reflect the change.

4. At Trial

At trial prosecutors will need to devote most of their attention to the presentation of the case or scrutinizing the presentation of the defense's case. A prosecutor will find it difficult to simultaneously try the case and operate the computer. Accordingly, to maximize the benefit of computerized case, the prosecutor should be assisted by someone who is familiar with the case and the use of a computer. If such assistance is not available, the prosecutor is still better prepared to try the case when he would be without the use of computer.

5. *Voir Dire*

Information from the juror questionnaires can be summarized on the computer. Questions for, or concerns about, specific witnesses can also be noted. As the potential jurors are identified their information can be accessed and used to conduct voir dire.

6. Direct and Cross-Examination

Consider using a computer drawing device when a witness will illustrate his or her testimony with a drawing. The drawing device will allow the witness's drawing to be presented in color and annotated as necessary. More importantly, however, it will allow the prosecutor to save the drawing on the computer. The drawing can then be printed for use as an exhibit or recalled if it is needed again.

In many cases the prosecutor will want to use charts to illustrate or summarize a witness's testimony. A computer can be used to create the chart or summary as the witness testifies. The chart or summary can be displayed as it is being created or when it is finished. The document can be saved and/or printed for use as an exhibit. If the defendant objects that the document is inaccurate or contains inadmissible information, the prosecutor can quickly and easily make the necessary corrections.

It is not uncommon in a criminal trial for the prosecution to have little or no advance notice of the identity of the defense witness. By computerizing a case, the prosecutor can

substantially reduce this defense advantage. Once the names of the witnesses are known, the prosecutor can generate a report for each witness which, among other things, includes:

- biographical information,
- statements,
- documents authored or received, and
- issues to which the witness may have relevant information.

The prosecutor can then use the information to prepare a cross-examination. In addition, as the witness testifies, the computer can be used to locate, access, and present statements and documents which can be used to cross-examine the witness on specific statements made on direct examination.

7. Resources and References

Law Practice Management Section, American Bar Association, *Winning With Computers*, (John C. Tredennick, Jr., ed. 1991) [ISBN 0-89707-830-61]

Law Practice Management Section, American Bar Association, *Winning With Computers, Part Two*, (John C. Tredennick, Jr., ed. 1991) [ISBN 0-89707-830-61]

Law Practice Management Section, American Bar Associaiton, *From Yellow Pads to Computers*, (Kathryn M. Braeman and Fran Schellenberger, eds. 1991) [ISBN 0-89797-676-1]

PART III

PROSECUTING MONEY LAUNDERING CASES

CHAPTER ONE — TRIAL PREPARATION AND CHECKLIST

A. Trial Preparation: Overview

For the line prosecutor, case preparation begins with the opening of the investigative file. The involvement of the prosecutor from the very beginning, whether as part of a task force, working within the agency or working with investigators from a local department, is the key. It is the prosecutor who must present the case to the court; it is the prosecutor who will bring the investigators' efforts to fruition in the courtroom. It is the prosecutor who must shape the investigation, manage to work product and prepare the case for prosecution.

In managing any type of litigation, organization is a key factor in success. The **Prosecution Checklist** (p. III-15) is provided as a guide to organization and may be altered to suit the needs of the individual prosecutor and the differences in practice or procedure from state to state.

The **Indictment and Complaint** (p. III-8) is the starting point in the "official" phase of the case. The indictment as handed up by the grand jury (or, if appropriate, the information issued by the prosecuting authority) and the complaint set forth the charges which the defendant must defend against and must be drawn with particularity. In this phase of the prosecution, the prosecutor's understanding of the elements of the offense and his ability to articulate those elements through the facts revealed by the evidence will be put to the test. This is where mistakes can occur. Reference to the forms of jurisdiction other than the forum state's must be made with care. The money laundering statutes now in place vary greatly in terminology, scope and criminal elements. The crime of money laundering may be said to be the criminal handling of money in an effort to remove or blur its identity as proceeds of crime and to place it in commerce through avoidance of banking requirements. Yet each statute has subtle differences which are brought into play either in cases interpreting the statutes or in the way the case was "made" (*e.g.*, "sting" vs. follow-up; transportation issues; "spending" vs. "laundering") and the successful prosecutor will be able to apply the facts of the case to the elements of the local statute and "plug" into the forms provided.

B. Preparing the Money Laundering Case for Trial[1]

1. Indictment

A well-drafted indictment, read at the commencement of the trial, serves as a powerful and persuasive opening statement, and provides the jury with an understandable "story" about the charged conspiracy or criminal scheme. A prosecutor must resist the temptation to indict everyone for everything and should charge the major defendants with the key counts. ThE overt acts of the conspiracy shouLd be described in detail. Overt acts highlight each defendant's participation in the criminal enterprise and afford the prosecutor an avenue to prove culpable the behavior of a defendant which is not otherwise the subject of a substantive count, *i.e.*, they expand the scope of relevancy for evidentiary purposes.

Recent federal case law has had a significant impact on charging in certain cases. Money laundering counts, for example, may now be charged for withdrawals or transfers from accounts containing commingled funds (*i.e.*, some money derived from specified unlawful activity and some from legitimate sources).[2]

2. Trial Preparation Plan

At, or even before the time of the indictment, the prosecution team should draft a trial preparation plan which sets a tentative schedule for the completion of trial preparation objectives. When the indictment is returned, documents for discovery must be collected and organized. Portions of individual documents may need to be redacted before being provided to the defense.

a. Discovery

The prosecutor should confer with defense counsel as soon as possible to arrange the details of the discovery process. For example, in a case with multiple defendants the prosecution might want to provide only one set of discovery materials to the defense team. Other discovery issues include:

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[1] This section was adapted from an article written by James Dutton, California Deputy Attorney General, which initially appeared in the July/August 1993 issue of NAAG's *Civil Remedies in Drug Enforcement Report*.

[2] *See* Andresen v. Maryland, 427 U.S. 463 (1976);United States v. Stubbs, 873 F.2d 210 (9th Cir. 1989) United States v. Holzman, 871 F.2d 1496, 1508 (9th Cir. 1989);United States v. Rogriguez, 869 F.2d 479 (9th cir. 1987).

- time and place for inspection of documents
- time and place for inspection of photographs, videos, and recordings
- arrangements for the duplication and production of interview tapes, and
- arrangements for the production of transcripts of interviews and prior court testimony.

An itemized enclosure letter should accompany all discovery distributions to the defense. Further, a control set of all discovery provided should be kept by the government.

The process of obtaining foreign documents for use at trial must be commenced at the earliest possible moment in the trial preparation stage. The United States Department of Justice, Office of International Affairs (OIA)(Washington D.C., 202/514-0015) will assist local, state and federal prosecutors in obtaining foreign documents (*e.g.*, bank records, public records). Requests for documents are made pursuant to Mutual Legal Assistance Treaties (MLATs) to signatory countries (*e.g.*, Mexico, Canada, and many European countries). If no MLAT exists, requests go through other channels relying on a foreign country's domestic laws. The turnaround time from the date of request to the time of receipt ranges from two to six months. Federal rules of evidence require that foreign bank records be authenticated by a custodian's certification (see 18 U.S.C. § 3505). Foreign public records may be self-authenticated under Rule 902(3) of the Federal Rules of Evidence.

The United States has no subpoena power over foreign nationals residing abroad. With respect to foreign witnesses, most countries require that interview requests of foreign nationals be submitted through official channels via the OIA. Voluntary attendance of foreign witnesses at trial can be arranged through the OIA. In federal prosecutions, a deposition of a "non-cooperating" foreign witness can be ordered by the trial court upon exceptional circumstances.[3] It is then arranged through the OIA. Relevant portions of the deposition testimony are admissible at trial upon a showing of unavailability.[4]

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[3] *See* United States v. Johnson, 971 F.2d 562, 570 (10th Cir. 1992); United States v. Webster, 960 F.2d 1301, 1308 (5th Cir. 1992); United States v. Jackson, 935 F.2d 832 (7th Cir. 1991).

[4] *See* FED. R. CRIM. P., Rule 15; 18 U.S.C. § 3503; United States v. Farfan-Carreon, 935 F.2d 678, 680 (5th Cir. 1991); United States v. Salim, 855 F.2d 944, 948-52 (2d Cir. 1988); United States v. Sines, 761 F.2d 1434, 1438-41 (9th Cir. 1985).

In complex money laundering cases, motions often come in waves. The first wave usually consists of motions for discovery, disclosure of confidential informants, severance of defendants for trial, bill of particulars, dismissal of duplicate counts, dismissal on statute of limitations grounds, and dismissal for purported extradition improprieties. With respect to discovery motions, the government should file a reciprocal discovery motion.

A second wave includes motions to dismiss for purported grand jury improprieties, to suppress and for the specificity and admissibility of co-conspirators' statements. The government should file at this time (substantially prior to trial) *in limine* motions concerning its intent to introduce "pivotal" evidence which the government anticipates will be sharply contested and/or may require a separate foundational hearing. Evidence that qualifies for this "preferential treatment" includes a defendant's prior bad acts[5] and attorney-client communications. The attorney-client privilege does not protect communications which further a crime or fraud.[6] Nor does it protect attorney-client communications in which the attorney is acting in a business or ministerial capacity for his client as opposed to providing professional legal advice specifically sought by the client.[7]

The final wave of motions is heard right before trial and includes standard motions *in limine* and motions for additional peremptory challenges by the defense in multiple defendant cases.[8]

b. Exhibit and Document Control

The court will set a date for the government to provide proposed exhibit and witness lists to the defense before trial. Preparation of an exhibit list should be an ongoing process commencing right after the filing of the indictment. The government can work off of its computer generated document index to create an *annotated exhibit list*:

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[5] *See* FED. R. CRIM. P., 15(e); FED. R. CRIM. P. 804 (b).

[6] *See* FED. R. OF EVID., R. 404(b).

[7] *See* United States v. Laurins, 857 F.2d 529, 540 (9th Cir. 1988), *cert. denied*, 492 U.S. 906 (1989). The crime-fraud exception applies even where the attorney is unaware that his advice may further an illegal purpose *Id.* at 540.

[8] *See* United States v. Huberts, 637 F.2d 630, 640 (9th Cir. 1980) (communications concerning the sale of equipment are not protected); Matter of Fischel, 557 F.2d 209, 212 (9th Cir. 1977) (preparation of summaries of a client's business transactions with third parties is not protected); Harris v. United States, 413 F.2d 316, 320 (9th Cir. 1969) (ministerial or clerical services performed by an attorney for a client are not protected).

Annotated Exhibit List

- sets forth a detailed description of each document;
- lists all witnesses who will refer to the document;
- states the bases for authentication;
- describes relationships with other exhibits; and,
- states how it fits into the prosecution's theory of the case.

This annotated exhibit list is *not* provided to the defense; instead, a redacted list is delivered to the defense showing exhibit numbers along with a brief description for each exhibit.

c. Stipulations

Stipulations pertaining to the foundational requirements for the introduction of financial business records, public records if not self-authenticating[9] and laboratory tests should be executed by the parties before trial. Often the defense needs a push by the trial judge to sign the stipulations. For this purpose a pretrial conference is recommended. A prosecutor's explanation to the court that the stipulations will result in "25 fewer witnesses" usually does the trick.

d. Charts

A money laundering case cries out for visual aids. The more documents to be intorduced, the more summary charts and overhead transparencies are needed. Any time a witness testifies about the contents of a document, a transparency of the document should be shown on an overhead projector so that the jury can visually follow along with the testimony.

In a money laundering case, charts can be used to set out the financial transactions that are the basis for the money laundering counts, as well as the series of transactions that trace the flow of the money and connect it to a specific unlawful activity. If available, use multi-color, clear acetate (plastic) multiple overlays for trial charts. Begin with the chart having the overlays flipped back. Then, as the evidence is introduced, flip over one acetate overlay, then another, unitl the "picture" of the transaction is complete.

[9] *See* FED. R. CRIM. R., R. 24(b).

Charts summarizing the evidence should be marked as exhibits and offered into evidence at trial.[10] Juries should be encouraged to take such charts with them into the jury room during deliberations. (Make sure the jury room is furnished with a pointer — some juror is likely to take up the "baton," so to speak.) Witnesses are permitted to testify about information contained on summary charts.[11] Expert witnesses are permitted to view charts and offer their opinions about the conclusions they draw from such charts.

Summary charts should always be introduced to graphically illustrate the prosecution's theory of the case. For example, a source and application of funds summary chart depicting a defendant's expenditures over the time span of the criminal enterprise, less any funds from legitimate sources, might end in the bottom right corner with a bold bottom line figure labeled "income from illegitimate sources."

Link charts identify a criminal organization's members, roles, and inter-connections and are especially valuable in multiple defendant cases. There are many variations of the link chart, but one of the easiest to explain to the jury looks exactly like a corporation's organization chart, with Mr. Big at the top. Link charts can also be used to illustrate communications and other evidentiary connections between coconspirators (*e.g.* telephone calls, meetings, joint trips) and may help simplify complex evidence for the jury. Software generated link charts are available.[12]

e. Expert Witnesses

Expert testimony regarding the *modus operandi* of money laundering schemes will enable the jury to better understand the criminal conduct and the defendants' involvement. An expert can explain to the jury how defendants' activities are consistent with the normal practices of a money laundering scheme. Expert testimony as to the modus operandi in criminal schemes is admissible in federal court.[13] An expert's opinion in a money laundering case that the defendant's unexplained

[10] For a domsetic document to be self-authenticating, Rules 902(1), (2), and (4) of the Federal Rules of Evidence require that it be under seal or certified and exmplified.

[11] *See* United States v. Marchini, 797 F.2d 759, 766 (9th Cir. 1986); *cert. denied*, 479 U.S. 1085 (1987).

[12] *See* United States v. Cuevas, 847 F.2d 1417, 1428 (9th Cir. 1987).

[13] NETMAP System by ATLA ANALYTICS is an example of a sophisticated software program for the graphic display of inner-relationships.

cash receipts were evidence of income from narcotic sales and illegal income is also admissible in federal court.[14] Resources permitting, the Internal Revenue Service, Criminal Investigations Division, will supply state and local prosecutors with qualified experts to testify at trial concerning money laundering schemes.

Evidentiary rules for the introduction of computer printouts ordinarily entail giving notice to the defense several days in advance of trial about the hardware, software, source of input, actual input and the actual printout to be introduced. This gives the defense the opportunity to do an independent check on the reliability of the data entry procedures and software. Drawing upon the computer database of the defendants' financial records, the prosecutor can introduce printouts showing all the deposits made by the defendants and the amounts and nature of all expenditures.[15]

3. Final Argument

In complex cases, good trial lawyers are always preparing their final argument as the trial progresses. No prosecutor wants to be stuck with only one night, or even one weekend, to prepare his oratorical masterpiece in a case with 30 or more counts, hundreds of exhibits, and 40 or more witnesses. And, although it is unusual, some federal judges have been known to insist that counsel begin final argument immediately upon the announcement of "the defense closes," without so much as a ten minute break.

4. Anticipated Defenses

This section (p. III-23) is intended to assist the prosecutor in thinking ahead to discern the defense posture and consider the evidence that will counter the possible defenses.

5. Jury Instructions & Sentencing Issues

The ultimate key to winning a money laundering case is the impression made on the jury. Selection of the jury in the first place is of obvious importance and *voire dire* (p. III-125) is the linchpin of successful selection. After the jury has been exposed to the masterful case that has

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[14] See *United States v. Patterson*, 819 F.2d 1495, 507 (8th Cir. 1987); *United States* v. *McCollum*, 802 F.2d 344, 346 (9th Cir. 1986); *United States* v. *Burchfield*, 719 F.2d 356, 357-358 (11th Cir. 1983).

[15] See *United States* v. *Webster*, 960 F.2d 1301, 1308 (5th Cir. 1982).

been developed it must have appropriate direction to guide them in reaching a verdict. In the absence of specific pattern instructions which may be required by rule or statute, you will have to craft your own. The forms and discussion in **Jury Instructions** (p. III-131) are intended to assist in that task.

6. Conclusion

With a maximum of organization from the start of the investigation, a focused prosecution team, high technology, and visual glitz (and, of course, good facts) the trial will be won. The next step is the appeal, a subject better left for another time and another author.

C. Money Laundering Prosecution Checklist

1. Organization

a. Begin as soon as case assigned

b. Initial document organization (See Part II, Chapter Seven)

(1) ☐ Bates stamp (or otherwise number) documents obtained in investigation

(2) ☐ Index documents by source (*e.g.*, search warrant, subpoena, public records, victim supplied) and categories (computer index system is preferable).

(3) ☐ Set up protocol to maintain integrity of original documents obtained (use copies of documents for file organization — see below)

c. Initial File Organization

(1) Separate accordion files (with several manilla folders inside) for each material witness

(a) ☐ Manilla files pertaining to each witness labeled by categories of information (*e.g.*, exhibits to be presented to witness, police reports, law enforcement notes of interviews, rap sheet, immunity agreements, prior statements from civil proceedings (*e.g.*, depositions, interrogatories, financial declarations), subpoena file (include copies of subpoenas, addresses, telephone numbers, correspondence to witness) and law pertaining to testimony (*e.g.*, motions in limine, motions to introduce evidence)

(2) Separate accordion files (with several manilla folders inside) for each defendant, and anticipated key defense witnesses

(a) ☐ Manilla files labeled police reports, rap sheets, photos-driver's license, prior statements from civil proceedings, impeachment (include copies of impeachment documents) and law pertaining to testimony

(3) ☐ Separate manilla folders for secondary witnesses (*e.g.*, chain of custody, authentication witnesses)

(4) ☐ Place copies of documents in respective folders as soon as you obtain them

d. Grand Jury (See Part II, Chapter Five)

(1) ☐ Subpoenas and record return information

(2) ☐ Original transcripts

(3) ☐ Extra copies of indictment

e. Pleading/Orders (See Part III, Chapters Three, Four, and Seven)

(1) ☐ Orders — separate folder for each order filed by the court, magistrate, or record entries by the clerk

(2) ☐ Pleadings

(a) ☐ government pleading — separate file in a chronological order

(b) ☐ defense pleading — separate file in a chronological order for each defendant

(3) ☐ Working file as to each motion — *contains each pleading/response by* government and defendant

2. THINGS TO DO

a. ☐ Prepare written "things to do" list

(1) prioritize work to be done

(2) specify responsible agent or prosecutor to perform work

(3) specify target date for work to be completed

b. ☐ Weekly meetings (more often, if necessary) with entire prosecution team to go over status of work to be performed under "to do" list and to readjust priorities

3. DISCOVERY

a. ☐ Establish a discovery protocol with defense counsel

(1) Arrange for duplication and production of interview tapes, video tapes

(2) Time and place for inspection of photographs, summary charts, computer printouts

(3) Agree to produce set of documents for each defense counsel or just one set of documents to entire defense team

(4) As to non-exonerating, voluminous material that you do not plan to introduce as

exhibits — arrange for inspection of documents by defense counsel (*e.g.*, boxes and boxes of business records seized pursuant to search warrant in a fraud/ money laundering case)

b. ☐ Xerox multiple copies of documents that will be provided in discovery as soon as the documents are obtained and Bates-stamped (at least one working copy for the government and copies for the defense)

c. ☐ Itemized discovery letter — use every time discovery is provided to the defense

d. ☐ When documents continue to trickle in just prior to time of trial, or during trial, specify in discovery letter when and how the documents were obtained

e. ☐ Government should keep a "control" set of discovery provided

f. ☐ Notify defense at least several days before trial about the hardware, software, source, means and input of computer printouts the government intends to introduceat trial.

4. FOREIGN RECORDS/WITNESSES

a. ☐ Foreign documents — as soon as trial date set, commence process to obtain documents (*e.g.*, bank records, public records, business records) (See Part II, Chapters Three and Six)

(1) Obtain documents through U.S. Department of Justice, Office of International Affairs, based on (1) provisions of Mutual Legal Assistance Treaties (MLAT) between the United States and Foreign Countries, or (2) Via judge-ordered Letters of Rogatory

(2) Turn-around time from date of request until receipt of documents — two to six months

(3) Make sure declarations signed by foreign custodian of records and/or public records seal and/or certification conform to authentication requirements of domestic jurisdiction

b. ☐ Foreign Witnesses — Attempt to Secure witnesses by Voluntary Attendance

(1) Request for attendance made through Department of Justice, Office of

International Affairs

(2) United States does not have subpoena power over foreign nationals living abroad

(3) In federal prosecutions, a deposition of a "non cooperating" witness can be ordered by the trial court upon exceptional circumstances pursuant to Rule 15 of the Federal Rules of Criminal Procedure (see also 18 U.S.C. § 3503)

5. ☐ **ANNOTATED (WORKING) EXHIBIT LIST AND TRIAL EXHIBIT LIST (FOR DOCUMENT INTENSIVE CASES)**

a. ☐ Investigators/prosecutors review all documents — prosecutor reviews all possible relevant documents, photographs, charts, and items of evidence

b. ☐ Prepare index of categories of evidence that may pe present at trial (*e.g.*, bank account *x*, real property *z*)

c. ☐ Assign a grouping of numbers to each category (*e.g.*, exhibits nos. 1-20 reserved for bank account x documents)

d. ☐ Prepare a working exhibit list — sets forth exhibit nos., description of documents, any personal notations concerning how the exhibit fits into the case, basis for authentication, and all witnesses who will be referring to exhibit at trial (See Part II, Chapter Seven)

e. ☐ As additional documents are obtained before and during trial that pertain to the index categories, mark new exhibits with corresponding nos. previously reserved for respective category

f. ☐ Redact working exhibit list to show only exhibit nos. and brief description of exhibits

(1) The redacted exhibit list becomes your trial exhibit list

(2) Only the redacted trial exhibit list is provided to the defense and the court

6. EXHIBITS

a. ☐ Place exhibit tags on exhibits prior to trial

b. ☐ Copy exhibits for placements in exhibit books (one each for court, each defendant, and each prosecutor)

c. ☐ Each original exhibit placed in its own manilla folder with corresponding exhibit number on folder. Exhibit folders filed in consecutive order in boxes

d. ☐ Maintain own list of exhibits introduced at trial — compare list with clerk's list before resting your case-in-chief

e. ☐ In a document-intensive case, prepare a working exhibit packet, containing copies of each exhibit, in order of presentation, that you intend to show the witness. Prosecutor refers to corresponding copy of exhibit during witness' testimony about the original exhibit

f. ☐ A list of exhibit numbers that a witness will be testifying about should be given the defense and the court prior to testimony

7. STIPULATIONS

a. Prepare stipulations for authentication of bank records, foundation for forensic tests, chain of custody well in advance of trial

(1) ☐ Send to defense with cover letter

(2) ☐ Make a record with the court of your efforts to enter into stipulations with the defense

(3) ☐ If necessary, elicit court's assistance at a pretrial motion and/or during trial to obtain the defendant's "cooperation" to enter into stipulations to save court time.

8. EXPERT WITNESS (SEE PART III, CHAPTER FIVE)

a. ☐ Contact potential expert witnesses during early stages of trial preparation

(1) Expert can assist in focus of case

(2) Can assist in closing down anticipated defenses

(3) Can assist in preparation of charts and other visual aids

b. ☐ Prepare foundation motions re: expert qualifications and motions pertaining to admissibility of expert's testimony, as necessary

9. WITNESS COORDINATION — COMPLEX CASE

a. ☐ Assign one agent or staff member to be responsible for witness attendance and coordination

b. ☐ Several weeks prior to trial — project order of witnesses and prepare tentative scheduling

c. ☐ Non-incarcerated witnesses

(1) Cover letter with each subpoena specifying tentative time period for testimony, travel and hotel instructions, and contact numbers

(2) Follow up phone call after service of subpoena to allay any witness concerns and answer questions

d. ☐ Incarcerated witnesses

(1) ☐ Writs

(2) ☐ Orders of transport

e. ☐ Daily meetings with witness coordinator during trial to rearrange witness schedules

f. ☐ Letter after verdict to inform witnesses of result and to thank them for their assistance

10. MOTIONS *IN LIMINE*/MOTIONS TO INTRODUCE TESTIMONY (SEE PART III, CHAPTER FOUR)

a. ☐ Attempt to present all motions *in limine* before commencement of trial

b. ☐ If necessary, due to inability to file motions before trial, present standard motions *in limine* (*e.g.*, prior arrest/convictions) pertaining to witnesses before respective witness is called to testify

c. ☐ Motions *in limine*/to allow evidence of a complicated or "pivotal" nature (*e.g.*, introducing defendant's prior bad acts; introducing attorney/client communications based ion crime/fraud exception) at the pretrial motion stage of the prosecution

11. SUMMARY CHARTS/VISUAL AIDS

a. ☐ Have investigator/auditor prepare charts or computer printouts summarizing key financial evidence (*e.g.*, net worth analysis, bank deposits, tracing flow of currency through financial institutions, credit card charges, and banking transactions that constitute money laundering)

b. ☐ Prepare link charts in criminal organization case

(1) Sanitize as much as possible to prevail against defense objections

c. ☐ Blow up key photographs of seized evidence, the scene, etc.

d. ☐ Use clear acetate (plastic) overlays of witnesses marking of diagrams/aerial photos, etc. If overlays ar not available, each witness should use a different color marking pen. Leave room on each diagram for a legend explaining any abbreviations.

e. ☐ Present key documents to the jury while the witness testifies through the use of transparencies of the documents shown on an overhead projector

12. FINAL ARGUMENT

a. ☐ Set forth "themes" of case in opening arguments — themes will be reemphasized and referred to in final argument

b. ☐ Keep final argument folder at trial — jot down thoughts and key witness statements for use in final argument

c. ☐ In lengthy trial, organize and commence working on final argument several weeks before end of trial

d. ☐ In complex case always give final argument to prosecution team and outsider as a "dry run"

e. ☐ Be prepared for and/or inquire into time limitation for final argument

CHAPTER TWO — ANTICIPATED DEFENSES

CHAPTER TWO: ANTICIPATED DEFENSES

Most defenses raised by a defendant in a money laundering prosecution revolve around the defendant not having the requisite criminal intent. All but one of the state statutes has a "knowledge" requirement (one speaks of acting with "purpose"), *e.g.*, knowledge that the financial transaction represents the proceeds of some form of unlawful activity. Many statutes have a "specific intent" requirement, *e.g.*, intent to promote, to conceal or disguise or to avoid currency reporting requirements. (*See* the discussion in Part I, Chapter Two; Elements and Charts.)

A. KNOWLEDGE

Family members, friends, and business associates of narcotic traffickers will often act as facilitators to launder a trafficker's drug proceeds. Their defense is usually, "I had no idea that the money came from the sale of drugs." The methods that a facilitator can use to launder proceeds are countless — ranging from a girlfriend opening an account in her name in which drug proceeds are deposited and expended to a "layering" of drug proceeds through multiple accounts of multiple "legitimate" businesses. Whether the prosecution team is faced with the simple or complex money laundering scheme, the facilitator's defense of no knowledge is refuted by a painstaking compilation of circumstantial evidence to prove that:

- The money in fact was derived from the sale of drugs, and
- the facilitator knew that the money was derived from the sale of drugs.

When dealing with the facilitator who is a family member or friend, knowledge is often proved by:

- conducting a net worth or source and application of funds analysis on both the narcotic trafficker and the facilitator to show that the currency in question was *not* derived from legitimate sources;
- Interviewing family members, friends, neighbors, and associates to place the trafficker and the facilitator together as much as possible (hopefully these

interviews will also elicit direct evidence of the facilitator's knowledge of the trafficker's illicit dealings);

- emphasizing the nature of, and circumstances surrounding, the financial transaction entered into between the facilitator and the narcotic trafficker or any financial institution (*e.g.*, facilitator makes repeated cash deposits in his/her account under $10,000 to avoid currency transaction reporting requirements; facilitator pays items of ordinary living expenses of trafficker from facilitator's account.); or
- using an expert to testify that the facts of your case are consistent with a money laundering scheme.

Where there is a more sophisticated scheme, such as laundering money through front businesses, many of the afore-mentioned investigative techniques can be utilized to prove a facilitator's knowledge. In addition, all the business and financial records of the front businesses must be obtained and analyzed to separate the legitimate income from the illicit income. Where the money is laundered through a layering of accounts of "legitimate businesses," an informant is often necessary in order to make a case against all of the major facilitators.

Most of the Federal Circuits Courts of Appeal allow a finding of "knowledge" in drug cases where the defendant acted with "willful blindness" or "deliberate ignorance." "Willful blindness" has also been applied to the knowledge requirements of 18 U.S.C. § 1956 (a)(1) in federal money laundering prosecutions.[1]

Federal case law does not restrict the applications of the "willful blindness" doctrine to narcotic and money laundering cases.[2]

[1] U.S. v. Long, 977 F.2d 1264, 1271 (8th Cir. 1992) (auto dealer facilitator); U.S. v. Campbell, 977 F.2d 854, 859 (4th Cir. 1992) (real estate agent facilitator).

[2] *See* United States v. Beech-Nut Nutrition Corp., 871 F.2d 1181, 1195-1196 (2nd Cir.), *cert. denied*, 493 U.S. 933 (1989) (food adulteration);United States v. Massa, 740 F.2d 629, 642-643 (8th Cir. 1984), *cert. denied*, 471 U.S. 1115 (1985) (fraud); United States v. Gullett, 713 F.2d 1203, 1212 (6th Cir. 1983), *cert. denied*, 464 U.S. 1069 (1984)) (interstate transportation of stolen securities).)

An innovative state prosecutor can require a "willful blindness" instruction in a state money laundering case where there is evidence that a defendant made a conscious effort to disregard the fact that the money was derived from narcotic trafficking or other qualifying illegal activity.

A leading case discussing willful blindness is *United States v. Jewell*.[3] The defendant was convicted of importing marijuana into the United States. He had accepted the offer of a stranger to drive a car across the border for $100 and had observed a secret compartment in the trunk, but declined to investigate further. On appeal he argued his lack of knowledge of the presence of contraband in his car. He challenged the jury instruction that the knowledge element could be satisfied if the government proved,

> if the defendant was not actually aware that there was marijuana in the vehicle he was driving when he entered the United States his ignorance in that regard was solely and entirely the result of his having made a conscious purpose to disregard the nature of that which was in the vehicle, with a conscious purpose to avoid learning the truth[4]

The Ninth Circuit affirmed the conviction and validated the challenged instruction. It held that *"deliberate ignorance and positive knowledge were equally culpable."*[5] (Emphasis added). This instruction is now a model instruction in the manual of Model Criminal Jury Instructions for the Ninth Circuit, No. 5.07 (1992 ed.) and is sometimes called the "ostrich" instruction. The instruction is appropriate in cases where,

> the facts and circumstances would have put any reasonable person on notice that there was a "high probability" that the undisclosed venture was illegal. Any reasonable person would have inquired extensively into the nature of the proposed venture...unless, of course, he did not want the hear the answers.

United States v. Sanchez-Robles, 92 F.2d 1070, 1074 (9th Cir. 1991).

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[3] 532 F.2d 697, (9th Cir. 1976).
[4] *Id* at 699.
[5] *Id* at 700.

B. Specific Intent to Promote

Many states have money laundering statutes which required the prosecution to prove that the defendant had the specific intent to promote the specified unlawful activity (SUA).

Federal case law which interprets the intent to promote language of 18 U.S.C. § 1956 (a)(1)(A)(i) is instructive as a guide for anticipating defenses that can be raised in a state money laundering prosecution based on statutes with similar language. Expenditures to maintain the defendant's lifestyle do not satisfy the intent to promote requirement.[6] However, purchases of assets or expenditures for services that are used as part of the ongoing illegal activity satisfy the intent to promote requirement.[7]

C. Conceal or Disguise the Nature or Source of Proceeds

Federal case law is also instructive in the area of possible defenses raised in state cases where the state statute includes concealment language similar to 18 U.S.C. § 1956(a)(1)(B)(i) ("knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, of the control of the proceeds of specified unlawful activity.")

A facilitator of the money laundering transaction (*e.g.*, auto dealer, real estate agent, courier) may assert that he cannot be guilty of money laundering because he did not participate in the transaction *with the purpose of concealing the source of the proceed* — he just wanted to consummate the transaction to receive his commission. At least one United States Circuit Court of Appeals has rejected this argument and found that a defendant may be convicted of money

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[6] United States v. Jackson, 935 F.2d 832, 841 (7th Cir. 1991).

[7] (*Id.*, at p. 841) (purchase of a beeper used in the narcotic trafficking business qualifies, purchase of cellular phone not shown to be used in the narcotic trafficking business does not); U.S. v. Johnson, 971 F.2d 562, 566 (10th Cir. 1992) (payoff of mortgage on home where fraudulent business is conducted promotes the unlawful activity as does the purchase of a Mercedes to give the business an aura of legitimacy); United States v. Cruz, 993 F.2d 164, 167 (8th Cir. 1993) (transportation sufficient to show that the purchase was made with the intent to promote the unlawful activity).

laundering on the basis that he knew someone else designed the transaction in part to conceal the source of the proceeds — the facilitator's purpose for entering into the transaction is not relevant.[8]

All the circumstances surrounding the particular money laundering transaction must be evaluated to determine whether a defendant has a viable defense based on insufficient evidence of an intent to conceal the nature or source of the proceeds. Credible evidence concerning the existence of one or more of the following circumstances assists the prosecution in meeting its burden of showing an intent to conceal or knowledge of an intent to conceal:[9]

- statements by defendant probative of an intent to conceal;
- unusual secrecy surrounding the transactions;
- structuring the transaction(s) to avoid currency transaction reporting requirements;
- commingling of illegal revenues with funds derived from a legitimate business in the business's bank account;
- using a nominee owner to conceal the true ownership interest;
- series of convoluted transaction preceding or part of the charged transaction, or,
- expert testimony concerning the characteristics of the charged money laundering transaction being consistent with a money laundering scheme.

The mere fact that a narcotic trafficker has placed title of an asset purchased with drug proceeds in the name of a family member is not sufficient in itself to prove an intent to conceal.[10] But, placing title in the name of an entity, or third person to conceal ownership qualifies as a money laundering violation.[11]

[8] United States v. Campbell, 977 F.2d 854, 857 (4th Cir. 1992).

[9] *See* United States v. Garcia-Emanuel, 14 F.3d 1469, 1474-1477 (10th Cir. 1994) for a detailed analysis of circumstances which prove an intent to conceal in various trasactional contexts.

[10] United States v. Saunders, 928 F.2d 940, 946 (10th Cir. 1991) (defendant present at purchase of vehicle which he placed in his daughter's name and *conspicuous* use of the vehicle as a family vehicle does not constitute money laundering under 18 U.S.C. § 1956 (a)(1)(B)(i); U.S. v. Lovett, 964 F.2d 1029, 1033, 1036 (10th Cir.), *cert. denied*, 113 S.Ct. 169 (1992) (car purchased in wife's name with both husband and wife using the car plus statements to dealer by defendant inferring that the purchase money came from a legitimate business — not a violation).

[11] United States v. Beddow, 957 F. 2d 490, 497 (8th Cir. 1992); and *see* United States v. Santos, 20 F.3d 280 (7th Cir. 1994).

The Tenth Circuit Court of Appeals has stressed the difference between the knowing use of illicit proceeds to purchase personal items for present gratification (*e.g.*, horses, cars), which do not constitute money laundering violations, versus business investments that are motivated by the desire to create the appearance of legitimate wealth, which do constitute money laundering violations.[12]

The transportation and delivery by courier or wire transfer of proceeds derived from narcotic trafficking, in itself, does not show an intent to conceal.[13] However, a finding of intent to conceal was upheld where a courier represented to law enforcement officials that he had only $4,000 in cash and a subsequent consensual search revealed $180,000 in cash secreted in thermoses and a talcum powder container.[14]

D. Commingled Funds — Failure to Prove that the Charged Transaction Was Made With Funds Traced to a Specified Unlawful Activity

State statutes, as well as federal statutes require that the money/funds involved in charged money laundering transactions is derived from a qualifying unlawful activity. Where a defendant has deposited or transferred illicit proceeds into a business account that either commingles proceeds from a legitimate business or funds from an unknown source, the prosecutor faces a defense — as to all money laundering charges based on withdrawals or transfers from the commingled account — of failure to prove the money/funds were derived from a qualifying unlawful activity. The best way to refute this defense is to charge only those withdrawals or transfers that can be proven to be comprised solely of proceeds form a qualifying illegal activity. For example, in the scenario where the predicate offense is fraud and the account is commingled with monies from unknown sources with deposits of money by victims of the fraudulent scheme, it is necessary to inspect the bank records to determine whether any portion of any of the

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[12] *See* United States v. Dimeck, 24 F.3d 1239, 1245 (10th Cir. 1994); United States v. Garcia-Emanuel, *supra*, at 1474.)

[13] United States v. Garcia-Emaunul, *supra,* at 1478) (defendant wired drug proceeds from his account to a Florida bank account of a Colombian national); United States v. Dimeck, *supra*, at 1246-1247 (intent to conceal not found where courier delivered drug proceeds and undertook steps to avoid detection of currency by outsiders.)

[14] United States v. Carr, 25 F.3d 1194, 1206 (3d Cir. 1994).

withdrawals or transfers from the account are solely derived from the qualifying illegal activity, and charge money laundering counts accordingly. (*e.g.*, day one — balance of account $50,000 from unknown sources; day two — deposit of $50,000 by victim of fraud; day three — $60,001 withdrawn charge money laundering violation for withdrawal *in excess of $10,000* because at least $10,001 of the withdraw had to be derived from the illegal activity).

Where it is impossible in the commingled account situation to prove that the money involved in a charged transaction was derived solely from the qualifying unlawful activity, federal case law supports an argument that the prosecution does not have to prove that all the funds used in the transaction were derived from a qualifying unlawful activity.[15] The Circuit Courts of Appeals allows the prosecutor this leeway because any other interpretation would allow individuals to avoid prosecution by simply commingling legitimate funds with proceeds of specified unlawful activities.[16]

A defense assertion that the prosecution must trace the money transacted in a charged money laundering count to particular narcotic sale versus narcotic trafficking in general has been rejected by Circuit Courts of Appeals.[17]

E. Commingled Funds and Merger

The statutory issues raised by the defenses of "commingled funds" and "merger" are covered in Part I, Chapter Two at pp. I-31 *ff.* Where the defendant has commingled criminal proceeds with legitimate funds in order to "mask" the criminal proceeds from law enforcement, there are two ways to defeat the defense. The first is to use the financial analysis techniques outlined in Part II, Chapter Three to "sort out" the good money from the bad and proceed from there.

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[15] United States v. Johnson, 971 F.2d 562, 570 (10th Cir. 1992); *United States v. Jackson*, 935 F.2d 832, 838 (7th Cir. 1991); *and United States v. Jackson*, 983 F.2d 757, 765 (7th Cir. 1983).

[16] United States v. Johnson, *supra*, at 570.

[17] United States v. Blackman, 904 F.2d 1250, 1257 (8th Cir. 1990).

This may not always be possible; the problem is that, in dealing with active accounts, it may be difficult if not impossible to sort out the money. A great deal will depend on the local interpretation of you state statute. If possible to do so, resort to federal case law. *United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994); and *United States v. Blackman*, 904 F.2d 1250 (8th Cir. 1990) both support the proposition that the prosecution need not prove that all funds in an account derive from unlawful activity. The prosecution's argument must be that it would be anomalous to allow the subject to defeat the money laundering statutes by commingling criminal proceeds with legitimate funds.

Merger presents a related problem. The doctrine of merger prohibits the use of one transaction to charge both the underlying offense and money laundering. The question is when is the underlying offense complete? Fraud cases present the best illustration. As pointed out earlier (pp. I-32, 33), the difficulty arises when the transfer of funds is made. If the transfer of funds to the subject's account is made by the victim, then the defense works because the transfer of funds by the victim is the fraud case; money laundering does not begin until the funds have come under the subject's control. Conversely, where the funds are transferred into the subject's account or by his agent, the fraud, being complete when the funds come under the subject's control, remains the predicate. Money laundering begins when those funds are placed in the account and there is no merger of offenses. The prosecutor must be acutely aware of the point at which the funds have come into the subject's control; money laundering does not begin until the underlying offense is complete - the act that renders the money "proceeds of unlawful activity."

F. The "Sting" and Defenses of Entrapment and Outrageous Government Conduct

1. The "Sting"

While the use of the "sting" provides one of the richest sources of money laundering cases, there are risks based on the wording of the statutes and the government's use of the tactic itself.

Where the sting is used, the inevitable question arises as to the source of the money. The

statutes require that the money be the proceeds of at least some form of unlawful activity. The inevitable question, then, is: If the agents take the money from their "sting" funds, is it the proceeds of some form of unlawful activity? Probably not. Therefore, if your statute does not have a specific sting provision where the monetary instruments are represented by law enforcement as the proceeds of unlawful activity, you must look to other provisions of your state law to see if the sting will succeed. A money laundering sting is obviously different from a stolen goods or drug sting where the object need not be "proceeds of some form of unlawful activity."

There are only eight states which specifically provide for stings. (*See* the discussion of stings *supra*, at pp. I-37-39 ; and, *see* chart at p. I-52.) A number of others provide for attempt crimes, *i.e.*, with language such as "conducts or *attempts* to conduct". In theory, at least, the "failure" to complete the crime of money laundering for the sole reason that the money used was not proceeds of an unlawful act could be charged as an attempt. The problem is that in most jurisdictions the penalty for an attempt is significantly less than that for the completed offense.

The rules for the use of the sting then must be derived from your own statute and the procedures used in your jurisdiction.

2. Entrapment and Outrageous Government Conduct

Another difficulty with the sting derives not from the statutes but from the way it is used. Entrapment is a familiar defense to sting operations and two cases, *Jacobson v. United States*, 118 L.Ed. 2d 174, 112 S.Ct. 1535 (1992); and *United States v. Hollingsworth*, 27 F.3d 1196 (7th Cir. 1994) illustrate limitations on law enforcement.

Jacobson illustrates the potential for overreaching by the government whose agents "worked on" the defendant for some 22 months before he finally bought the child pornography for which he was convicted. In *Hollingsworth*, the government pursued an individual who simply could not have engaged in money laundering had the government's agents not "held his hand" and led him through the acts.

The lesson for the prosecutor is clear and not very dramatic. The subject of a "sting" must be left to his own devices once presented with the government-sponsored "opportunity." He must not be pushed lest he plead that he was not pre-disposed. And the sting must not drag on for an unreasonable length of time as in *Jacobson*. The prosecutor overseeing a money laundering cast must be able to recognize both the disposition and capability of the subject; if he cannot or will not perform the culpable acts without governmental urging, resources should be turned to potentially more fruitful cases.

CHAPTER THREE — INDICTMENT FORMS

A. Model Indictments Based On the Model Money Laundering Act

1. Indictment Form Based On Model Money Laundering Act, Section 5(a)(1); "Transportation" Money Laundering Theory

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of MONEY LAUNDERING in violation of MODEL MONEY LAUNDERING ACT SECTION 5(a)(1), committed as follows:

The defendant in the County of [specify county], [and elsewhere] on or about [specify date], knowing that the property involved, to wit, [specify], is the proceeds of some form of unlawful activity, to wit [specify] knowingly transported the property which is the proceeds of a specified unlawful activity, to wit [specify].

2. Indictment Based On the "Receives and Accepts" Money Laundering Theory, Without a Threshold Amount

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of MONEY LAUNDERING in violation of MODEL MONEY LAUNDERING ACT section 5(a)(1), committed as follows;

The defendant in the County of [specify county], and [and elsewhere] on or about [specify date], knowing that the property involved, to wit [specify], is the proceeds of some form of unlawful activity, to wit, [specify] knowingly received or acquired the property with in fact is the proceeds of a specified unlawful activity, to wit [specify].

3. Indictment Based On the "Transaction" Money laundering Theory, Without a Threshold Amount

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of MONEY LAUNDERING in violation of MODEL MONEY LAUNDERING ACT Section 5(a)(1), committed as follows:

The defendant in the County of [specify county], and [and elsewhere] on or about [specify date], knowing that the property involved, to wit [specify], is the proceeds of some form of unlawful activity, to wit, [specify] knowingly conducted a transaction involving the property which in fact is the proceeds of a specified unlawful activity, to wit [specify].

4. Indictment Based On Section 5(a)(2); Prohibition of a Person from Providing Property to Another Knowing that the Property is Intended to be Used to Facilitate a Specified Unlawful Activity

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of MONEY LAUNDERING [ ] DEGREE in violation of MODEL MONEY Laundering ACT Section 5(a)(2), committed as follows:

The defendant in the County of [specify county], [and elsewhere] on or about [specify date], made property, to wit [specify] available to another by [specify: transportation, transaction or otherwise], knowing that it is intended to be used for the purpose of committing or furthering the commission of a specified unlawful activity, to wit [specify].

5. Indictment Based Upon Section 5(a)(3), which Prohibits the More Common "Transaction" Money Laundering without a Threshold Amount

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of MONEY LAUNDERING in violation of MODEL MONEY LAUNDERING ACT Section 5(a)(3), committed as follows:

The defendant in the county of [specify county], [and elsewhere] on or about [specify date], conducted a transaction knowing that the property, to wit, [specify], involved in the transaction is the proceeds of some form of unlawful activity, to wit [specify], with the intent to conceal or disguise the nature, location, source, ownership, or control of the property.[1]

(A Section 5(1)(3) charge can either be pleaded with the intent "to conceal or disguise the nature, location, source, ownership, or control of the property" or with the intent to avoid a transaction reporting requirement under federal law.)

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[1] Discussed in the Text of the Elements of the Offense section *supra* at Part I, Chapter One.

[2]The descriptions of "the nature, location, etc." need no all be used in the conjuctive.

6. Indictment Form Based On the "Transaction Involving Proceeds of Unlawful Activity to Avoid a Reporting Requirement" Money Laundering Theory

AND THE JURY AFORESAID, by this indictment, further accuse the defendant of the crime of MONEY LAUNDERING [ ] DEGREE in violation of MODEL MONEY LAUNDERING ACT Section 5(a)(3), committed as follows:

The defendant in the County of [specify county], [and elsewhere] on or about [specify date], conducted a transaction knowing that the property, to wit [specify] involved in the transaction is the proceeds of some form of unlawful activity, to wit, [specify], with the intent to avoid a transaction reporting requirement under the [Model Financial Transaction Reporting Act or federal law — specify federal statute].

7. Indictment Form Based On Section 5(a)(4), Designed to Prosecute Those Who Are Engaged in the "Business" of Money Laundering, Without A Threshold Amount

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of MONEY LAUNDERING in violation of MODEL MONEY LAUNDERING ACT Section 5(a)(4), committed as follows:

The defendant in the Count of [specify county], [and elsewhere] on or about [specify date], knowing that the property, to wit, [specify] is the proceeds of some form of unlawful activity, to wit [specify] knowingly engaged in the business of conducting, directing, planning, organizing, initiating, financing, managing, supervising, or facilitating transactions involving property that in fact is the proceeds of specified unlawful activity, to wit, [specify]. [1]

[1] The descriptions of "conducting, directing, etc." need not all be used in conjunctives.

8. DEFINITIONS

(a) "Proceeds" means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of the kind.

(b) "Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim or right with respect to anything of value, whether real or personal, tangible or intangible.

(c) "Specified unlawful activity" means any act, including any preparatory or completed offense, committed for financial gain, that is punishable [as a felony] [by confinement for more than one year] under the laws of this state, or, if the act occurred outside this state, would be punishable [as a felony][by confinement for more than one year] under the laws of the state in which it occurred and under the laws of this state, involving:

(1) [trafficking in controlled substances, homicide, robbery, extortion, extortionate extensions of credit, trafficking in explosives or weapons, trafficking in stolen property, or obstruction of justice,] [a reference to those acts or offenses described in 18 U.S.C. § 1956(c)(7)].

(2) [reference to grades of offenses, such as "any first degree misdemeanor or higher," or any felony and /or other appropriate specified state offenses].

(3) [for states with state racketeering or criminal profiteering statutes, reference to "predicates" to the racketeering offenses and to the racketeering offenses, *e.g.*, illegal investment in an enterprise, illegal control of an enterprise, illegal conduct of an enterprise].

(d) "Transaction" includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawals, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of any monetary instrument, use of a safe deposit box, or any other

acquisition or disposition of property by whatever means effected.

(e) "Unlawful activity" means any act which is chargeable or indictable as [an offense] [a crime] of any [degree] [classification] under the laws of this state in which the act occurred [or under the federal law] and, if the act occurred in a state other than this states, would be chargeable of indictable as [an offense] [a crime] of any [degree] [classification] under the laws of this state [or under federal law].

B. Indictment Form Based on Miscellaneous State Statutes

1. Forms Based On the New York Money Laundering Statute

The following two forms are based upon the New York money laundering statute. It is an example of a **"financial transaction money laundering statute"** that requires:

- a threshold amount,
- a qualifying crime, and
- multiple intents.

The New York statute uses the term "an exchange" in lieu of the term "transaction," as does the Connecticut money laundering statute.

(a) Indictment form for Penal Law Section 470.10(1)

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of MONEY LAUNDERING IN THE SECOND DEGREE in violation of Penal Law Section 470.10(1), committed as follows:

The defendant in the Count of [specify county], [and elsewhere], on or about [specify date], exchanged and received in exchange, in more than one transaction more than one monetary instrument, to wit [specify monetary instrument] which are the proceeds of specified criminal conduct, to wit [specify crime], having a total value exceeding $10,000, for more than one monetary instruments and equivalent property with knowledge that the monetary instruments exchanged and received in exchange are the proceeds of criminal conduct and that the defendant intentionally made the exchange to conceal and disguise the nature and source of the proceeds.

(b) Indictment for Violation of Penal Law 470.10(2)

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of MONEY LAUNDERING IN THE SECOND DEGREE in violation of Penal Law Section 470.10(2), committed as follows:

The defendant in the County of [specify county], [and elsewhere], on or about [specify date], exchanged and received in exchange, in more than one transaction more than one monetary instrument, to wit [specify monetary instrument] which are the proceeds of specified criminal conduct, to wit [specify crime], having a total value exceeding $10,000, for more than one monetary instruments and equivalent property with knowledge that the monetary instruments exchanged and received in exchange are the proceeds of criminal conduct and that the defendant intentionally made the exchange to aid himself and another person to commit and profit and benefit from specified criminal conduct.

2. Indictment Form Based on the California Money Laundering Statute

This form is based upon the California money laundering statute contained in Penal Code § 186.10 (as distinguished from the money laundering crimes contained in its Health and Safety Code, §§ 11370.8). It is an example of a **facilitation money laundering statute and a financial institution** money laundering statute, as is the Hawaii money laundering statute which is similarly constructed.

The undersigned, further deposes and says on information and belief, that said defendant did, in the [specify] Judicial District, County of [specify], State of California, on or about [specify date] commit a FELONY, to wit: a violation of Section 186.10 of the Penal Code of California, in that said defendant did willfully and unlawfully conduct a transaction involving a monetary instrument of value exceeding five thousand dollars ($5,000) to wit: [specify monetary instrument], through a financial institution, to wit: [specify financial institution] with the intent to promote, manage, establish, carry on or facilitate the promotion, management, establishment, or carrying on of any criminal activity.

3. Indictment Form Based on the Florida Money Laundering Statute

This form is based upon the Florida money laundering states which contains a **sting provision**, closely resembling the sting provision in the federal statute of 18 U.S.C. § 1956.

On or about [specify date] in the County of [specify county], with the intent to promote the carrying on of specified unlawful activity, [defendant] conducted and attempted to conduct a financial transaction involving property and proceeds which and [investigative or law enforcement officer, or someone acting under such officer's direction], represented as being dervied from [or represented as being used to conduct and facilitate] specified unlawful activity, to wit [describe specified criminal activity] in violation of [specify section] of the [specify] Law.

4. Indictment Form Based on the Nevada Money Laundering Statute

This form is based upon the Nevada money laundering statute § 207.195, which is an example of a **financial money laundering statute** which contains:

- no threshold amount.
- an "attempt to conduct" clause,
- any unlawful activity, and
- multiple intents.

Subdivision of § (1)(1)(3) of § 207.195 is used.

On or about [specify date], in the [specify] County, defendants did conduct and attempt to conduct a financial transaction to wit [describe the financial transaction] involving a monetary instrument to wit [specify monetary instrument] which represents the proceeds of and is directly derived from an unlawful activity, knowing that the transaction evaded a provision of [federal/state] law that requires reporting of a financial transaction.

5. Indictment Form Based on the Maryland Money Launcdering Statute

This form is based upon the Maryland money laundering statute, § 297B, which is an example of a money laundering statute restricted to **controlled substances**.

AND THE GRAND JURY AFORESAID, upon their oath aforesaid, do further present that [defendant], in the County of [specify county] on or about [date], did, with the intent to conceal and disguise the nature and source of proceeds of controlled dangerous substances, conduct a financial transaction involving such proceeds, knowing that the proceeds were derived from controlled dangerous substance offenses, in violation of Article 297B of the Annotated Code of Maryland, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

CHAPTER FOUR — PRE-TRIAL MOTIONS

CHAPTER FOUR: PRE-TRIAL MOTIONS

A. INTRODUCTION

In complex money laundering cases, motions often come in waves. The first wave usually consists of motions for discovery, disclosure of confidential informants, severance of defendants for trial, bill or particulars, dismissal for purported extradition improprieties. With respect to discovery motions, the government should file a reciprocal discovery motion.

A second wave includes motions to dismiss for purported grand jury improprieties, to suppress, and for the specificity and admissibility of co-conspirators' statements. Sample oppositions to motions to suppress searches of residences which defends a warrant against attacks of lack of probable cause for documents to be located at the premises, staleness, and being overbroad is included at III-57.

The government should file at this time (substantially prior to trial) *in limine* motions concerning its intent to introduce "pivotal" evidence which the government anticipates will be sharply contested and/or may require a separate foundational hearing. Evidence that qualifies for this "preferential treatment" includes a defendant's prior bad acts[1] and attorney-client communications. A sample motion noticing intent to introduce evidence of a prior transportation of currency is included at III-68. The attorney-client privilege does not protect communications which further a crime or fraud.[2] Nor does it protect attorney-client communications in which the attorney is acting in a business or ministerial capacity for his client as opposed to providing professional legal advice specifically sought by the client.[3] A sample motion noticing the intent to introduce testimony of attorneys concerning activities of their former clients is included at III-72.

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[1] *See* FED. R. EVID. 404(b).

[2] *See* United States v. Laurins, 857 F.2d 529, 540 (9th Cir. 1988), *cert. denied*, 492 U.S. 906 (1989). The crime-fraud exception applies even where the attorney is unaware that his advice may further an illegal purpose (*Id.* at p 540)

[3] *See* Matter of Fischel, 557 F.2d 209, 212 (9th Cir. 1988), (preparation of summaries of a client's business transactions with third parties is not protected); United States v. Huberts, 637 F.2d 630, 640 (9th cir. 1980) (communications concerning the sale of equipment are not protected); Harris v. United States, 413 F.2d 316, 320 (9th Cir. 1969) (ministerial or clerical services performed by an attorney for a clent are not protected).

The final wave of motions is heard right before trial and includes standard motion *in limine* and motions for additional peremptory challenges by the defense in multiple defendant cases.[4]

Sample of a motion to introduce expert testimony concerning banking regulations is included as part of the expert testimony section, at III-102. Sample of motions concerning the introduction and business records and summary charts is included as part of the documentary/ demonstrative evidence section at III-89.

[4] See Federal Rules of Criminal Procedure, Rule 24(b).

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1. There Was Probable Cause to Believe that Evidence of Illegal Activity Would Be Found at the Via Marina Apartment

Defendant Longo also claims that the warrant issued by Magistrate Judge King was not supported by probable cause. Defendant claims that the information relied on by the government was stale and that the bulk of the information was provided by "unreliable informants" whose information should be disregarded. Defendant's Motion at 27, ln. 18-28, ln. 24. Defendant's challenge fails, as there was probable cause to believe that documents relating to the fraud would be found at the Via Marina Apartment.

A federal magistrate judge's determination that there is probable cause to support the issuance of a search warrant cannot be overturned by a reviewing court unless it is found to be clearly erroneous. *United States v. Elliott*, 904 F.2d 25 (9th Cir. 1990); *United States v. Dozier*, 844 F.2d 701, 706 (9th Cir. 1988) A reviewing Court need only find that the judge had a substantial basis for the finding of probable cause. *United States v. Kerr*, 876 F.2d 1440, 1444 (9th Cir. 1989), *United States v. Logan*, 825 F.2d 1342, 1348-49 (9th Cir. 1987). In questionable cases, the district court should give preference to the validity of the arrant. *United States v. Calaberese*, 825 F.2d 1342, 1349 (9th Cir. 1987), *United States v. Peacock*, 761 F.2d 1313, 1315 (9th Cir.), *cert. denied*, 474 U.S. 847 (1985).

The question before Magistrate Judge King was whether "given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

It is difficult to summarize the enormous amount of evidence in the sixty-seven page affidavit in support of the warrant. The affidavit incorporated literally several dozen witness interviews and Detective Gervais's review of thousands of documents. Gervais's affidavit established beyond any doubt that *each* of the corporations used in the scheme, including Capital General Corporation which was controlled by Longo, was *solely* engaged in fraud. Essentially, the affidavit established that Mende and his cohorts

operated completely sham corporations to induce victims to pay advance fees.

The specific information in the affidavit which focused on Longo and Capitol General can be found at pages 21 through 23 and 56 though 60. In these pages, Gervais established that:

(1) Several victims and four insiders of the scheme detailed how Longo used Capital General Corporation between 1988 and 1989 to lure victims to British Indemnity Group to pay fees. Affidavit at 21-22.

(2) Longo falsely told clients of Capital General Corporation that Mende had hundreds of millions of dollars to fund their projects. Affidavit at 22.

(3) Longo assisted in the creation of false financial statements and fraudulent assets for the scheme. Affidavit at 23.

(4) Longo had a prior bad check conviction and another conviction arising out of a pension fund fraud. Affidavit at 56.

The affidavit went on to detail the specific bases for believing that Capital General documents relating to the fraud with Mende and Longo's continuation of the advance loan fee scheme could be found at the Via Marina residence. These included:

(1) Longo's ex-wife's observations that Longo had kept the Capital General Records. Affidavit at 58.

(2) A parole officer's statement that Longo had told him that the Capital General files had been moved to the Via Marina apartment and a storage facility. Affidavit at 58-59.

(3) The parole officer's observations that Kele and Longo lived at the Via Marina address, were conducting their business out of the apartment, and had numerous files there. Affidavit at 59.

(4) Testimony from the Parole officer that "Joseph Gyenes told Manion that in 1991, Kele and Longo defrauded Gyenes out of $20,000 in advance fees."

There is no question that the affidavit established probable cause to believe that Capital General Corporation was an entirely fraudulent company used by Longo to engage in fraud. While the bulk of the specific information related to Longo's activities in

1988 and 1989, the statement of Gyenes established that Longo's fraudulent activities continued into 1991.

The search of Capital General's "offices" was two years after Longo's scheme with Mende and a few months after Gyenes was defrauded. Defendant alleges that no probable cause existed to believe that documents relating to Capital General's and Longo's fraudulent activities would be at the apartment. The Ninth Circuit has explicitly rejected this argument in *United States v. Greany*, 929 F.2d 523, 525 (9th Cir. 1991). In *Greany*, the court upheld a search for records and equipment relating to a methamphetamine lab over two years after the last known illegal activity there. *Id.* The Court noted that "staleness must be evaluated in the light of the particular facts of the case and the nature of the criminal activity and property sought." *Id.* The court went on to hold that it is proper for the magistrate judge to conclude that "records of a criminal activity will be kept for some period of time." *Id.*

The facts in this case make it far more reasonable for Judge King to conclude that fraudulent Capital General records would be found at the apartment. First, unlike *Greany*, this affidavit contained specific statements from a parole officer who indicated that Longo, himself, had stated that some of his business documents were at the apartment. The parole officer also stated that Longo's business was continuing and that it was being conducted out of the apartment. Second, the affidavit set forth specific information to show that Longo's participation in advance loan fraud schemes had continued after he left Mende and that Longo had committed the same fraud in 1991. Moreover, since Capital General was purported to be a legitimate business which the affiant noted was still involved in litigation arising out of its businesses, it was even more likely that Longo would maintain the records. Affidavit at 62-63 (Businesses generated thousands of documents and involved in multiple litigations). *Cf. United States v. LaMorte*, 744 F.Supp. 573, 575-76 (S.D.N.Y. 1990) (Probable cause to believe that documents relating to large criminal enterprise would be kept three and one-half years *after* crimes ceases). Under *Greany*, it was most certainly reasonable for the Magistrate

Judge to conclude that the documents would be at the apartment.

2. The Search Warrants Were Not Overbroad

a. The Warrants Descirbed the Items to be Seized With Sufficient Particularity

The Fourth Amendment requries theat a warrant "particularly describe[s] the place to bve searched, and the ... things to be seized." Defendant Longo argues that the warrant was overbroad because it failed to limit the documents to be seized solely to Capital General Corporation's activities between 1988 and 1989 and that the warrant improperly sought the seizure of broad categories of documents. Defendant further alleges that because the attachment setting out the documents to be seized referred to numerous criminal violations Longo did not commit, it must be facially overbroad.

As noted above, Longo's allegation that the affidavit did not set forth any facts to indicated that Captial General Corporation was, itself, a fraud is incorrect. As set forth in the affidavit, Longo was the alter ego of Capital General Corproation. Between 1988 and 1989, he operated the compnay out of Mende's offices. As the affidavit notes. Longo subsequently moved the offices to the Via Marina apartment. It was entirely reasonable for the magistrate judge to conclude that Longo was operating Capital General in the same fashion out of the apartment as he did when he worked withe Mende. Moreover, it was clear from the affidavit that Longo and Kele, whom the magistrate knew was on probation for another crime, had used their advance loan fee scheme to defraud Gyenes in 1991. In sum, it is entirely reasonable to believe that a convicted felon "investment banker" who was intimately involved in a complex fraud in 1988 and 1989, who moved to an apartment and enlisted the assistance of another felon and who was known to have defrauded yet another victim months before the search was still engaged in the same fraud.

To comply with the Fourth Amendment's particularity requirement, "the warrants' description of items need only be reasonably specific rather than elaborately detailed." *United States v. Holzman*, 871 F.2d 1496, 1508 (9th Cir. 1989) (quoting *United States v. Storage Space Designated Nos. 8 and 49*, 777 F.2d 1363, 1368 (9th Cir. 1985).

Especially in complex white collar cases, the warrant must be read with "practical flexibility" and "an awareness of the difficulty of piecing together the 'paper puzzle.'" *United States v. Wuagneux*, 683 F.2d 1343-49, (11th Cir. 1982), *cert. denied,* 464 U.S. 841 (1983). As the Supreme Court has observed "the complexity of an illegal scheme may not be used as a shield to avoid detection when the State has demonstrated probable cause to believe that a crime has been committed. . . ." *Anderson v. Maryland*, 427 U.S. 463, 481 n.10 (1976).

The warrants in this case set forth approximately sixteen categories of documents to be seized from the companies involved in advance loan fee schemes, including Capital General Corporation. The courts have routinely upheld warrants containing far less specific descriptions than these, when, as in this case, the supporting affidavits establish probable cause to believe that the business was "permeated with fraud." For example, in *United States v. Offices Known as 50 State Distributing Co.*, 708 F.2d 1371 (9th Cir. 1983), *cert. denied*, 465 U.S. 1021 (1984), the Ninth Circuit upheld a warrant which authorized the seizure of all of the business records of a company which was engaged in the sale of specialty gift items through the mail by means of false and fraudulent representations.

The warrant in that case described the items to be seized with much less specificity than here. It authorized the seizure of lead source material, invoices, sales orders, order forms, books, records (magnetic or typewritten), ledgers, correspondence, pitches (written or taped), typewriters, premiums, gifts, supplies, and/or merchandise, United States Postal Service Money Orders, United States Postal Service C.O.D., firm mailing records, and other evidence and instrumentalities for numerous on-going violations of Title 18 United States Code, Sections 1341 (Mail Fraud), 1342 (Fictitious Names) and 371 (Conspiracy). *Id.* at 1372 (quoting language of warrant).

In finding the warrant valid, the Ninth Circuit agreed that the supporting affidavit "evidenced a pervasively fraudulent operation which encompassed the entire business and therefore *all* business-related books, records and equipment constituted instrumentalities

of fraud which the Inspectors were properly directed to seize." *Id.* at 1374 (emphasis added). The court held that: "While the seizure was extraordinary broad, and in that sense 'general,' under the particular facts of this case the scope of the warrant was justified. It was not possible through more particular description to segregate those business records that would be evidence of fraud from those that would not, for the reason that there was probable cause to believe that fraud permeated the entire business operation of 50 State." *Id.* at 1374. *See also United States v. Schmidt*, 947 F.2d 362, 373-74 (9th Cir. 1991) (warrant is not facially overbroad even though it required bank to turn over all documents relating to any transfer in excess of $10,000 because of the broad nature of the scheme).

Similarly, in *United States v. McClintack*, 748 F.2d 1278 (1984), the Ninth Circuit upheld a warrant which authorized the seizure of the following items from the offices of DeBeers Diamond Investment, Ltd. ("DeBeers"): Diamonds, emeralds, sapphires, rubies, and other gemstones, as well as books, records, notes, memoranda, telephone records, client lists, purchasers, and prospective purchasers appraisals, and any and all items referring to the sale of diamonds and other gemstones which are evidence of a violation of Title XVIII, United States Code, §§ 1342 and 1343. *Id.* at 1202.

The affidavits in the case established probable cause that DeBeers was selling precious stones that it did not own to customers over the telephone and sending the customers appraisals which overvalued the worth of the stones. On this record, the court had no problem finding that "the affidavits in this case provide probable cause to seize all that is described and the descriptions are particular enough to identify all items subject to seizure." *Id.* at 1283.

In another case on point, *United States. v. Bentley*, 825 F.2d 1104 (7th Cir. 1987), the court upheld a warrant which "set[s] out 21 categories of documents that collectively covered every business document" in the files of Universal Precious Metals, Inc. ("Universal"), which, like Capital, was engaged in the fraudulent sale of precious metals for future delivery. In language applicable to this case, the court held: "This is the rare

case in which even a warrant stating 'Take every piece of paper related to the business' would have been sufficient. Universal was fraudulent through and through. Every transaction was potential evidence of that fraud. . . . When the whole business is a fraud, the warrant properly may permit the seizure of everything the agents find." *Id.* at 1110. *See also Hernandez-Escarsega,* 886 F.2d at 1567-58; *United States v. Kail*, 804 F.2d 441-45 (8th Cir. 1986); *National City Trading Group v. United States*, 635 F.2d 1020, 1026 (2d Cir. 1980).

The search warrant here properly described several categories of Capital General documents for seizure. The affidavit established that Capital General was merely a vehicle for Longo's fraud. Because Capital General was a sham business used as a vehicle for Longo's fraud, all of his business documents could properly be seized pursuant to the warrant.

Further, even if this court found that some portions of the documents set forth in attachment B to the search warrant were overbroad, all records that fell within the other categories are still properly seized. *See United States v. Gomez-Soto*, 723 F.2d 649, 654 (9th Cir. 1984) ("this court has embraced the doctrine of severance, which allows us to strike portions that satisfy the Fourth Amendment.); *Holzman*, 871 F.2d at 1510 (invalidity of line five of warrant did not require suppression because all of the seized items were adequately described elsewhere).

3. The Officers Conducting The Search Acted in Reasonable and Good Faith Reliance on the Warrant

As demonstrated above, the warrants in this case were not overbroad. But even if the Court were to find otherwise, the search of the apartment would still be valid under the good faith exception to the exclusionary rule.

In *United States v. Leon*, 468 U.S. 897 (1984), the Supreme Court held that the exclusionary rule does not apply to evidence which "was obtained in objectively reasonable reliance on a subsequently invalidated search warrant." *Id.* at 922. The court added,

moreover, that "a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search." *Id.* at 922.

In *United States v. Schmidt*, 947 F.2d 362 (9th Cir. 1991), this Circuit applied *Leon* to uphold a search based on an allegedly overbroad warrant. In *Schmidt*, the defendants relied on *United States v. Crozier*, 777 F.2d 1376 (9th Cir. 1985), the same case relied on by Longo here. *Crozier* held that agents could not have relied in good faith on an overbroad warrant which described the items to be seized with no more particularity than: "material evidence in violation of 21 U.S.C. § 841, 846 (manufacture and possession with intent to distribute amphetamine and conspiracy)." 777 F.2d at 1381.

In rejecting defendant's argument against application of *Leon*, the *Schmidt* court had little trouble distinguishing *Crozier* and the very arguments made by defendant Longo here: "Even if we consider the warrant to be [facially overbroad], the good faith exception applies. This case can be distinguished from *Crozier*. In that case, the warrant did not particularize any property to be seized." *Id.* at 374. *See also United States v. Michaelson*, 803 F.2d 1042, 1046-48 (9th Cir. 1986) (officers relied in good faith on an overbroad warrant).

The facts surrounding the search also point to the officers' good faith. Two prosecutors reviewed the affidavit. *See United States v. Brown*, 951 F.2d 999 (9th Cir. 1991) (review by prosecutors evidence of good faith). As set forth in the attached declarations of Inspector Hamilton and Detective Bernier, the agents went through each document on the premises and left boxes and boxes of documents behind that did not fit into the warrant. Hamilton Dec'l at 1, Bernier Dec'l at 2. A neutral magistrate issued the warrant which was based on the truthful affidavit of Detective Gervais. As *Leon* stresses, no deterrence would be served by precluding evidence seized by agents acting in good faith on a facially valid warrant.

4. Defendant Consented to the Search of the Houseboat and Car

As noted in the introduction, the government does not plan to introduce any evidence seized from the houseboat or car. In any event, defendant's attempt to suppress

any evidence found there fails. As the attached declaration of Postal Inspector Hamilton establishes, Longo freely signed two consent forms to search the apartment. As Hamilton notes, Longo "appeared very calm and easy going" when asked to sign the search, had not been handcuffed, and was not threatened in any way before he signed the written consent form. Hamilton Dec'l at 2. Detective Bernier, who was also present, likewise described Longo as calm and noted that Longo was not coerced in any way. Bernier Dec'l at 2.

C. Model Notice of Intent to Introduce Evidence Pursuant to Federal Rule of Evidence 404(b)

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United States of America

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, V. DANIEL JAMES FOWLIE, Defendant	NO. SA CR 88-83-AHS NOTICE OF INTENT TO INTRODUCE EVIDENCE PURSUANT TO FEDERAL RULE OF EVIDENCE 404(b); MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff, United States of America, hereby notifies the court and defendant of its intent to introduce evidence that in 1980 or 1981, defendant and Joseph Cooper, a government witness, transported in excess of $5,000 in United States currency out of the United States without filing the required report.

This notice of intent is based upon the attached memorandum of points and authorities, the files and records of this case, and any evidence and argument that may be presented at the trial and the hearing on this matter.

DATED: This _____ day of _____

1. Notice of Intent to Introduce Testimony (Knowledge of CMIR Requirement): Memorandum of Points and Authorities

INTRODUCTION

The United States expects to introduce at trial the testimony of Joseph (Jason) Cooper, a co-conspirator of the defendant. Mr. Cooper met defendant in approximately 1979 or 1980 and approximately a year later became involved with defendant in selling cocaine. Cooper acted as defendant's money counter and bookkeeper, a role he continued to perform when defendant began distributing marijuana in early 1982. The government does not intend to introduce evidence relating to defendant's dealing in cocaine and has instructed its witnesses not to refer to that subject.

During the time period that defendant was dealing cocaine, defendant showed Cooper French Line brand suitcases with secret inner compartments on both sides. Defendant taught Cooper how to pack currency into the secret compartments and mentioned that it was necessary to declare currency taken out of the country in excess of a certain sum. On at least one occasion during this time period, defendant and Cooper traveled together out of the United States with currency in excess of $5,000 secreted inside the French Line suitcases, without filing the required report.[1] The currency was used to pay for cocaine defendant had purchased.

The government does not intend to introduce evidence of the purpose of the transportation of currency. However, defendant's prior transportation of currency and discussions with Cooper are admissible pursuant to Federal Rule of Evidence 404(b) because they are relevant to show defendant's knowledge, intent, and *modus operandi* in connection with the currency transportation charges (Counts 20-26) and the conspiracy charged in count 20, which includes as one of its objects the obstruction of the Internal Revenue Service. In connection with those counts, the evidence at trial will show that, in 1983, at the request of defendant, Cooper, on several occasions, sent couriers from the United States to the Defendant in Rotterdam, Netherlands, with currency in excess of $5,000 secreted in hidden compartments of French Line suitcases. None of the couriers filed CMIRs

[1] The report is Customs Form 4790, Report of International Transportation of Currency or Monetary Instruments, commonly referred to as a CMIR.

DEFENDANT'S PRIOR ACTS IN CONNECTION WITH THE ILLEGAL TRANSPORTATION OF CURRENCY ARE ADMISSIBLE PURSUANT TO FEDERAL RULE OF EVIDENCE 404(B)

The Ninth Circuit has repeatedly held the Rule 404(b) is a rule of "inclusion which admits evidence of other crimes or acts relevant to an issue in trial, except where it tends to prove only criminal disposition." *United States v. Bradshaw*, 690 F.2d 704, 708 (9th Cir. 1982), *cert. denied*, 463 U.S. 1210 (1983, quoting, *United States v. Rocha*, 553 F.2d 615, 616 (9th Cir. 1977). Evidence of other acts should be excluded only where it tends to prove *solely* criminal disposition or is unduly prejudicial. *United States v. Hadley*, 918 F.2d 848, 850 (9th Cir. 1990); *United States v. Sigal*, 572 F.2d 1320, 1323 (9th Cir. 1978); *United States v. Rocha*, *supra*, 553 F.2d at 616.

In reviewing the Congressional history of Rule 404(b), the Supreme Court recently observed that "Congress was not nearly so concerned with the potential prejudicial effect of Rule 404(b) evidence as it was with ensuring that restrictions would not be placed on the admission of such evidence." *Huddleston v. United States*, 485 U.S. 681, 688-89 (1988).

Evidence is admissible pursuant to Rule 404(b) if: (1) sufficient proof exists for the jury to find that the defendant committed the prior act; (2) the prior act was not too remote in time; and (3) the prior act is introduced to prove a material issue in the case. *Hadley, supra*, 918 F.2d at 850-51. Where intent is a key issue, evidence of past crimes is generally admissible. *United States v. McCollum*, 732 F.2d at 851. Each of these requirements is satisfied here.

First, Cooper's testimony, other aspects of which will be extensively corroborated, provides a sufficient basis for the jury to conclude that the defendant committed the prior acts. Second, the prior acts occurred no more than two years before defendant launched his marijuana distribution organization. Third, the prior act is directly probative of several elements of the charged crimes — defendant's knowledge of the currency reporting requirement, defendant's intent to impede the Internal Revenue Service's ability to ascertain and collect income taxes, and defendant's position as an organizer, manager or supervisor within the marijuana distribution enterprise. Finally, the

prior act is not only similar, but virtually identical, to the charged offenses. During 1983, defendant utilized the same *modus operandi* to transport over a million dollars in drug profits from the United States to Holland — secreting the currency in hidden compartments in flower-patterned French Line suitcases. Again, no CMIRs were filed declaring the transportation of this currency out of the country.

CONCLUSION

For the foregoing reasons, evidence of defendant's prior transportation of currency out of the country and his discussions with Cooper concerning this money are admissible pursuant to Federal Rule of Evidence 404(b).

2. Certificate of Service

CERTIFICATE OF SERVICE

I, (Name of Assistant District Attorney), declare:

That I am a citizen of the United States and resident or employed in (city, state); that my business address is (address); that I am over the age of eighteen years, and am not a party to the above-entitled action.

That I am employed by the United States Attorney for the (U.S. Attorney's jurisdiction), who is a member of the Bar of the United States District Court for the (jurisdiction); that on (date) I deposited in the United States mails in the United States Courthouse at (address of courthouse) in the above-entitled action, a copy of Notice of Intent to Introduce Evidence Pursuant to Federal Rule of Evidence 404(b); Memorandum of Points and Authorities addressed to:

(name, title and address of attorneys receiving documents)

at (his/her/their) last known address, at which place there is a delivery service by United States mail.

This certificate is executed on (date) at (city, state).

I certify under penalty of perjury that the foregoing is true and correct.

(Signature)

(name of ADA)

(name of U.S. Attorney)
United States Attorney

(name of Assistant U.S. Attorney)
Assistant United States Attorney

Assistant United States Attorney

Special Assistant United States Attorney

(U.S. Attorney's Office address)

D. Notice of Intent to Introduce Testimony of Former Attorney of Defendant

LOURDES G. BAIRD
United States Attorney
ROBERT L. BROSIO
Assistant United States Attorney
MARK HOLSCHER
Assistant United States Attorney
JAMES D. DUTTON
Special Assistant United States Attorney
1100 United States Courthouse
312 North Spring Street
Los Angeles, California 90012

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. MILTON ZUCKER MENDE, CARROLL W. MCCOLPIN, ROBERT STEVE TURMAN, SAMUEL DUBOVY-LONGO, ROCCO "PASSY" PASSANANTE, Defendants	)	No. CR NOTICE OF INTENT TO INTRODUCE TESTIMONY; MEMORANDUM OF POINTS AND AUTHORITIES; EXHIBIT Hearing Date: Hearing Time: Courtroom:

Plaintiff, United States of America, hereby notifies the court and defendants of its intent to introduce the testimony of Richard Davis, Ron Goldie, A.O. Headman, Jr., Gerald Olf, Kenneth Rosenblood, and Charlotte Hassett; who were employed by Commonwealth Insurance Group, Inc., Banco Commercial Arabe, Inc., and British Indemnity Group, Inc., as attorney or legal assistants.

This notice of intent is based on the attached Memorandum of Points and Authorities, the files and records of this case and any additional evidence and any argument that the Court wished to hear on this motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The government seeks to introduce testimony of at least five lawyers and a legal assistant employed by corporations controlled by defendants. Four out of six worked out of the very same corporate officers where the defendants met with victims and issued fraudulent loan guarantees. The fifth, Mr. Davis, represented the corporation in a civil fraud suit. The sixth, Mr. Headman, relayed information between the Utah Securities Commission and defendant before Utah determined in 1986 that the assets of defendants' corporation were fraudulent and stopped all sales of its stock. The attorneys' testimony will relate to their observations that the corporations were patently fraudulent, their dealings with regulatory agencies and victims who informed them of the probable fraud, and their public statements to all employees of the corporation that Mende was a convicted felon and a con artist.

II. SUMMARY OF ARGUMENT

First, no attorney-client privilege can possibly exist for almost all of the testimony because only a very small portion of it concerns any confidential conversations between the defendants and the corporations' attorneys for the purpose of seeking legal advice. Second, each corporation was a sham which issued fraudulent guarantees based on fictitious assets. Each sham corporation engaged only in the business of issuing fraudulent loan guarantees supported by these fictitious assets. Therefore, even confidential conversations between the defendants and the corporations' attorneys necessarily fall under the crime-fraud exception to the attorney-client privilege.

Third, the Supreme Court has held that the managers of a corporation cannot assert the corporation's attorney-client privilege only to protect themselves from criminal prosecution. Defendants cannot meet their burden of proffering a single interest of the defunct corporations that would be served by their attempt to assert the corporations' privilege. Fourth, the law permits all the attorneys to testify about any communications they had with the corporations' officers since all of the corporations involved are defunct, and no "client" exists to assert the privilege.

III. BACKGROUND

Defendant Mende and his associates used various sham corporations between 1985 and 1991 to effectuate their fraudulent advance fee scheme. These corporations included Commonwealth Insurance Group, Inc. (CIG), British Indemnity Group, Inc. (BIG), and Banco Commercial Arabe, Inc. (Banco). As set forth in the indictment, each of these corporations was fraudulent from inception and engaged solely in the issuance of fraudulent loan guarantees to small businesses. The defendants told victims that these corporations had between $200 million and $2 billion in unencumbered assets. In fact, none of these purported assets were owned by the corporations which were merely sham vehicles for the issuance of worthless loan guarantees. Every corporate financial statement was a patent lie, every representation defendants made concerning the assets of the corporation was false, and the corporations were merely fronts for the fraud scheme.

CIG ceased operation in 1987. BIG declared bankruptcy in January of 1989 and ceased operation shortly thereafter. Banco also ceased operation after regulatory agencies precluded it from acting as a bank in 1991 and Mende returned to using British Bancorporation as his front.[1] None of the companies filed federal tax returns between 1985 and 1991. None of the companies has any remaining offices or officers or engages in any business.

These three corporations hired a succession of attorneys to assist them in their business operations in furtherance of the fraudulent scheme. Many attorneys worked briefly for the corporation, learned that the operations were a sham and left. Some of these attorneys, including Mr. Olf and Mr. Rosenblood, received information from victims and law enforcement that defendant Mende had numerous prior felony convictions and passed this information on to defendants Longo and Turman.

The testimony expected to be elicited from the former attorneys can be divided into six general categories. Five of the categories do not even raise the possibility of eliciting privileged

[1]This is the corporation Mende used when he issued the fraudulent loan guarantees which resulted in his 1982 conviction.

information because these areas do not relate in any way to communications between the attorneys for the corporation and management for the purpose of obtaining a legal opinion. These six categories are:

(1) The attorneys' testimony concerning their performance of nonlegal business duties with customers of CIG, BIG and Banco. This would include the attorneys' testimony concerning their due diligence work on the loan packages, communication with customers concerning their projects, and relay of customers' concerns and other information regarding projects to Mende and other principals of CIG, BIG and Banco.

(2) The attorneys' testimony about the business operations of CIG, BIG and Banco, including the numerous calls they received from victims whose funding had been denied after they had paid fees.

(3) Attorney Headman's testimony regarding the Utah Securities Division's request for documentation to verify BIG's assets, the documentation he collected and returned to the Utah Securities Division, and Utah Securities Division suspension of BIG's stock offer.

(4) Olf and Rosenblood's public statements to the entire staff of BIG, including defendant Longo, that Mende had a long history of fraudulent conduct and that the companies used by the defendants were bogus.

(5) The attorneys' notification to Mende, Turman and other officers of BIG, Banco and CIG, that the companies lacked the necessary licensing and registrations to issue financial guarantees.

(6) The attorneys' review and discussion with defendants concerning lawsuits filed by victims against CIG, BIG, Banco, Mende for their failure to fulfill funding guarantees.

This last category would include confidential communications between corporate counsel and the officers of the corporation for the purpose of seeking legal advice.

IV. ARGUMENT

A. Since the Corporations Which Received the Legal Advice are Defunct, the Corporations' Attorney-Client Privilege Has Been Extinguished

Federal courts are normally required to admit all relevant non-heresay testimony at trial. Privileges such as the attorney-client privilege run counter to this basic principle that "the public has a right to every man's evidence" so that that truth is revealed at trial. *Trammel v. United States*, 445 U.S. 48, 50 (1980). The Supreme Court has repreatedly cautioned that all privileges "must be strictly construed" because they interfere with the "predominant principle of utilizing all rational means for ascertaining truth." *Trammel*, 455 U.S. at 50 (citiations ommitted). The lower courts have heeded the Supreme Court's admonition and have also held that the attorney-client priviliege must be "strictly construed" within the narrowest possible limits. *United States v. Zolin*, 809 F.2d 1411, 1415 (9th Cir. 1987); *affirmed in part and vacated in part*, 109 S.Ct. 2619 (1989); *In re Crazy Eddie Securities Litigation*, 131 F.R.D. 374, 377 (E.D.N.Y 1990) (citiations omitted); *Bauer v. Abel*, 637 F. Supp 343, 345 (W.D. Wash. 1986) (citations omitted).

The initial question for this court to resolve is whether, under a narrow and strict constuctions of the attorney-client privilege, a former officer of a defunct corproration can assert the privilege on behalf of this non-existent client. It is well settled that "when a corporate agent, acting in his or her official capacity, consults cousel, the privilege bolongs to the corporation and not the individual officer." *Bauer v. Abel*, 637 F. Supp 343, 345 (W.D. Wash 1986) (citations omitted). Thus, the attorney-client privilege belongs only to the corporations CIG, BIG and Banco, if it exists at all. This privilege could only exist today if this court finds that the former officers of BIG, Banco and CIG can assert a corporate attorney-client privilege after the corporation or "client" has become defunct. In an analogous situation, the Supreme Court has held that former officers or directors of a corporation have absolutely no power to asser the attorney-client privilege for communications they made when they worked at the corproration.[2] *Commodities Futures Trading Commission v. Weintraub*, 471 U.S. 343, 349 (1985); *In re Boileau*,

736 F.2d 503, 505-06 (9th Cir. 1984). Moreover, in *Weintraub*, the Supreme Court went on to hold that the former directors and officers of a corporation cannot assert the attorney-client privilege for their confidential conversations with corporate counsel, even if they were forced out of their management positions by a bankruptcy trustee. *Id.*

In *Weintraub*, the court also held that the managers, of course, must exercise the [corporations's] privilege in a manner consistent with their fiduciary duty to act in the best interests of the corporation and not of themselves as individuals." 471 U.S. at 342-43. No defendant in this case will be able to assert any "interest" of the defunct corporations which needs to be protected. These corporations are assetless and are most certainly judgment proof. The only reason defendants would assert the corporations' privilege would be to protect themselves from criminal prosecutions, a reason strictly prohibited in *Weintraub*. Even if BIG, Banco, or CIG existed today, defendants would not be permitted to breach their fiduciary duty to the corporation and assert the privilege solely to protect themselves from criminal prosecution.

Defendants' right to assert the corporations privilege is far weaker than the claim of the former managers which was rejected in *Weintraub*. Mende, Turman, and McColpin are former officers of corprorations that are now defunct. Longo left BIG over four years ago and never worked for the other two corporations, CIG and Banco. He, therefore, could not possibly have standing to assert any corporate privilege on behalf of the corporations.

As noted above, CIG ceased to exist over five years ago, BIG went into bankruptcy and ceased operations three years ago, and Banco also ceased operations over a year ago. No court has ever held that a corporation's attorney-client privilege survives the termination of the corporation. Both the Uniform Rules of Evidence and the Model Code of Evidence recognize that there is no legitimate basis for allowing a corporate attorney-client privilege to exist after a

[2] Defendant Turman was ousted from the corporations in 1988. Defendant Longo ceased his involvement with all the corporations in 1980. Under *Weintraub*, neither of these defendants could possibly have the standing to even assert the attorney-client privilege for the corporations.

corporate entity is defunct. *See* C. Wright & K. Graham, FEDERAL PRACTICE & PROCEDURE § 5499, at 486-88 (1986). As Professors Wright and Miller note, "unless one thinks that corporate communications with counsel are a form of property to be valued along with its trademarks and ashtrays in the diposition of assets, it is hard to defend a perpetual corporate privilege." *Id.* at 488. No Ninth Circuit or Supreme Court precedent squarely addresses the exact issue of the viability of the attorney-client privilege for a defunct corporation; however, analogous precedent like *Weintraub*, the model rules and legal commentators all indicate that no privilege should exist after a corporation ceases its existence. Even if the privilege still existed, defendants should not be allowed to violate *Weintraub* and assert the privilege solely to protect themselves individually where no possible interest of the corporation would be served by their assertion of the privilege.

B. Even If the Corpaorations' Privilege Remains, Six of the Seven Categories of Anticipated Testimony Cannot be Privileged Because They Do Not Involve Confidential Communications Between Counsel and Representatives of the Corporations

Each defendant in this case bears the burden of proving that he is entitled to the protection afforded by the corporations' atttorney-client privilege.[3] *United States v. Zolin*, 809 F.2d 1411, 1415 (9th Cir. 1987); *affirmed in part and vacated in part*, 109 S.Ct. 2619 (1989); *Matter of Fischel, supra*, 557 F.2d 209,212 (9th Cir. 1987). The attorney-client privilege only extends to confidential communications of a client to his attorney and the attorney's responses for the purpose of obtaining legal advice. *United States v. Huberts*, 637 F.2d 630, 640 (9th Cir. 1980), *cert. denied*, 451 U.S. 975 (1981); *Matter of Fischel*, 557 F.2d at 211; *Harris v. United States*, 413 F.2d 316, 320 (9th Cir. 1967). In this case, the "clients" are corporations that must act through their officers. Thus, if the corporations' attorney-client privilege remains, it protects only confidential communications between officers of the corporations and their attorneys for the purpose of seeking legal advice for the corporations. *Upjohn v. United States*, 449 U.S. 383, 389 (1981).

[3]Only Mende and McColpin appear to have any possible claim, as they were the only two officers who stayed with the sham corproations until they became defunct.

[4]Ministerial or clerical services performed by an attorney for a client are also not covered by the attorney-client privilege. *Harris v. United States*, 413 F.2d 316, 320 (9th Cir. 1987); *United States v. Huberts*, 637 F.2d at 640.

The attorney-client privilege does not extend to communications between an attorney and a client where the attorney is acting as a business agent for the client. *Huberts*, 637 F.2d at 640 (client's communications to attorney not privileged because attorney was overseeing the sale of equipment and communications did not relate to confidential legal advice); *see also Matter of Fischel*, 557 F.2d at 212 (preparation of summaries by an attorney of a client's business transactions with third parties are not protected by the attorney-client privilege because the summaries do not contain privileged information).[4]

Four of the six legal witnesses — Goldie, Olf, Resenblood, and Hassett — worked in the orporate offices. They were percipient witnesses to the interactions of the defendants with clients, the daily working of the office, and non-confidential statements defendants made to them and third parties. Their anticipated testimony, which is summarized in the first five categories listed at pages six through seven above, arises solely from their own observations and cannot fall within the corporations' attorney-client privilege because no confidential communications underlie their testimony.

C. Each of the Three Corporations Was A Complete Fraud, Therefore, Even Confidential Communications Between Defendant and the Attorneys Cannot Be Protected

Any confidential communications between the defendants and their former attorneys for the purpose of obtaining legal advice are not protected by the attorney-client privilege if the government makes a *prima facie* showing that they were made in furtherance of the fraud scheme charged in the indictment. *United States v. Zolin*, 109 S.Ct. 2619, 2626 (1989); *United States v. Laurins*, 857 F.2d 529, 540 (9th Cir. 1988), *cert. denied*, 492 U.S. 906 (1989). This exception to the privilege applies even if the attorneys had no idea that BIG, CIG, and Banco were used by defendants to further a fraud scheme. *Laurins*, 857 F.2d at 540.

[5] Resolution of the crime-fraud exception pertains only to the testimony proffered in category six of the proposed testimony as the first five categories do not contain privileged confidential communications in the first instance. Moreover, the court need not resolve the crime-fraud issue for the proffered category six testimony if it finds that the corporations' attorney-client privilege does not exist for the defunct corporations.

Laurins goes on to explain that the government meets its *prima facie* burden when it shows evidence that, if believed by the jury, would establish the elements of the ongoing illegality and the communications were linked to the illegality. *United States v. Laurins, supra*, 857 F.2d at 541.[5] Attached as exhibit 1 is twenty pages from the search warrant affidavit in this case which briefly summarized the substantial evidence that defendant created CIG, Banco and BIG as sham corporations to defraud victims. As set forth at pages ten through seventeen of the attached affidavit, the sham corporations were operated so brazenly by defendants that the victims were told that these worthless shell corporations held between $200 million and $3 billion in unencumbered assets. None of these assets were owned by the corporations.

This case does not involve legitimate corporations that were used on occasion by wayward employees to commit fraud. Rather, the corporations were fraudulent to the core. The three sham corporations served only as vehicles for defendants to perpetuate the fraudulent advance-fee scheme. As alleged in the indictment, defendants went to great lengths to put off and lull victims to pay fees, and the employment of attorneys to fend off angry victims was one part of this strategy. The attorneys were also used to create an air of legitimacy for the corporation and fend off regulators who wanted to shut down the corporations. Any discussions between defendants and counsel concerning how to put off regulators and angry victims and "create" new assets for the corporations would necessarily be part and parcel of the fraud. Such discussions are not protected because the only purpose of such legal advice would be to further defendant's goal of perpetuating the illegal scheme. *Laurins*, 857 F.2d at 540-41.

V. CONCLUSION

The former attorneys for the defunct corporations should be permitted to testify for four independent reasons. First, since the corporations no longer exist, no client exists to assert the privilege. Second, defendants cannot make the necessary showing under *Weintraub* that they would be asserting the corporations' privilege for the corporations' benefit rather than their own interest in precluding relevant testimony from being introduced a their criminal trial.

Third, even if the privilege still remained and defendants were asserting it for the corporations' benefit, the vast bulk of the attorneys' testimony would not fall within the privilege because the proffered testimony would not reveal or relate to confidential communications between the corporations' employees and counsel for the purpose of seeking legal advice.

Finally, all confidential communications can also be the subject of attorney testimony because the client corporations were blatant frauds and the sole purpose of employing the attorneys was to perpetuate the fraud scheme charged in the indictment.

CHAPTER FIVE — EVIDENTIARY CONSIDERATIONS

CHAPTER FIVE: EVIDENTIARY CONSIDERATIONS

A. DOCUMENTARY/DEMONSTRATIVE EVIDENCE

A well-organized case with effective document controls eliminates most foundation problems for the introduction of documentary/demonstrative evidence. (*See* sections on Document Control and the Money Laundering Prosecution Checklist section dealing with case organization and document control.) Document protocols should require that public records received during the investigative stage be certified or otherwise authenticated as required by the rules of evidence of the respective state. Certificates of the absence of public records should also be obtained at the earliest possible time in the investigation. (Some governmental agencies purge their records after a very short time period (*e.g.*, 2 years).) Although most foundation problems can be avoided by preparation, federal statutes and case law are instructive as to certain evidentiary issues facing state prosecutors.

A document intensive money laundering case cries out for visual aids. Summary charts should be used. Rule 1006 of the Federal Rules of Evidence allows contents of voluminous writings, recordings or photographs to be introduced in the form of summary charts where the contents of the voluminous material cannot be conveniently examined in court. As long as the underlying data is admissible and the defense has a reasonable opportunity to inspect and/or copy it, the data itself does not have to be admitted into evidence. Summary charts compiled by a computer are admissible.[1] Although cumulative, a summary chart which condenses testimony, as well as telephone and rental records already in evidence, is admissable to help the jury organize and evaluate evidence which was factually complex and fragmentally revealed.[2]

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[1] See FED. R. EVID. 1006; Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc., 772 F.2d 505, 515, n. 9 (9th Cir. 1985); United States v. Smyth, 556 F.2d 1179, 1182-83 (5th Cir. 1977).

[2] United States v. Shirley, 884 F.2d 1130, 1133 (9th Cir. 1989). (*See also* the sample motions regarding summary charts included at Ch. III-75.

Federal cases are also instructive in the area of admissibility of computer printouts as business records. Computer printouts of business inventory and payroll are admissible as general ledgers of the business upon a showing that the raw data is accurately inputed into the computer, the printouts are checked against the raw data for accuracy, and the printouts represented a regular business practice.[3] A Director of Communications qualified as a custodian of records for the introduction of automated computer printouts of telephone calls made from a hotel room even though the Director had no knowledge of how the printouts are generated.[4]

In most complex money laundering cases, a net worth analysis or source and application of funds analysis will be presented as part of the prosecution's case (analyses showing that a defendant's asset accumulations/expenditures during the course of the purported criminal activity far exceed his sources of legitimate income). These analyses will often rely on receipts and other documents evidencing expenditures/purchases seized at the defendant's residence or other location over which he had dominion and control to prove his expenditures/purchases. The receipts/ documents must be admitted for the truth of the matter to prove the actual amounts of the expenditures. A hearsay objection is overcome either by a custodian of records from the business laying the proper foundation for introduction as a business record, or depending on jurisdiction, as an adoptive admission. California law does not even allow a receipt seized at a defendant's residence with his authenticated signature on the receipt to be introduced for the truth of the matter as an adopted admission. *People v. Maki*, 39 Cal. 3d 707, 713-14 (1985). However, federal cases have held that possession of a receipt by a defendant is sufficient to show he "adopted" it for purposes of an adopted admission under Rule 801(d)(2)(B) of the Federal Rules of Evidence.[5]

Lastly, *United States v. Sterns*, 550 F.2d 1167, 70-1172 (9th Cir. 1977) provides a useful discussion concerning the introduction of photographs. Among other things, *United States v. Sterns* holds that a photograph itself can assist in its own foundation regarding the time that the photo was taken and the location of the photo. (*Id.*, at p. 1171.)

[3] United States v. Catabran, 836 F.2d 453, 457-58 (9th Cir. 1988).

[4] United States v. Linn, 862 F.2d 735, 741 (9th Cir. 1988).

[5] United States v. Ospina, 739 F.2d 448, 451 (9th Cir. 1984); *see also, U.S. v. Marino*, 658 F.2d 1120, 1124-1125 (6th Cir. 1981).

Index

1. Government's Motion in *Limine*

UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 1:91:CR:110

Hon. Benjamin F. Gibson
Chief Judge

WAYNE SARGENT,

Defendant.
_____/

GOVERNMENT'S MOTION IN LIMINE

1. That the Defendant Wayne E. Sargent is scheduled to begin trial on July 7, 1992, before Chief Judge Benjamin F. Gibson.

2. That the Defendant is indicted on thirty counts of money laundering and related criminal charges.

3. That the evidence and the charges in this case raise complicated, intricate and voluminous issues of fact which will require the use of summary charts under Rule 1006 of the Federal Rules of Evidence.

4. The United States proposes to introduce, as substantive evidence, approximately 15 charts which summarize the financial transactions charged in the substantive offenses and additional 6 charts which summarize the financial condition of Wayne Sargent and his corporations during 1987 and 1988.

5. The financial transaction charts are necessary because the typical juror lacks sufficient knowledge and training to reconstruct a money laundering scheme. Further, even if a juror possessed such skill, unfamiliarity with the details of this case would make reconstruction of the

financial transactions a burdensome, if not impossible task.

6. The proposed financial transaction charts are accurate and reliable. Each component of the chart is based on an admissible piece of documentary evidence, which was subject to discovery.

7. The financial transaction charts are not speculative, argumentative or based on inferences. Thus, there is no unfair prejudice in the proposed charts.

8. The financial condition charts are necessary because the typical juror lacks sufficient knowledge and training to reconstruct and summarize the sources of income for a money laundering business. "Source of income" evidence is highly persuasive and relevant evidence of money laundering. Even if the typical juror had the necessary skill, the voluminous nature of the bank records, *i.e.*, monthly statements, deposit items, withdrawal items, etc., would make reconstruction of the financial condition of Wayne Sargent and his businesses a burdensome, if not impossible, task.

9. The proposed financial condition charts are accurate and reliable. Each component of the chart is based on an admissible piece of documentary evidence, which was subject to discovery.

10. The financial condition charts are not speculative, argumentative or based on inferences. Thus, there is no unfair prejudice in the proposed charts.

11. All of the full-sized proposed evidentiary charts are available for inspection at the United States Attorney's Office. Attached for review are some samples of the proposed charts.

WHEREFORE, the United States respectfully requests that this Court enter an order holding that the United States' charts are admissible as substantive evidence.

2. Brief in Support of Government's Motion in *Limine*

UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 1:91:CR:110
Hon. Benjamin F. Gibson
Chief Judge

WAYNE SARGENT,

Defendant.

_____/

BRIEF IN SUPPORT OF GOVERNMENT'S MOTION IN LIMINE

I. SUMMARIES AND CHARTS ARE ADMISSIBLE AS EVIDENCE UNDER RULE 1006

Summary charts are admissible both under Fed. R. Evid. 1006 [hereinafter Rule 1006][1] and by "the established tradition in the Sixth Circuit and others." *United States v. Campbell*, 845 F.2d 1374, 1381 (6th Cir. 1988), *cert. denied*, 488 U.S. 908 (1989). Courts have found the admittance of summary evidence is necessary because it is irrational to expect an average jury to compile summaries and re-create sophisticated flow charts for the voluminous evidence that underlie these cases. *United States v. Duncan*, 191 F.2d 981, 988 (5th Cir. 1990), *cert. denied*, 500 U.S. 926, 114 L. Ed 2.d, 121 111 S.Ct. 2036 (1991). In *United States v. Winn*, where chronological charts tracking events by date of occurrence were admitted, the court found it "questionable whether even an above average panel of jurors, without some framework in the form of a chart or otherwise, could organize the veritable cache of circumstantial evidence...in order to glean the significance from the multifarious facts." *See* 948 F.2d 145, 151 n.17 (5th cir. 1991).

[1] Fed. R. Evid 1006 provides in pertinent part: [t]he contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. . . .

II. SUMMARIES OF UNDERLYING EVIDENCE THAT ARE VOLUMINOUS AND INCONVENIENT FOR IN COURT EXAMINATION ARE ADMISSIBLE AS EVIDENCE UNDER RULE 1006.

Summaries admitted pursuant to Rule 1006 are evidence. *Winn, supra* at 158 ; *United States v. Stephens*, 779 F.2d 232, 238 (5th Cir. 1985). Rule 1006 requires (1) that the materials underlying a summary or chart be voluminous and (2) an in-court examination be inconvenient. *United States v. Scales*, 594 F.2d 558, 562 (6th Cir.), *cert. denied*, 441 U.S. 946 (1979). This determination is left to the discretion of the trial court and is governed by the stringent abuse of discretion standard. *See United States v. Williams*, 952 F.2d 1504, 1519 (6th Cir. 1991). Case law has demonstrated that the Rule 1006 threshold is easily satisfied. *See, United States v. Scales, supra* (admitted a summary of financial statements); *Williams, supra* at 1519 (admitted three charts summarizing daily events); *United States v. Campbell*, 845 F.2d 1374, 1381 (6th Cir. 1988) (admitted six charts summarizing financial information). Based on the preceding standard, the in-court examination of over 250 financial records in this case easily satisfies the voluminous and inconvenient standard.

III. COMPLEXITY MAY BE A FACTOR IN THE RULE 1006 DETERMINATION

District courts in their discretion routinely go beyond the language of the voluminous standard to apply (implicitly or explicitly) a standard that is more in line with the purpose of the rule. *See United States v. Evans*, 572 F.2d 455 (5th Cir. 1978) (in a complex case of this magnitude the district court has considerable latitude in expediting the proceedings). A close inspection of the voluminous standard reveals that courts look to the complexity of the underlying facts (as well as some aspects of quantity) when making the voluminous determination. Several courts have explicitly weighed the complexity factor when determining whether summarization is appropriate. *See United States v. Scales*, 594 F.2d 558, 562 (6th Cir.) (admitted summary of evidence because comprehension of exhibits would have been difficult and certainly inconvenient without) *cert. denied*, 441 U.S. 946 (1979); *Campbell, supra* at 1381 (admitted summary because evidence was complex due to large number of exhibits); *United States v. Stephens*, 779 F.2d 232, 239 (5th Cir.

1989); *United States v. Shirley*, 884 F.2d 1130 (9th Cir. 1989) (admitted summary charts detailing telephone calls, rental records, jail records, and testimony into evidence to help the jury organize and evaluate evidence which is factually complex); *United States v. Meyers*, 847 F.2d 1408, 1412 (9th Cir. 1988) (admitted chart detailing long distance calls made by various co-conspirators because the sequence of events was confusing and the chart contributed to clarity of presentation); *United States v. Lemire*, 720 F.2d 1327, 1250 (D.C. Cir. 1983) (admitted summary because culling through documents would result in confusion and extraneous evidence).

Clearly, the preceding applications of the voluminous standard indicate the complexity of the underlying evidence is a significant factor to be weighed in the determination. Complexity is measured by the ability of a lay person to comprehend evidence in its raw form. Therefore, where a lay person would have difficulty comprehending evidence in its raw form, it is sufficiently complex to warrant a summary admissible under rule 1006. Accordingly, the actual test courts have applied when making the rule 1006 determination is whether a jury could better comprehend the evidence in summary form. Thus, in making its determination, this court should consider whether the jury would better comprehend the underlying evidence with the aid of summary evidence. Consequently, this matter involving 250 financial transactions of an intricate money laundering scheme satisfies the complexity standard. Therefore, under either standard, voluminous or complexity, this matter qualifies as summary evidence under Rule 1006.

IV. MODERN APPLICATION ADMITS RULE 1006 SUMMARIES INTO EVIDENCE WITHOUT LIMITING INSTRUCTION

It is not error for the trial court to permit charts and summaries to be sent to the jury without limiting instructions. *United States v. Possick*, 849 F.2d 332, 339 (8th Cir. 1988): It is left to the discretion of the trial court, whether charts and diagrams admitted under Rule 1006 should be sent to the jury with or without instructions. *Id.*; *see also, United States v. Orlowski*, 808 F.2d 1283, 1289 (8th cir. 1986), *cert. denied*, 482 U.S. 927 (1987); *United States v. Robinson*, 774 F.2d 261, 275 (8th Cir. 1985). This modern interpretation of Rule 1006, accepted by these informed circuits and evidence scholars, provides that summaries and charts that qualify under Rule 1006 are

evidence and should be admitted without instructions. *See Possick, supra; United States v. Osum*, 943 F.2d 1394, 1405 n. 9 (5th Cir. 1991); 5 Weinstein & Berger, WEINSTEIN'S EVIDENCE, ¶ 1006[7], p. 1006-15. This method remedies the concerns of jury confusion and reasoning abilities set forth in *Duncan, supra*, and *Winn, supra*,[2] as it aids finders of fact in comprehending and deciding the growing number of complex cases.

Recent authority indicates the Sixth Circuit is prepared to join its fellow circuits and embrace the modern interpretation of Rule 1006. In *Martin v. Funtime*, No. 91-3595 (6th Cir. 1992), the Sixth Circuit held: "If the underlying records themselves could have been admitted to show their contents, *there appears to be no reason why Rule 1006 would not apply to a summary of their contents*. Therefore, the proper inquiry is whether the underlying records are admissible and not whether there is some independent . . . justification for admitting the summaries themselves." *Id.* at 11 (emphasis added). The Sixth Circuit embraced the modern view by switching the focus of the admissibility inquiry away from the summary charts and onto their underlying evidence. *See id.; Scales, supra,* at 563.

Other Sixth Circuit holdings also indicate acceptance of the modern rule. *See, Scales, supra* at 563 (exhaustively reviewed the question of the admission of charts as evidence and concluded that Fed. R. Evid. 1006, and established tradition, both within this circuit and in other circuits, allowed admission of chart summaries), *cert. denied*, 441 U.S. 946 (1979); *United States. v. Williams*, 952 F.2d. 1504, 179 (6th Cir. 1991) (three charts summarizing chronology of events admitted into evidence); *United States v. Campbell*, 845 F.2d 1374, 1381 (6th Cir. 1988) (chart summarizing medical files admitted into evidence), *cert. denied*, 488 U.S. 908 (1989); *United States v. Collins*, 596 F.2d 166, 169 (6th Cir.) (charts on financial data admitted into evidence).

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[2] See page 92 for discussion of concerns in *Duncan* and *Winn*.

[3] *Paulino* was correctly decided because the summary of witness testimony was a clear example of a pedagogical device. Therefore, since it was not within the purview of Rule 1006, the court properly rejected it as substantive evidence. The standards of Rule 1006 are discussed *supra* and pedagogical devices are discussed *infra*.

Additional support of Sixth Circuit acceptance of modern appliction is demonstrated by the analysis of Sixth Circuit Judge Nelson. In 1991, Judge Nelson joined the *Paulino* decision that held summary evidence should be accompanied by limiting instructions. *See, Paulino* at 753.[3] Yet, 10 months later in the *Funtime* decision, Judge Nelson joined in admitting summaries of personnel records as substantive evidence without mention of limiting instructions. *See, Funtime* at 11.

Other circuits and prominent evidence scholars have adopted the modern approach. For example, in *United States v. Gardener*, the court stated "it is not reversible error for a court to admit chart summarizing evidence into evidence, without limiting instruction, where defendant had opportunity to challenge underlying facts." *See* 611 F.2d 770, 776 n.3 (9th Cir. 1980). Similarly in *Osum, supra*, the court stated "summaries or the like introduced under Rule 1006 may in appropriate circumstances be evidence themselves; in such an instance, [an] instruction may improperly prejudice the party introducing the summaries at least if the underlying documents are not in evidence." *Osum, supra,* at 1405 n.9. Furthermore, prominent evidence scholars have subscribed to this view of Rule 1006. "Rule 1006 material, unlike pedagogical devices,[4] are evidence and do not require limiting instructions." 5 Weinstein & Berger, *Weinstein's Evidence*, ¶ 1006[7], at 1006-15.

V. RULE 1006 WAS DESIGNED TO ADMIT SUMMARIES AS EVIDENCE AND WITHOUT LIMITING INSTRUCTIONS

The purpose of Rule 1006 as indicated through its history and the advisory committee notes explicitly state that it was designed to admit summaries and charts as evidence in themselves. *See* Fed. R. Evid. 1006 advisory committee notes. The original interpretations of the Rule was set forth by the Federal Judicial Center Committee to study Criminal Jury Instructions. That committee recommended that, with respect to summaries, "no instruction should be given because

[4] A classic example of a pedagogical device resides in Gomez v. Great Lakes Steel Div., National Steel Corp.,942 F.2d 977 (6th Cir. 1991), where a summary of actual damages which projected future events and economic losses was not a simple compilation of voluminous records. Therefore, the lower court was reversed for admitting it without limiting instructions. In general, pedagogical devices are discussed *infra* pp. 97-98.

it is now clear that under Rule 1006 the summary itself is evidence." *Weinstein, supra,* at 1006-15. This was the original interpretation of Rule 1006 and currently it is the modern application as it has been adopted by informed courts and supported by evidence scholars. Even on its face, Rule 1006 seems to contemplate that properly authenticated charts or summaries are themselves admissible evidence. Baskin, *Charts, Graphs and Mini-Summations*, 16 LITIGATION 21, 22 (1989). It is apparent that the modern method derived directly from the language of the rule and the guidance of the Advisory Committee.[5] The resurgence of this application can be attributed to the increasing complexity of cases and the need for courts to assist finders of fact in comprehending complex cases.

VI. RULE 1006 DOES NOT ENCOMPASS PEDAGOGICAL DEVICES AND THEREFORE THEY ARE ADMITTED WITH LIMITING INSTRUCTIONS

Clearly, the decision in *Funtime, supra*, falls in line with the more modern interpretation of Rule 1006 and represents Sixth Circuit decisions that require limiting instructions and only occasionally permit the charts and summaries to accompany the jury to its deliberations. *See, United States v. Paulino*, 935 F.2d 739 (6th Cir. 1991), *cert. denied*, 502 U.S. 914, 116 L. Ed. 2.d 257 112 S.Ct. 883 (1992). These decisions can be reconciled with *Funtime* and the modern view by examining the complexity of the underlying evidence and whether the chart or summary amounts to a pedagogical device.[6] In *Paulino, supra*, unlike *Funtime*, the charts and summaries amounted to a mere pedagogical device as opposed to material within the purview of Rule 1006. *Paulino, supra* at 753.

Additionally, Weinstein has addressed the difficult distinction between summaries and charts which are pedagogical devices and their respective treatment. Weinstein states:

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[5] The admission of summaries of voluminous books, records, or documents offers the only practicable means of making their contents available to judge and jury. Fed. R. Evid. 1006 advisory committee's note.

[6] The Sixth Circuit has held that the pedagogical devices are more akin to argument than evidence and that they should be accompanied by a limiting instruction. *Paulino, supra* at 753; *See also,* Gomez v. Great Lakes Steel Div., National Steel Corp., 803 F.2d 250 (6th cir. 1986). United States v. Bakke, 942 F.2d 977 (6th Cir. 1991).

> Some courts have suggested that charts, summaries, and calculations are not evidence, but are merely presentations of other evidentiary material in more intelligible form. This theory ignores the fact that the jury may never see the original materials forming the basis of charts, summaries, or calculations. In that situation, the exhibits are clearly evidence of the contents of the original or duplicate materials. *Whether or not the originals are introduced at trial, the summaries may be relied upon as evidence-in-chief. See United States v. Smyth*, 556 F.2d 1179 (5th Cir.), *cert. denied*, 434 U.S. 862 (1977); *United States v. Skalicky*, 615 F.2d 1117 (5th Cir.), *cert. denied*, 449 U.S. 832 (1980).

5 WEINSTEIN & BERGER, WEINSTEIN'S EVIDENCE, ¶ 1006[2] (emphasis added).

Funtime demonstrates that, where the underlying material would be admissible as evidence itself if offered, then the summary of that material ascends beyond the status of a mere pedagogical device and is admissible itself as evidence under Rule 1006. *See, Funtime, supra* at 11. Additional support of the reconciliation of these cases is illustrated by Judge Nelson's presence on the majority in both *Paulino* and *Funtime* noted *supra*.

To summarize, where there is complex material underlying a summary or chart, or the material is voluminous and would not be convenient for the court to present to the jury as evidence itself, then that material is admissible itself in summary form under Rule 1006 without limiting instructions.

VII. CONCLUSION

The 250 financial transactions in this case fall within the boundaries of Rule 1006 as they are not only voluminous and inconvenient for in-court examination, but they are also complex and necessitate jury guidance in the form of summary charts. Summaries within the purview of Rule 1006 are admissible as evidence themselves and do not require limiting instructions. Accordingly, the fifteen charts representing the 250 exhibits are admissible as evidence under Rule 1006.

C. Expert Testimoney in Money Laundering Cases

Prosecutors will present expert testimony in most, if not all, money laundering cases. Three of the main areas of expert testimony are:

- Testimony concerning the *modus operandi* of money laundering schemes to enable the jury to better understand the criminal activity and the defendant's involvement in it
- Testimony concerning banking practices
- Testimony explaining a net worth or source and application of funds analysis

Sample examination protocols to elicit expert testimony in the above areas are included at III-94. Another area of expert testimony that may arise relates to the probative value of controlled substance residue on currency and/or a drug sniffing dog's alert on currency.

Federal law in the above areas is instructive for state prosecutors prosecuting money laundering cases under nascent state statutes. In Federal law, as well as under most state evidentiary rules, expert testimony concerning scientific, technical and other specialized knowledge is admissible as long as it *assists* the trier or fact *to understand* the evidence of to determine a fact and issue. (Fed. R. Evid. 702) Rule 704 of the Federal Rules of Evidence even allows opinion evidence that embraces an ultimate issue to be decided, such as mental state or condition of the defendant in a criminal case. (*See also, United States v. Webster*, 960 F.2d 1301, 1308-09 (money laundering); *United States v. Daniels*, 723 F.2d 31, 32-33 (8th Cir., 1983) (narcotic trafficking scheme); *United States v. Patterson*, 819 F.2d 1495, 1507 (9th Cir. 1987) (narcotic trafficking scheme); *United States v. McCollum*, 802 F.2d 344, 346 (9th Cir. 1986) (mail fraud scheme). Where expert testimony overlaps into "profile testimony," such testimony can be introduced, not for the impermissible purpose of direct evidence of guilt, but for the limited purpose of direct evidence pertaining to conspiracy (*e.g.*, formation, agreement, purpose) or to

explain items in possession of a defendant. (*United States v. Robinson*, 978 F.2d 1554,1564-65 (10th Cir. 1992) (testimony by a gang expert).) Otherwise, inadmissible drug courier profile testimony is admissible as background material to provide the jury with a full and accurate portrayal of the events (*United States v. Gomez-Norena*, 908 F.2d 497,499-501 (9th Cir. 1990).)

Testimony by a banking official, whether to explain certain documents, processes for the movement of money (*e.g.*, international wire transfers) or normal banking practices of customers compared to the defendant's practices, helps the jury understand otherwise meaningless documents, processes or practices. On certain occasions an expert can even explain regulations pertaining to bank operations where it aids the jury's understanding of other evidence presented in a complex case. *United States v. Unruh*, 855 F.2d 1363, 1376 (9th Cir. 1987), *cert. denied*, 488 U.S. 974 (1988). As a general rule, law is given by the court and not introduced as evidence. *Cooley v. United States*, 419 U.S. 1123 (1975).

A net worth analysis or a source and application of funds analysis and expert testimony explaining the analyses are admissible. The analyses focus the jury on evidence that a defendant's expenditures/asset purchases during the time period of the purported illegal activity far exceed any sources of legitimate income to pay for such expenditures/purchases. Not only do these analyses often provide proof that the money used in the transaction on which the money laundering charge is based was derived from the underlying specified unlawful activity, but also that the defendant was in fact engaged in criminal activity. Federal Circuit Courts of Appeal have uniformly allowed this type of evidence to be presented to the jury in money laundering cases. *United States v. Turner*, 975 F.2d 490, 496-97 (8th Cir. 1992); *United States v. Webster*, *supra*, 960 F.2d at p 1308; and *United States v. Cruz*, 993 F.2d 164, 167 (8th Cir. 1993) (introduction of defendant's tax returns and financial statements from prior years was sufficient to establish defendant's informal net worth as they identified and quantified defendant's available sources of funds at the time of the commencement of the purported criminal activity). The identification and quantification of a defendant's assets at the time of the commencement of the purported criminal activity must be

shown where the prosecutor is relying on a source and application of funds analysis (expenditures method) is order to eliminate the possibility that the source of funds for defendant's expenditures during the time of the criminal activity was the liquidation or use of previously existing legitimate assets.

United States v. $30,060.00 in United States Currency, 94 Daily Journal D.A.R. 14770 (9th Cir. Nov. 8, 1994) and other federal cases foreshadow hotly contested foundation hearings as the probative value of narcotic residue and/or a drug sniffing canine alert on currency. (*See also, United States v. Carr*, 25 F.3d 1194, 1202,1203, n. 3 (3d Cir. 1994); *United States v. $53,082.00 in United States Currency*, 985 F.2d 245, 250-51, n. 5 (6th Cir. 1993); *United States v. $639,558.00 in United States Currency*, 955 F.2d 712, 714, n. 2 (D.C. Cir. 1992).) *United States v. $30,060.00* held that the government did not meet its burden of establishing probable cause for the purposes of forfeiting $30,060 in currency seized from the front seat of defendant's car after a drug sniffing canine alert. The prosecutor had also presented evidence that the amount and packaging of the currency were consistent with drug trafficking (prosecution also refuted defendant's story concerning legitimate sources for the currency). The court stated that there was "no credible evidence (alert) connecting Alexander's (defendant's) money to drugs" because of the high percentage of currency in circulation in the Los Angeles area contaminated by drugs (defense expert testified that in excess of 75 percent of the currency is contaminated). (*Id.*, at pp. 15773-15774.)

United States v. $30,060 has serious ramifications for law enforcement,as5e not only in the area of the probative value of an alert on currency to help establish that the possessor of the currency was involved in narcotic trafficking, but also for the establishment of probable cause to search a closed container based on a canine alert (a package may contain drug contaminated currency just as easily as drugs). A prosecutor will need to present expert testimony on the amount of residue on the currency (ion scanner), elicit testimony that stresses the fact that a canine alerts on currency based on odor (more temporal than residue — odor dissipates quickly), and present evidence of the high proportion of negative responses by drug sniffing canines in order to preserve the probative value of a canine alert.

D. Brief of the United States Regarding Expert Witness on Money Laundering

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
v.	§	CRIMINAL NO. H-91-59
	§	
JAMES BURNSIDE	§	#22

BRIEF OF THE UNITED STATES REGARDING EXPERT WITNESS ON MONEY LAUNDERING

The United States intends to call Special Agent Donald Semesky of the IRS as an expert witness on the Bank Secrecy Act, Currency Transaction Reporting Requirements and the regulation promulgated thereunder, the movement of currency and arrangement of transactions to avoid reporting requirements and to conceal the source of funds, and the methods and techniques characteristic of money laundering.

Agent Semesky has been admitted and qualified as an expert on these topics in the Northern District of Texas, District of Massachusetts, District of Rhode Island, District of New Jersey, District of Pennsylvania, Western District of Virginia, and District of Arizona. Agent Semesky's expertise flows from his B.S. in Accounting, his license as a C.P.A. which he obtained in 1976, and his 19 years practicing and instructing in the Criminal Investigative Division of the IRS.

Agent Semesky's expertise is precisely the type which Federal Rule of Evidence 702 ("Testimony by Experts") seeks to ensure is available to assist jurors:

> There is no more certain test for determining when experts may be used than the common sense inquiry whether the untrained layman would be qualified to determine intelligently and to the best possible degree the particular issue without enlightenment from those having a specialized understanding of the subject.

Fed. R. Evid. 702 advisory committe notes.

The "untrained laymen" on a typical jury are hardly "qualified to determine intelligently and to the best possible degree" issues relating to accounting and banking practices and statutes and regulations pertaining thereto. The jury will therefore require assistance from a witness with technical expertise in these areas in order to understand the complicated series of transactions which the evidence will show accountant/defendant JAMES BURNSIDE performed on Desi Guerra's behalf. Just as defendant BURNSIDE relied on his professional expertise and his knowledge of the rules and regulations pertaining to the accounting profession in managing Desi Guerra's money, so too must the jury rely on the professional expertise of an expert witness like Agent Semesky to guide them through the convoluted web of transactions which BURNSIDE arranged and conducted on Guerra's behalf.

Decisions of the Fifth and other federal Circuit Courts of Appeal establish clearly that such testimony is properly admitted. *See, e.g., United States v. Webster*, 960 F.2d 1301, 1308-09 (5th Cir.) (affirming admission of IRS agent's expert opinion that documents were evidence of money laundering), *cert. denied*, 113 S.Ct. 355 (1992); *United States v. Dotson*, 817 F.2d 1127, 1131 (5th Cir. 1987) (affirming admission of IRS agent's expert opinion in response to questions such as "What other items have you noted in the evidence, Agent Baker, that indicate an intent willfully to evade income taxes?").

Indeed, one Circuit has specifically affirmed the admission of Agent Semesky's expert testimony in precisely the same fields as will be presented in this case, even going so far as to mention Agent Semesky by name in the opinion; "we disagree with [defendant] that Semesky's testimony did anything more than is permitted by the Rules [of Evidence]". *United States v. Posters N Things*, 969 F.2d 652, 661, n.6 (8th Cir. 1992), *cert. granted* on other issues, *slip op.* U.S. 1993).

It bears emphasis that Agent Semesky's testimony will in no manner constitute an instruction to the jury on the law, for that is clearly the province of the court. Rather, Agent Semesky's

testimony will explain to the jury the logic of a given transaction or series of transactions in light of applicable legal rules and regulations, and will further illustrate where appropriate that the transactions would lack professional logic in the absence of such rules and regulations. While such an opinion does touch upon the law applicable to this case in some limited respect, it clearly does not *instruct* the jury on the law, but rather performs a very different function in suggesting to the jury how the *existence* of a regulation can lead a professional to deviate from what would otherwise be the regular practice of the profession. Such expertise is clearly helpful to the jury in understanding financial evidence, and clearly beyond the jury's lay capabilities.

The Fifth Circuit has explicitly approved the admission of such expert opinion even though it touches upon the law:

> "[A]n expert witness may not substitute for the court in charging the jury regarding the applicable law. . . . In the *context* in which this statement appears, however, . . . the statement is more amenable to interpretation as an *empirical observation* [than as] promoting a legal doctrine . . . The provinces of judge, jury and expert witness are not cartographically immutable and precise" Courts *must* accommodate to the expertise that the jury *must* receive from those who possess it. . . . the Court *was obligated* to see the bookmaker's lexicon made intelligible to those unlearned in the argot if not the art.

United States v. Milton, 555 F.2d 1198, 1203-04 (5th Cir. 1977) (emphasis supplied); *see also United States v. Fleishman*, 684 F.2d 1329, 1335-36 (9th Cir.)(citing *United States v. Milton, supra*, and *United States v. Masson*, 582 F.2d 961 (5th Cir. 1978), in which the court stated that "[t]he Fifth Circuit recognized the difference between a defendant's guilt or innocence and expert testimony regarding the various roles played by persons involved in illegal enterprises"), *cert. denied*,459 U.S. 1044 (1982); *United States v. Boney*, 977 F.2d 624, 631 ("Concluding that a defendant's actions . . . suggest that the defendant played a given role in a criminal enterprise is not the same as telling the jury . . . that the defendant is guilty as charged).

It also bears emphasis that Agent Semesky's testimony will not run afoul of Rule 704(b)'s admonition that "[n]o expert . . . may state an opinion or inference as to . . . the mental state or condition constituting an element of the crime charged."

First, Agent Semesky will not be asked to comment upon defendant BURNSIDE's state of mind, but rather to explain transactions which are consistent with money laundering techniques. As the Fifth Circuit has previously held under similar circumstances, such "testimony did not reach the ultimate issue of [defendant's] state of mind, but merely *highlighted the evidence* that would support such an inference by the jury . . . the focus . . . was on facts that might support the jury's acceptance of an inference of intent." *United States v. Dotson, supra,* 817 F.2d at 1131-32 (emphasis supplied); *see also United States v. Webster, supra*, 960 F.2d at 1308-09 (stating that IRS expert who testified that defendant's receipts supported charge of money laundering "did not testify as to [defendant's] mental state or condition, [and therefore] his testimony was admissible under Rule 704").

In short, Rule 704(b)'s proscription of expert opinion regarding the requisite *mens rea* of the charged offense is to be construed exactly as it reads and is not to be expanded to proscribe opinion stating certain facts exist which could *give rise* to inferences. *See, e.g., United States v. Dotson, supra*, 817 F.2d at 1132 (affirming admission of tax agent's expert opinion which "merely explained his analysis of the facts indicating willful evasion, and did not . . . embrace the ultimate question of whether [the defendant] did in fact intend to evade income taxes").

Stated differently, "[c]oncluding that a defendant's actions . . . suggest that a defendant played a given role in a criminal enterprise *is not the same* as telling the jury that the government has proved every element of its case." *United States v. Boney, supra*, 977 F.2d at 631.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that Agent Semesky be permitted to offer his expert opinion regarding the records and practices of accountant/defendant JAMES BURNSIDE.

E. Predicate Questions: Net Worth Evidence

1. Would you please state your name and business address for the record?
2. Where are you employed?
3. In what capacity are you employed?
4. How long have you been so employed?
5. What are your duties and responsibilities associated with that employment?
6. What training and education have you received in order to qualify you for your position?
7. Are you familiar with the term "net worth method?"
8. In your _____ years experience, approximately how many net worth method investigations have you conducted?
9. Would you please tell the judge and members of the jury what a net worth method is designed to do or show?
10. Have you ever been required to appear in court to testify in connection with your net worth investigations?
11. Which courts?
12. Have you ever been accepted as an expert witness in connection with your testimony in those courts?
13. How many times? (Offer the witness as an expert in forensic accounting.)
14. Would you explain to the judge and the jury how you go about making a net worth analysis?
15. Is there a formula by which you determine the net worth method? (See attachment, which can be blown up and utilized as an exhibit).
16. In undertaking a net worth analysis, typically what types of records do you rely on?
17. Did there come a time where you performed a net worth analysis regarding the defendant?
18. When did you begin to undertake your investigation/analysis?
19. What caused you to do so?
20. Would you tell the judge and members of the jury what types of records your relied on in performing your net worth analysis?

21. For what years did you undertake such an analysis?

22. According to State's Exhibit __ (the formula) what is the first thing you must determine and did you in fact do that for calendar year ____.

23. Please tell us the nature and type of assets that the defendant had for calendar year_____.

24. What was the respective value of each of those assets?

25. In setting a value for those assets, do you use cost or fair market value?

26. Why is cost used?

27. What was the total value of the defendant's assets based on their cost for calendar year_____.

28. Would you please tell us the nature/type of liabilities that the defendant had in calendar year _____.

29. What was the total of those liabilities for _____.

30. After you determined the defendant's total assets and liabilities for ___, were you able to determine his net worth?

31. What was his net worth for _____.

32. Referring once again to State's Exhibit ___, the net worth method formula, why is the prior year's net worth subtracted?

33. Did you in fact determine the defendant's net worth from calendar year ____ ?

34. What was the defendant's net worth for calendar year ___.

35. What was the increase in the defendant's net worth from calendar year ___?

36. According to the net worth method formula, what is the next line item to be considered?

37. What were the nature and amount of the defendant's personal expenditures for calendar year _____.

38. How did you determine those personal expenditures?

39. Did the defendant have any sources of non-taxable income in calendar year ___?

40. How are you able to determine that?

41. Why, according to the formula, is non-taxable income subtracted?

42. Were you then able to determine the defendant's adjusted gross income?

43. What was it?

44. Were you able to determine whether the defendant had any exemptions or deductions to subtract from his adjusted gross income?

45. How did you make such a determination?

46. What were the nature of the deductions and their respective dollar amounts?

47. To a reasonable degree of accounting certainty, were you able to determine a taxable income for the defendant for calendar year ___.

48. What was the defendant's taxable income?

49. What was the defendant's tax liability based on that income?

50. How was that computed/calculated?

51. As part of your investigation, did there come a time when you checked with the Comptroller's Office to determine whether or not the defendant filed a tax return?

52. I am showing you State's Ex. __, a certified copy of the defendant's 1994 tax return, (assuming that he filed one) do you recognize this document?

53. What, if any, amount did the defendant report as the source for that income?

54. What, if anything, did the defendant list as the source for that income?

55. Based on your net worth analysis, did the defendant overstate or understate the taxable income he reported?

56. And in your expert opinion, was the Defendant's understatement material or immaterial to determining his correct tax liability?

Net Worth Method

	TOTAL ASSETS
LESS	TOTAL LIABILITIES
EQUALS	NET WORTH
LESS	PRIOR YEAR'S NET WORTH
EQUALS	NET WORTH INCREASE
ADD	PERSONAL EXPENSES
LESS	NONTAXABLE INCOME
EQUALS	ADJUSTABLE GROSS INCOME
LESS	EXEMPTIONS & DEDUCTIONS
EQUALS	TAXABLE INCOME

F. Illustrative Partial Examination Protocol for a Money Laundering Expert Testifying About Money Laundering Structuring Schemes

1. Qualification of Expert
   a. How long have you been with law enforcement (elaborate, describe work history)?
   b. What are your current duties?
   c. Do your assignments include money laundering investigations (elaborate)?
   d. Describe your law enforcement experience and training pertaining to the investigation of money laundering. (Elaborate in detail, *e.g.*, training classes, investigations, working and talking with fellow officers experienced in money laundering investigations, etc.)
   e. Does such training and experience including talking to informants involved in money laundering about money laundering schemes (elaborate)?
   f. Does such training and experience include talking to persons who have been convicted of money laundering charges about money laundering schemes?
   g. Do you lecture on the subject of money laundering (elaborate)?
   h. Have you ever testified as an expert in a court of law in the area of money laundering (elaborate)?
   i. Are you familiar with the state laws pertaining to money laundering (elaborate)?

2. Questions concerning Money Laundering Structuring Schemes in General (Tailor Questions to Fit Facts in the Defendant's Case)
   a. Are you familiar with the term "structuring" as it relates to money laundering?
   b. What does the term mean: (Elaborate; at this time, if allowed, elicit a concise explanation of the federal regulations regarding a financial institution's obligation to file a Currency Transaction Report on a cash transaction with the institution in an amount in excess of $10,000.)
   c. What are some of the general indicators of a money laundering structuring scheme?
   d. Once the monies are deposited in the bank, does it usually stay there for an extended time, or is it transferred? (Question used to elicit testimony that in most structuring

schemes the initial deposits then expeditiously wire transferred to other accounts, often out of the country.)

e. Are there money laundering schemes which vary in terms of sophistication?

f. Can you give us some examples of money laundering schemes starting with the more basic and proceeding to the more complex?

g. As an investigator of a money laundering structuring scheme, what analysis do you undertake of the financial records? (Elicit testimony as to the tracing of the cash and the painstaking analysis of bank records.)

3. Facts of Defendant's Case

a. Did you have an opportunity to review the transcripts of officer A, B, and C's trial testimony in preparation for your testimony today?

b. Did you also have an opportunity to review X, Y, and Z bank account records, marked respectively as Exhibits 1, 2, and 3?

c. Based on Exhibits 1, 2, and 3, did you prepare any charts? (Mark as Exhibit 4 the chart showing dates, amounts, and denominations of cash deposits — Mark as Exhibit 5 chart showing wire transfers form bank account X records.)

d. Please explain how you prepared Exhibit 4.

e. Please explain what each of the columns set forth in Exhibit 4 mean. (Go through the same questions for Exhibit __.)

f. Does the series of deposits between ____ and ____ set forth in Exhibit __ indicate anything to you? (Elicit testimony that certain deposits/transactions are consistent with a money laundering structuring scheme.)

7. Does the wire transfer from bank account X to the _____ Bank as shown in Exhibit __ indicate anything to you? (Elicit testimony that bank account X was used as a clearing account for eventual transfer of funds overseas, all consistent with a money laundering scheme.)

8. What is your opinion, if any, as to the various transactions that you have testified about (recite in summary form), being consistent or inconsistent with a money laundering structuring scheme.

G. Illustrative Partial Examination Protocol for a Banking Expert/Custodian of Records Testifying About $3,000 to $10,000 Cash Logs, Currency Transaction Reports, Negotiation of a Check for Currency, and Wire Transfers

1. Qualification of Expert/Custodian of Records
   a. Inquire into witness's educational background.
   b. Witness's employment history relating to performing financial institution/banking functions.
   c. Current position—length of time—description of job duties.
   d. Specialized training in banking—focus on areas of training that correspond to banking activities that are the subject of your examination.
   e. Are you a lecturer in any areas of banking activities (elaborate)?
   f. Have you testified as an expert in a court of law in the area of banking (elaborate)?

2. Cash Purchase of Cashier's Checks, Traveler's Checks, Bank Checks and Money Orders Totaling $3,000 to $10,000 ($3,000-$10,000 Cash Log)
   a. Does your bank make a record of cash puchases of certain negotiable instruments between $3,000 and $10,000 (yes)?
   b. What is this record called? (Log for monetary instruments purchased with currency, also known as the $3,000 and $10,000 cash log.)
   c. Why is the log prepared by the bank? (Record required by federal law—31 U.S.C. section 5325; 31 C.F.R. section 103.29(a).)
   d. What type of negotiable instruments must be purchased by the customer? (Bank checks, cashier's checks, money orders, or traveler's checks) (see 31 C.F.R. section 103.29(a).)
   e. What information about the transaction is contained in the log? (Date of transaction, amount paid for in cash, type of negotiable instrument purchased; name, address, and description of identification document purchaser.)
   f. What sort of identification is required? (Depends on whether the customer is a deposit account holder of our bank or not — for an account holder the bank must verify that the customer is a deposit account holder by a signature card — for a

non-bank account holder verification of identity by a normally accepted identity document, such as a driver's license.)

g. Does the bank keep the $3,000-$10,000 logs on file (yes)?

h. Is Exhibit a true and accurate copy of a log showing a $5,000 cash purchase of a cashier's check on ____?

3. Currency Transaction Reports (CTR) (Cash Transactions In Excess of $10,000)

a. Does your bank make a record of cash transactions in excess of $10,000? (Yes)

b. What is the record called? (Currency Transaction Report)

c. Why is the currency transaction report prepared by the bank? (Required by 31 U.S.C. section 5313 and 31 C.F.R. section 103.22.)

d. What type of transaction must be recorded on a CTR form? (Each deposit, withdrawal, exchange, transfer or payment of currency in excess of $10,000 — wire transfers not recorded.)

e. Are multiple transactions ever treated as a single transaction for purposes of filing a CTR? (Multiple cash transactions on behalf of any person that results in cash in or cash totaling more that $10,000 in one business day can be treated as a single transaction; and number of $100 bills or higher used in the transaction)

f. What information is contained in a CTR? (Identifying information about the transactor and the person on whose behalf the transaction is being made; date, nature, and amount of transaction; and number of $100 or higher denominations used in the transaction.)

g. What sort of identification information is recorded? (Name, address, social security number, account affected, and description of identification document (*e.g.*, driver's license or alien registration card number used to verify identity).) (See 31 C.F.R. section 103.28)

h. Does your bank keep currency transaction reports on file? (Yes)?

i. Is Exhibit ___ a true and accurate copy of a currency transaction report concerning $30,000 in cash withdrawn from account number _____ on ____ from your bank?

4. Negotiation of Check For Cash At A Branch Where the transactor Does Not Have An Account

   a. Did you bring records from the _____ branch of _____ Bank with you today pursuant to a subpoena *duces tecum*? (yes)

   b. Do these records, marked as Exhibit __, concern account number ____ in the name of _____? (Yes)

   c. Is account number ___ a deposit account at your downtown branch? (No, the account is maintained at our _____ Branch.

   d. What is the procedure for negotiating a check for cash for a deposit account holder of another branch of_____ Bank? (The transactor must show the teller valid identification such as a driver's license. The teller writes the driver's license number and account number with the other branch on the back of the check.)

   e. Does the face of the negotiated check indicate what date it was negotiated and by what teller? (Yes, a teller stamp indicates the date and which teller handled the transaction.)

   f. What sort of records, if any, are kept by the bank to indicate that the check was negotiated for cash ? (Each teller has a cash in/cash out slip that shows how much cash was taken in and paid out each day. Copies of the underlining checks or other instruments negotiated by the customers for cash pay out are kept by the bank. A calculator tabulation of each of the cash pay-outs made by the teller is kept to support the aggregate daily cash out total entered in the cash in/cash out slip.)

5. Domestic Wire Transfer (Fedwire)

   a. How long have you worked at your bank's wire room? (Department of bank that sends and receives wire transfers)

   b. Approximately how many wire transfers does a wire room handle each banking day?

   c. What aggregate monetary value do the daily wire transfers represent?

   d. What system do you use to wire money from your bank to another bank located in the United States? (Fedwire—handles all domestic wire transfers.)

e. Who is Fedwire run by? (Federal Reserve Bank)

f. Can Fedwire transfers be made between a bank located in the United States and one located outside of the United States? (no)

g. What sort of receipt document is generated by a Fedwire transfer? (Copies of a computer generated receipt of the transaction are kept at the originating bank and ultimate beneficiary bank of the wire transfer as well as with the Federal Reserve.)

h. What information does the receipt contain? (The receipt should contain the date of transaction, amount of transaction, originating bank, name or originator (private person or company), name of beneficiary bank, name of beneficiary, beneficiary's account number, and bank-to-bank instructions.)

i. Are codes used on the Fedwire receipt? (Yes—key codes are: AC-account number, BNF-beneficiary; BBK-beneficiary's bank, ORG-originator; OGB-originator's bank; IBK-intermediary bank.)

j. Are there any other documents maintained by the bank concerning the wire transfer? (Yes—often an internal transaction log is kept which contains similar information to the Fedwire receipt as well as a transaction history (time, review and release, employees, computer terminals, etc.).)

k . Are there any other records of the wire transfer kept? Yes—an advice statement/ debit notification sent to the customer who originated the wire transfer—includes information about the transaction as well as the customer's bank account number that was debited by the value of the wire transfer. Our bank also maintains a wire transfer request form that is filled out when a customer requests a wire transfer by phone, fax, or in person. Additionally, we keep an incoming wire transfer log which contains the pertinent information about the wire transfer.)

6. International Wire Transfers (Chips)

a. How does your bank transmit funds to a foreign country? (Through the Chips System.)

b. What is Chips? (It stands for Clearing House Interbank Payment System. Chips is

owned by 12 New York banks.)

c. Describe Chips' procedure for transmitting funds abroad? (As a member bank of the Chips System, we send a payment order message to the central Chips computer. Chips authenticates the message and then sends a received message to the receiving bank (also a Chips member). The Chips System then automatically debits the sending bank's Chips account and credits the receiving bank's Chips account.)

d. Is Chips ever used where the originating bank and the recipient bank are both located outside of the United States? (Yes—where U.S. dollars is a currency being transferred, 98% of the transfers will be routed through New York via the Chips System.)

e. What information is contained in Chips messages? (Name of originator bank and sometimes originator, name of beneficiary bank and sometime beneficiary, date and amount of transaction.) (Note: as new wire transfer regulations take effect, this information will be the same as that shown for the Fedwire transaction on the preceeding page. *See* "New Rules Adopted for Regualtion of Wire Transfers and Casinos," NAAG *Financial Crimes Report*, Jan/Feb 1995 at 12-13. *See also* 31 C.F.R. Part 103.

H. Model Stipulation re: Report of International Transportation of Currency or Monetary Instruments

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. _____, Defendant	NO. SA CR 88-83-AHS STIPULATION RE: REPORT OF INTERNATIONAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS (CMIRs)

It is hereby stipulated and agreed by and between plaintiff, United States of America, through its counsel of record, and defendant _____, individually and through his counsel of record, as follows:

If called as witness, _____ and _____ would testify that:

1. They now are or previously were the custodians of all "Report of International Transportation of Currency or Monetary Instruments" (CMIR), Customs Form 4790, filed throughout the United States.

2. They conducted or caused to be conducted a diligent search of their files and indices, and did not locate any "Report of International Transportation of Currency or Monetary Instruments" (Form 4790) filed by (defendants and co-defendants between (year) and (year).

DATED: This ___ day of

Respectfully submitted,

Attorneys for Plaintiff
United States of America

I. Model Stipulation Re: Tax Returns

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	NO.
	)	
Plaintiff,	)	STIPULATION RE: TAX RETURNS
	)	
v.	)	
	)	
DANIEL JAMES FOWLIE,	)	
	)	
Defendant.	)	
	)	

Plaintiff, United States of America, by and through its counsel of record, and defendant _____, individually and through his counsel of record, hereby agree and stipulate that _____, if called as a witness, would testify as follows:

1. He/she is the custodian of records of the Internal Revenue Service.

2. He/she conducted or caused to be conducted a diligent search of the files and records of the Internal Revenue Service, and did not locate any federal income tax return filed by (defendant) _____ for the years _____.

DATED: This __ day of _____ .

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. DANIEL JAMES FOWLIE, Defendant.	NO. STIPULATION RE: CUSTOMS ARCHIVES RECORDS

Plaintiff, United States of America, by and through its counsel of record, and defendant _____, individually and through his counsel of record, agree and stipulate as follows:

1. United States Customs Service Archive Records show the (defendant or co-defendant) entered the United States at (entry point:state) on (date)_____ at (time) am/pm.

2. United States Customs Service Archive Records show that (defendant or co-defendant) entered the United States at (entry point:states) on (date)_____ at (time) am/pm.

3. United States Customs Service Archive Records show that (defendant or co-defendant) pre-cleared United States Customs in (entry point: state) on (date)

K. Model Stipulation Re: Testimony of Chemist

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. DANIEL JAMES FOWLIE Defendant.	NO. STIPULATION RE: TESTIMONY OF CHEMIST

Plaintiff, United States of America, by and through its counsel of record, and defendant _____, individually and through his counsel of record, hereby agree and stipulate that _____, if called as a witness, would testify as follows:

1. He/she is employed as a forensic chemist with _____, and has been so employed for _____.

2. He/she has a _____ degree in chemistry from (list credentials) _____.

3. In the course of his/her employment, he/she has examined over _____ items containing controlled substances, including approximately ___ items containing marijuana.

4. He/she has testified as an expert in approximately ___ cases in the municipal, superior and juvenile courts in the State of _____, and ___ case(s) in the United States District Court for the _____ District of _____.

5. On (date) _____, he/she examined Government Exhibits ___ and and determine that the residue on each of those exhibits contains (controlled substance identified) _____. He/she also examined Government Exhibit __ and determined that it contains _____.

L. Model Stipulation Re: Banque de Paris et Pays Bas N.V. Records

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	NO.
	)	
Plaintiff,	)	STIPULATION RE: BANQUE DE PARIS ET DES PAYS BAS N.V. RECORDS
	)	
v.	)	
	)	
DANIEL JAMES FOWLIE	)	
	)	
Defendant.	)	
_____	)	

IT IS HEREBY STIPULATED by and between plaintiff, United States of America and defendant _____ through their respective attorneys herein, as follows:

1. Government Exhibit __ is Banque de Paris business records as that term is used in Rule 803(6), Federal Rules of Evidence. The custodian of records of Banque de Paris is deemed to have been called as a witness and after having been sworn, to have testified as follows:

1. That Exhibit __ is the statements, deposit receipts, and other banking records for account number _____ in the account name of _____.

2. That Banque de Paris et des Pays Bas N.V. has changed its name to Banque Parisbas Netherlands B.V.

M. Memorandum of Points and Authorities in Support of Government's Motion to Present Evidence of Government Regulations Pertaining to Currency Transactions

I. INTRODUCTION

Special Agent Joseph Rowland of the Internal Revenue Service testified on April 5, 1991 to a series of three cashier's checks purchased on September 13 and 14, 1988 that totaled in excess of $10,000. The named payee of these casher's checks was an American Express Credit Card account in the name of Dan Fowlie.

Special Agent Rowland further testified to a series of four cashier's checks purchased with cash on November 25, 1988 that totaled in excess of $20,000. The named payee of the cashier's checks obtained in each of the above-refernced transactions was the same. The casier's checks we purchased at differerent banks.

II. ARGUMENT

31 U.S.C. Section 5313(a) (enacted as part of the Bank Secrecy Act of 1970) and the regulations thereunder (31 C.F.R. Section 103.22), require that a domestic financial institution, involved in a qualifying transaction for payment, receipt, or transfer of currency in excess of $10,000 dollars, file a currency transaction reprort (CTR) with the Internal Revenue Service.

The Secretary of the Treasury expressly determined that the currency transaction reports "have a high degree of usefulness in criminal, tax, or regulatory investigation or proceedings." 31 C.F.R. Section 103.21. A copy of the pertinent regulations (31 C.F.R. Sections 103.11, 103.21, 103.22) formulated by the Secretary of the Treasury is attached as Exhibit A hereto.

A copy of a currency transaction report (IRS Form 4789) is attached hereto as Exhibit B.

There is a strong inference form the pattern and nature of the series of cashier's checks obtained on September 13/14, 1988, and on November 25, 1988, that the persons obtaining the cashier's checks for payment to the account of Dan Fowlie's American Express card were

attempting to avoid the filing of the currency transaction reports with the Internal Revenue Service by the transacting financial institutions as required by 31 U.S.C. Section 5313(a) and the regulations thereunder. The filing of a currency transaction report would have disclosed on whose behalf a cashier's check in excess of $10,000 was obtained for. This pattern of financial transactions to avoid the reporting requirements was in furtherance of the conspiracy to distribute narcotics and launder narcotic proceeds as alleged in Count 1 of the indictment.

Special Agent Joseph Rowland should be allowed to testify about the applicable regulations pertaining to the filing of a currency transaction report, so that the jury can understand how these series of cashier's check transactions furthered the conspiracy to distribute narcotics and launder narcotic prceeds. Special Agent Rowland is expected to testify that, because of the currency transaction reporting regulations, cash purchases of individual cashier's checks at separate banks in amounts under the $10,000 threshold reporting requirement to pay obligations are consistent with a money laundering scheme to launder proceeds from an illicit enterprise, such as narcotic trafficking.

Rule 702 of the Federal Rules of Evidence provides that a witness qualified as an expert may testify in the form of opinion, or otherwise, concerning a matter where his specialized knoweldge "will assist the trier of fact to understand the evidence or to determine a fact in issue. . . ." The determinate factor for use of an expert is: "whether the untrained laymen would be qualified to determine intelligently and to the best possible degree the particular issue without enlightenment from those having a specialized understanding of the subject manner involved in the dispute." Fed. R.Evid. 702 advisory committee nores (citation omitted). The series of cashier's checks purchases can only be made understandable to the jury as an activity consistent with a money laundering scheme through Special Agent Rowland's testimony about the transactions in light of the applicable federal regulations.

A law enforcement expert can testify that a defendant's activities are consistent with the normal

practice of a particular criminal scheme. *United States v. Patterson*, 819 F.2d 1495, 1507 (8th Cir. 1987) (expert testimony on criminal narcotics distribution organizations and how they operate); *United States v. McCollum*, 802 F.2d 344, 346 (9th Cir.1986) (expert testimony regarding typical structure of mail fraud schemes); *United States v. Burchfield*, 719 F.2d 356, 357-58 (11th Cir. 1983) (expert testimony describing the *modus operandi* of counterfeit monies schemes). Furthermore, an expert's opinion (IRS Special Agent) in a money laundering case that the defendant's unexplained cash recipts were evidence of narcotics sales and gambling income is admissible under Rules 702 and 704 of the Federal rules of Evidence. *United States v. Webster*, 960 F.2d 1301, 1308-09 (5th Cir.) *cert. denied*, 113 S.Ct. 335 (1992).

Agent Rowland's testimony will be limited to a summary of the pertinent Bank Secrecy Act Regulations (31 C.F.R. Sectioons 103.11, 103.22) to give meaning to the cash purchases of a series of cashier's checks. His testimony is not intended to be a substitute for any proper jury instruction or otherwise meant to act as a jury instruction. However, the Ninth Circuit Court of Appeals has upheld a trial court's decision to allow the expert testimony of an FDIC Bank Examiner concerning a bank regulation in lieu of a jury instruction explaining the regulation in a complex bank fruad case. *United States v. Unruh*, 855 F.2d 1363 (9th Cir. 1987), *cert. denied*, 488 U.S. 974 (1988).[1] The Circuit Court of Appeals held that the trial court's decision was justified "by the aid that it gave the jury in understanding other evidence presented as part of the prosecution's case." (*Id.*, at p 1376.)

III CONCLUSION

For the foregoing reasons, the government respectfully requests that Special Agent Joseph Rowland be allowed to testify about the regulations pertatining to currency transaction reports in order to aid the jury's understanding of the series of cash purchases of cashier's checks.

[1] As a general rule, lawis given by the court and not introcuced as eviedence. Cooley v. United States, 501 F.2d 1249, 1253-54 (9th Cir. 1974), *cert. denied* 419 U.S. 1123 (1975).

CHAPTER SIX — VOIR DIRE OF A MONEY LAUNDERING PROSECUTION

CHAPTER SIX: VOIR DIRE OF A MONEY LAUNDERING PROSECUTION[1]

Anyone you are reading this section does not have to be told that the trial of a money laundering case to a jury, like any other "financial crime," presents challenges that are not present in other types of criminal prosecution. This author has never seen a bloody photograph of a safety deposit box or a scintillating videotape of the interior of an accountant's office. If anyone has seen such, he should read no further (and I'd like to sit second chair). If not, here are some brief thoughts intended to assist prosecutors in obtaining a jury that is both prepared and eager to hear the evidence. Well, at least prepared.

First, and maybe foremost, the porosecutor should be upbeat about his case. He shouldn't apologize for it being a "dull paper case," or make similar disparaging remarks. Appearing enthusiastic, the prosecutor should tell the jury panel that he is pleased to present this interesting and important case to them. This salesmanship actually works and needs to begin when first counsel is introduced to the panel. Depending on how the jurisdiction allows for it, a prosecuto might introduce witnesses as if they were about to speak at a seminar. The physical nature of the evidence should be described in glowing terms and the care with which it was obtained and how much information it contains be detailed. The term "smoking gun" may come to mind while discussing a panelist's understanding of the function of a wire transfer instruction or the minutes of a director's meeting. Use of such "violent crime" analogies will begin to impress upon the jury the serious nature of a money laundering offense.

Where allowed some free range, a prosecutor's voir dire can also serve as the introductory portion of the opening statement. You will be prepared, of course, to discuss the type of crime and the punishment alternatives where applicable. As you do this, talk with individual panelists and explore their feelings about this crime; while few of your panelists will have dealt firsthand with a money launderer, they certainly will have had some experience with some type of financial

[1] This chapter was written by Don Clemmer, Chief, Financial Crimes Division, and Brian Johnson, Chief, Money Laundering Prosecution Section, Office of the Attorney General of Texas.

fraud. Almost everyone has had a brush with a swindler or a sharpie, and a discussion of this with some more vocal members of the panel can be useful before trial begins, even if some of the them are struck by the defense.

In any money laundering case the prosecution will have to prove some sort of underlying criminal activity. Even if the indictment sounds dry when the prosecutor reads it to them, the panel ought to perk up when he begins discussing "dope dealers," "extortionists," "gangsters," or a fellow who "torched" his restaurant. Stress and repeat the underlying crime as often as possible, and emphasize that the trial at hand is really about combatting that type of crime and its resultant monetary fruits.

Because successful money laundering investigation almost always includes seizure of assets, one must discuss, and even elicit, negative comments from panelists who have been exposed to negative publicity concerning seizure and forfeiture. One television news magazine episode or one headline in the local newspaper can leave the public with the impression that all forfeitures are unfair. This can point out jurors to be struck, but it can also serve to begin a discussion of the contrasts between this case and the particular media-embossed horror story someone recalls. Do not be ashamed of your forfeiture law. Before telling them how the statute works, ask jurors what they think ought to happen to assets gained from illegal activity. A large majority will say they should be confiscated and used as restitution or returned to legitimate society in some way. Then explain how the statute handles forfeited property and stress its further use by law enforcement agencies to fight future crimes, like buying more bullet-proof vests and such. Be prepared to cite some specific examples of this: in the author's jurisdiction (Texas), forfeited funds were used to purchase a $4 million automated fingerprint system that daily nabs more crooks and parole violations at no taxpayer expense. Juries think that is an excellent way to spend funds that previously belonged to criminals. Stress the due process and fairness that gives the defendant his day in court, and that makes the state show up and prove, through credible evidence, that the property should be forfeited.

It is vital, of course, to explain what money laundering is. Ask a juror or two how they think a narcotics dealer is able to put to use the money he makes. Through this question begin to educate the panel on how the massing of large quantities of cash is actually a hinderance to the criminals and how they must convert the cash or remove it from the country in order to use it. Let them understand how a launderer is necessary in order to make the underlying crime really profitable. Ask the entire panel, a little facetiously perhaps, "how many of you folks pay taxes?" Begin to educate them on how a money launderer has a free ride with the benefit of cash being brought to him for which there is no true labor or benefit to the local economy. You are looking to end up with a jury that works for a living, supports a family, perhaps, pays taxes, has to finance their car or house, and can probably remember the few times they had over $500 in their wallet. In other words, people who play by the rules as opposed to your defendant.

Make certain you discuss with jurors how they, as typical members of the community, handle their own financial transactions. Do they make large cash deposits in their accounts or are they paid by check? Have they ever had to wait at their bank while the teller filled out a CTR? Have they ever had to wait at a customs checkpoint while a customs agent completed a CMIR? Do they transport large amounts of cash for their business associates? Of course, if a panelist answers "yes" to any of these questions, use a strike and call for a drug dog.

Often the defendant will have a nice appearance, a competent and presentable attorney, a family, possibly a professional license, such as in accountancy or law, and no priors. What's worse, the victim is the government. Look for jurors who will agree with you that there are no "victimless crimes." Emphasize the manner in which the money launderer makes narcotics trafficking possible and that, without such people, the supply of narcotics would slowly dry up. Especially in cases where your defendant is a professional, point out how he has used his special training to the detriment of society; that he is as blameworthy as the street-level dealer for the addicts, crack babies, and drug-related crimes plaguing the community.

It is often a good strategy to look for people who occupy positions similar to the defendant, people who have held jobs for years without selling out for the easy dollar. You are looking for jurors who occupy positions of trust in their careers. Look for a juror who will understand your evidence, such as an accounts receivable clerk or bookkeeper who will see through the defendant's attempts to explain away documentary evidence as "accounting errors" or "standard business practice." Always look for a supervisor of other employees, managers, or especially personnel/human resource department supervisors who have probably dealt with dishonest individuals in the workplace.

If they can survive strikes by the defense, bankers and other financial professionals will probably have received some training or warnings concerning the recognition of money laundering traits, and be aware of the "know your customer" obligations and the reporting requirements for certain transactions. Even if the veniremen is later struck, it may be advantageous to enter into a discussion of their experience in front of the entire panel.

If your indictment charges individual crimes aggregated into one continuous scheme over a period of time, discuss that with the panel in order to set up part of your final argument for punishment. A white-collar crime defendant may not have priors, in the usual sense of convictions, but, if he or she has laundered money on 100 occasions over the last two years, then you should treat the first instance as his initial crime and the other 99 as subsequent offenses.

And, last, but not least, a simple, but effective tactic is to translate criminal legalese into real spoken English, early and often, with your panel while your inquire as to their personal experiences, possible prejudices and understanding of the law. This means that a phrase such as "secure by deception" becomes "cheat." "Created a false impression of fact" becomes "lie." "With purposeful concealment" becomes "hide." And most importantly, "appropriate without the consent of the owner" becomes "steal." If your defendant lied, cheated and stole, then use those words to describe his conduct to your jury panel and continue throughout the trial. The jurors will probably appreciate the literal transaction.

May all your panels be bright, alert and made of retired bank officers.

CHAPTER SEVEN — MODEL JURY INSTRUCTIONS

CHAPTER SEVEN — MODEL JURY INSTRUCTIONS

A. INTRODUCTION

The jury instruction contained herein are based upon the substantive law contained in the Model Money Laundering Act (MMLA) and the Model Financial Transaction Reporting Act (MFTRA). The instructions are designed as an illustration which can be used in drafting instructions based upon existing statues enacted in each jurisdiction.

B. MODEL MONEY LAUNDERING ACT REQUESTED JURY DEFINITIONS

1. State's Requested Jury Instruction No. MMLA § 4(A)

"Proceeds" means property or an interest in property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission, and includes any property of any kind.

Proceeds can be any kind of property, not just money. It can include personal property, like a car or a piece of jewelry, or real property, like an interest in land. For example, if someone robs a bank, the money he takes from the teller is the proceeds of the bank robbery. If someone steals a car, the car is the proceeds of the theft. And if someone commits a sophisticated fraud scheme and thereby acquired an interest in land, or shares of stock, or a joint interest in a bank account, that interest, whatever it may be, is the proceeds of the crime. Along the same lines, if someone sells drugs for cash, the cash received is the proceeds of the crime; additionally, if someone takes those cash proceeds and changes them from cash to check, the check is still proceeds of the crime.

2. State's Requested Jury Instruction No. MMLA § 4(B)

"Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim or right with respect to anything of value, whether real or personal, tangible or intangible.

3. State's Requested Jury Instruction No. MMLA § 4(C)

"Specified Unlawful Activity" means any act, including any attempt or completed offense, committed for financial gain that is punishable as a felony or by confinement for more than one year under the laws of this state, or, if the act occurred outside of this state, would be so punishable under the laws of the state in which it occurred.

4. State's Requested Jury Instruction No.MMLA § 4(D)

"Transaction" means a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

5. State's Requested Jury Instruction No. MMLA § 4(E)

Knowing Property Represents Proceeds of Some Form of Unlawful Activity

The term *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 chargeable or indictable crime of any degree or class. Thus, the State need no prove that the defendant specifically knew that the [property/funds/monetary instruments] involved in the financial transaction represent the proceeds of [specify predicate offense] or any other specific offense; it need only prove that the [he/she] knew that [it/they] represented the proceeds of some form, though not necessarily which form, of criminal activity under state or federal law.

In this case, it is the government's theory that the defendant knew that the proceeds were derived from [specify offense].

I advise you that [specify offense] is a crime under [specify state, federal or foreign] law.

1. State's Requested Jury Instruction No. § 5(a)(1): Elements of the Model Money Laundering Act

Count ___ of the indictment charges the defendant with a violation of the Model Money Laundering Act § 5(a)(1).

There are four elements to Count ___ of this indictment which the State must prove:

FIRST, the defendant must knowingly conduct or attempt to conduct a financial transaction; or

FIRST, the defendant must knowingly transport or receive or acquire the property, or attempt to transport, receive or acquire the property.

SECOND, the defendant must know that the property involved in the financial transaction represents the proceeds of some form of unlawful activity;

THIRD, the property involved in the financial transaction must, in fact, involve the proceeds of specified unlawful activity; and

FOURTH, the defendant must engage in the financial transaction with the intent to promote the carrying on of specified unlawful activity.

2. Elements of the MMLA § 5(a)(2)

There are two elements to Count ___ of this indictment which the State must prove:

FIRST, the defendant must knowingly make property available to another by transaction, transportation or otherwise, or attempt to make property available to another;

SECOND, the defendant must know that the property is intended to be used for the purpose of committing or furthering the commission of specified unlawful activity.

3. Elements of the MMLA § 5(a)(3)

There are four elements to Count _____ of this indictment which the State must prove:

FIRST, the defendant must knowingly conduct or attempt to conduct a financial transaction;

SECOND, the defendant must know that the property involved in the financial transaction

represents the proceeds of some form of unlawful activity;

THIRD, the property involved in the financial transaction must, in fact, involve the proceeds of specified unlawful activity; and,

FOURTH, the defendant must engage in the financial transaction knowing that the transaction is designed, in whole or in part, to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

FOURTH, the defendant must engage in the financial transaction knowing that the transaction is designed in whole or in part to avoid a transaction reporting requirement under state or federal law, [specifically reporting requirement alleged to have been violated].

4. Elements of the MMLA § 5(a)(4)

There are three elements to Count ____ of the indictment which the State must prove:

FIRST, the defendant must knowingly engage in the business of conducting, directing, planning, organizing, initiating, financing, managing, supervising, or facilitating transactions involving the property;

SECOND, the defendant must know the property involved in the transaction is the proceeds of some form of unlawful activity:

THIRD, the property involved in the financial transaction must, in fact, involve the proceeds of specified unlawful activity.

1. Conducts

The term *conducts* includes initiating, concluding, or participating in initiating, or concluding a transaction.

2. Transports, Transmits or Transfers

The term *transports, transmits, or transfers* includes all means of carrying, sending, mailing, shipping or moving funds. Thus, it includes the electronic transfer of funds by wire or other means as well as other non-physical means of transferring funds. It also includes physical means of transferring funds such as carrying money across the border.

3. Intent to Promote the Carrying on of the Specified Unlawful Activity (SUA)

The term *with the intent to promote the carrying on of specified unlawful activity* means that the defendant must have conducted or attempted to conduct the transaction or to transport, receive or acquire the property, or disguise the nature, location, source, ownership or control of the property, for the purpose of promoting (that is, to make easier, facilitate or to help bring about) the carrying on of one of the crimes listed as specified crimes within the statute. By carrying on crime, it may be that the crime to be carried on is one that will be committed in the future, or it may be a crime already committed, or a crime that is still underway or ongoing that the defendant intended to continue or complete.

The crime the defendant intended to promote, of course, must be one of the crimes listed in the statute as specified unlawful activity. I instruct you that [specify the SUA intended to be promoted] is a specified unlawful activity within the definition section of the statute.

4. Knowledge Requirement (Sting)

a. Additional Elements

The state is entitled to prove the defendant's knowledge (that is, that the defendant violated this statute knowingly) by proof that a law enforcement officer represented as true any of the elements required to be proven and that the defendant's subsequent statements or actions indicate that the defendant believed such representation to be true.

Thus, it makes no difference whether the property transported, transmitted or transferred or attempted to be transported, transmitted or transferred is actually derived from criminal activity. It could be money provided by an undercover government agent in the course of an undercover investigation. Where the money came from does not matter. What matters is that the undercover agent represented the money as having come from some form of unlawful activity and that the defendant, by his subsequent statement or actions, believed the representation to be true.

The term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, an officer authorized to investigate or prosecute violations of this section.

5. Defendant Not Perpetrator of SUA Offense

It does not matter whether or not the person who committed the underlying crime, and thereby acquired or retained the proceeds, was the defendant. As I have said, it is a crime under the Money Laundering Statue to [conduct a financial transaction] [transport, transmit or transfer monetary instruments or funds] involving property that is the proceeds of a crime, even if that crime was committed by another person, as long as all of the elements of the offense are satisfied.

6. Tracing Not Required

The State is nor required to trace the property it alleges to be proceeds of specified unlawful activity to a particular underlying offense. It is sufficient if the State proves that the property was the proceeds of specified unlawful activity generally. For example, in a case involving the laundering of alleged drug proceeds, the State would not have to trace the money to a particular drug offense, but could satisfy the requirement by proving that the money was the proceeds of drug trafficking generally.[1]

[1]*See* United States v. Blackman, 904 F.2d 1250 (8th Cir. 1988); United States v. Banco Cafetero Panama, 797 F.2d 1154 (2d Cir. 1986).

7. Conscious Avoidance of Specified Knowledge

In determining whether any defendant had knowledge of a particular matter, you may consider whether the defendant closed his or her eyes to the facts which should have prompted him or her to investigate. Specific knowledge may be inferred when a person knows other facts that would induce most people to acquire the specific knowledge in question. Thus, if someone refuses to investigate an issue that cries out for investigation, it may be presumed that he or she already "knows" the answer an investigation would reveal, whether or not he or she is "certain." By giving this instruction, this does not constitute any comment by the Court on the weight of the evidence. The Court is not suggesting that there is or is not conscious avoidance of knowledge. You are the sole judges of all of the facts.

E. MFTRA Definitions

1. "Authorized delegate" means a person designated by the licensee under Section 10 of the [Model Money Transmitter Licensing and Regulation Act].

2. "Check cashing" means exchanging for compensation a check, draft, money order, traveler's check or a payment instrument of a licensee for money delivered to the presenter at the time and place of the presentation.

3. "Compensation" means any fee, commission or other benefit.

4. "Conduct the business" means engaging in activities regulated under the [Model Money Transmitter Licensing and Regulation Act] [more that ten (10) times in any calendar year] for compensation.

5. "Foreign money exchange" means exchanging for compensation money of the United States government or a foreign government to or from money of another government at a conspicuously posted exchange rate at the time and place of the presentation of the money to be exchanged.

6. "Licensee" means a person licensed under the [Model Money Transmitter Licensing and Regulation Act].

7. "Location" means a place of business at which activity regulated by the [Model Money Transmitter Licensing and Regulation Act] occurs.

8. "Money" means a medium of exchange authored or adopted by a domestic or foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance.

9. "Money transmitter" means a person who is located or doing business in this state, including a check casher and a foreign money exchanger, and who:

(a) sell or issues payment instruments;

(b) conducts the business or receiving money for the transmission of or transmitting money;

(c) conducts the business of exchanging payment instruments or money into any form of money or payment instrument;

(d) conducts the business of receiving money for obligors for the purpose of paying that obligor's bills, invoices or accounts; or

(e) meets the definition of a bank, financial agency or financial institution as prescribed by 31 U.S.C. Section 5312 or 31 C.F.R. Section 103.11 [and any successor provision].

10. "Payment instrument" means a check, draft, money order, traveler's check or other instrument or order for the transmission or payment of money, sold to one or more persons, whether or not that instrument or order is negotiable. "Payment instrument" does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher or a letter of credit.

11. "Proceeds" means property acquired or derived directly or indirectly from, produced through, realized through,or caused by an act or omission and includes and property of any kind.

12. "Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim or right with respect to anything of value, whether real or personal, tangible or intangible, without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

13. "Superintendent" means the superintendent of banks [insert proper title official].

14. "Transaction" includes a purchase, sale, trade, loan, pledge, investment, gift transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of any monetary instrument, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

15. "Transmitting money" includes the transmission of money by any means including transmission within this country or to or from locations abroad by payment instrument, wire, facsimile or electronic transfer, courier or otherwise.

16. "Traveler's check" means an instrument identified as a traveler's check on its face or commonly recognized as traveler's check an issued in a money multiple of United States or foreign currency with a provision for a specimen signature of the purchaser to be completed at the time of purchase and a countersignature of the purchaser to be completed at the time of negotiation.

F. MFTRA Elements

1. MFTRA § 4 and § 5(h)

All persons engaged in a trade or business who receive more that $10,000 in money in one transaction, or who receive more that $10,000 in money through two or more related transactions, must complete and file with the attorney general the information required by 26 U.S.C. Section 6050I and C.F.R. Section 1.6050I, [and any successor provisions,] concerning returns relating to cash received in trade or business.

2. MFTRA § 4 and § 5(h)(2)

Count ___ of the indictment charges the defendant with a violation of the financial Transaction Reporting Act §5(h).

There are four elements to Count ___ of this indictment which the State must prove.

The essential elements required to be proven beyond a reasonable doubt in order to establish this offense are as follows:

FIRST, that the defendant knew of a trade or business's duty to report currency transactions in excess of $10,000;

SECOND, that the defendant knowingly furnished or provided false, inaccurate, or incomplete information, or

THIRD, the information was provided from the defendant to licensee, authorized delegate; money transmitter; financial institution; person engaged in a trade or business; or any officer, employee, agent or authorized delegate of any of them; or to the attorney general;

FOURTH, the defendant intended to disguise the fact that the money or payment instrument is the proceeds of criminal conduct; or

FOURTH, the defendant intended to promote, manage, or carry on, or to facilitate the promotion, management, establishment or carrying on, of any criminal conduct.

G. MFTRA Optional Instructions

1. MFTRA § 5 Avoiding A Reporting Requirement

a. Knowledge

The defendant has also been charged with violating FTRA § 5, which requires knowledge that the transaction or attempted transaction was designed in whole or in part to avoid a transaction reporting requirement. In this case, defendant is charged with engaging in transactions knowing that such transactions were designed in whole or in part to avoid the reporting requirements of [state and/or federal] law.

Knowledge of the defendant's purpose to avoid the reporting requirement may be established by proof that the defendant actually knew that the transaction was designed in whole or in part to avoid the reporting requirement; or knew because he willfully blinded himself or was purposefully ignorant to the fact that the transaction was designed in whole or in part to avoid the reporting requirement. Additionally, a person who intentionally subdivides a transaction into a series of transactions by dividing a lump sum of money into smaller amounts under the $10,000 reporting requirement for no legitimate business reasons, through one or more financial institutions or persons engaged in a trade or business, could be said to have known that this was done for the purpose of avoiding the reporting requirement.