United States v. McDougald: The Anathema
To 18 U.S.C §1956 And National Efforts
against Money Laundering

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United States v. McDougald: The Anathema To 18 U.S.C §1956 And National Efforts against Money Laundering

Mathew Paulose Jr.

Abstract

This Comment argues that the Sixth Circuit should overrule McDougald. Part I discusses the purpose, process, and problems of the crime generally known as money laundering. Part I also discusses national efforts against money laundering, and in particular, the United States’ efforts through Section 1956 of the Money Laundering Control Act. Part I concludes by discussing the Salinas-Citibank Affair and the probable prosecution of Citibank for money laundering violations. Part II reviews the Sixth Circuit’s line of cases leading up to and including the McDougald decision. Part II also contrasts McDougald by reviewing the decisions of the United States Court of Appeals for the Third and Fourth Circuits in United States v. Carr and United States v. Campbell, respectfully, both of which addressed the same issue as McDougald but differed in their interpretations of Section 1956. Part III argues that the Sixth Circuit should overrule its decision in McDougald. The Court’s holding is in direct conflict with the plain meaning of the statute as well as the statute’s legislative intent. The Court’s holding is also in conflict with the international community’s efforts against money laundering. Finally, overruling McDougald will prevent misapplication of Section 1956 in future cases, such as the case that will most likely be born out of the Salinas-Citibank Affair.

Mathew Paulose Jr.*

INTRODUCTION

On June 3, 1996, the United States Justice Department ("Justice Department") opened an investigation into what has become known as the most sweeping investigation of its kind.1 The investigation involves Citibank North America ("Citibank") and an inquiry into whether it knowingly accepted, deposited, and disseminated more than US$100 million in allegedly illegitimate income belonging to Raul Salinas de Gortari, the brother of former Mexican president, Carlos Salinas de Gortari ("Salinas-Citibank Affair").2 If the inquiry proves true, the Justice Department will charge Citibank for money laundering, in violation of section 1956(a)(2)(B)(i) ("Section 1956") of the Money Laundering Control Act.3

* J.D. Candidate, 1998, Fordham University. This Comment is dedicated to my family for their unconditional support and encouragement.

1. Anthony DePalma & Peter Truell, A Mexican Mover and Shaker Got the Red Carpet at Citibank, N.Y. TIMES, June 5, 1996, at A1; see Salinas Case has Ramifications for Citicorp's Legal Obligations, SUN-SENTINEL, Dec. 5, 1996, at 3D (stating that Citibank probe is "most sweeping investigation of its kind").

2. Laurie Hays, Citibank Cop was Kept Off Salinas Probe, WALL ST. J., June 11, 1996, at A3; DePalma & Truell, supra note 1, at A1. At the time of the investigation, Citibank was the second largest bank in the United States. Salinas Case has Ramifications for Citicorp's Legal Obligations, supra note 1, at 3D. Citibank currently moves US$98 trillion a year through 97 countries. Hays, supra, at A3.


Money laundering is the process by which a person or institution conceals the existence, source or application of illegal income, and then disguises that income to make it appear legitimate. INTERIM REPORT ON ORGANIZED CRIME, INTERIM REPORT TO THE PRESIDENT AND THE ATTORNEY GENERAL, THE CASH CONNECTION: ORGANIZED CRIME,
Section 1956,⁴ prohibits a person or institution from transporting, internationally, illegitimate income knowing the income represents proceeds from some form of unlawful activity, and knowing the transportation was designed to disguise some aspect of the proceeds, such as its source.⁵ The section possesses two mens rea requirements,⁶ both of which are knowledge.⁷ In


(a)(2) [w]hoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity . . . shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both.

Id.

5. Id.


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Id.

5. Id.

6. Section 1956, a criminal statute, consists of elements. Id. Elements are those constituent parts of a crime which prosecutors must prove beyond a reasonable doubt to sustain a conviction. Com. v. Burke, 457 N.E.2d 622, 624 (Mass. 1990); BLACK'S LAW DICTIONARY 520 (6th ed. 1990) [hereinafter BLACK'S]. Constituent parts may be categorized as actus reus, causation, and mens rea. Id. Mens rea is defined as the element regarding the requisite guilty mind or criminal intent of the accused. Id. at 985.
the context of the Salinas-Citibank Affair, a charge of Section 1956 will require the Justice Department to prove that Citibank transported Raul Salinas's money knowing the money represented the proceeds of some form of unlawful activity, and knowing that the transportation was designed to disguise some aspect of the money, such as the money's source.⁸

Notwithstanding the difficulty of proving two mental states,⁹ the Justice Department will encounter an additional issue. In 1993, the United States Court of Appeals for the Sixth Circuit ("Sixth Circuit") in United States v. McDougald¹⁰ used language interpreting Section 1956's first mens rea requirement as requiring knowledge of a specific unlawful activity, rather than some form of unlawful activity.¹¹ The case dealt with the prosecution of Bobby McDougald, a retired army sergeant, who had purchased a new car for a convicted drug dealer using US$10,000 of the drug dealer's money.¹² The Justice Department successfully convicted McDougald under Section 1956, but was reversed on appeal.¹³ The Sixth Circuit held that the Justice Department had failed to prove McDougald knew the US$10,000 represented proceeds of a specific unlawful activity, which in the case the Court emphasized was drug trafficking.¹⁴

The McDougald holding is in direct conflict with the plain meaning of the statute and the statute's legislative history.¹⁵ And although the Sixth Circuit has retreated to a certain extent from its decision,¹⁶ it has yet to overrule McDougald. This Comment

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7. 18 U.S.C. § 1956(a)(2)(B)(i). "Knowledge" is defined as the acquaintance with fact or truth. People v. Henry, 72 P.2d 915, 921 (Cal. App. 1990); BLACK'S, supra note 6, at 872. "When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence." Id.
10. 990 F.2d 259 (6th Cir. 1993).
11. Id.
12. Id. at 260-61.
13. Id.
14. Id. at 262-63.
15. 18 U.S.C. § 1956; see United States v. Carr, 25 F.3d 1194, 1204 (3d. Cir. 1994) (holding that requisite mens rea element is satisfied if it is established that defendant knew he was carrying funds representing proceeds of some form of unlawful activity).
16. See United States v. Bencs, 28 F.3d 555, 562 (6th Cir. 1994) (distinguishing
argues that the Sixth Circuit should overrule *McDougald*. Part I discusses the purpose, process, and problems of the crime generally known as money laundering. Part I also discusses national efforts against money laundering, and in particular, the United States's efforts through Section 1956 of the Money Laundering Control Act. Part I concludes by discussing the Salinas-Citibank Affair and the probable prosecution of Citibank for money laundering violations.

Part II reviews the Sixth Circuit's line of cases leading up to and including the *McDougald* decision. Part II also contrasts *McDougald* by reviewing the decisions of the United States Court of Appeals for the Third and Fourth Circuits in *United States v. Carr* 17 and *United States v. Campbell*, 18 respectfully, both of which addressed the same issue as *McDougald* but differed in their interpretations of section 1956.

Part III argues that the Sixth Circuit should overrule its decision in *McDougald*. The Court's holding is in direct conflict with the plain meaning of the statute as well as the statute's legislative intent. The Court's holding is also in conflict with the international community's efforts against money laundering. Finally, overruling *McDougald* will prevent misapplication of section 1956 in future cases, such as the case that will most likely be born out of the Salinas-Citibank Affair.

I. BACKGROUND

Money laundering is an international problem demanding an international response. 19 Traditionally, national efforts in the international field have focused on combating money laundering solely in connection with drug trafficking. 20 Recently international efforts have diverged from the traditional view and have now focused on combating money laundering in connection with all major crimes. 21 The United States led the new approach

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*McDougald* on grounds that it only applied "where evidence of defendant's knowledge . . . was as consistent with innocence as with guilt.")

17. 25 F.3d 1194 (1994).
21. Id. at x.
with Section 1956, considered one of the most powerful anti-money laundering statutes in the world. With the Department of Justice's investigation into Citibank, section 1956 will once again be under scrutiny.

A. Money Laundering

Money laundering is the process by which one conceals the existence, source, or use of illegitimate income, and then disguises that income to make it appear legitimate. The purpose

It has become clear that organized crime needs to be fought on all fronts. The criminalization of and fight against the proceeds derived from all kinds of offenses has become a necessity. The criminal should not be permitted to profit from his crime, be it a drugs trafficker, terrorist, illegal arms trader or a trafficker of children.

Id.

22. Amy G. Rudnick, United States, in GUIDE TO MONEY LAUNDERING, supra note 19, at 236.


24. See BLACK'S, supra note 6, at 747 (defining "illegitimate" as "[t]hat which is contrary to law."). "Illegitimate income" is used here and throughout the Comment to define income derived from transactions contrary to law, such as racketeering, bribery, and narcotics trafficking. INGO WALTER, SECRET MONEY 407 (1985); see Annual Meeting of the American Corporation Counsel Assoc., Money Laundering: What it is and How to Counter it, 14 ACCA DOCKET 28, 29 (1996) (hereinafter Money Laundering) (using "criminal proceeds" in place of "illegitimate income"); BLACK'S, supra note 6, at 884 (defining "laundering" as "[t]erm used to describe investment or other transfer of money flowing from racketeering, drug transactions, and other illegal sources ... ").

25. INTERIM REPORT, supra note 3, at 7. The term "money laundering" has an uncertain origin. See CHARLES A. INTRAGO, INTERNATIONAL MONEY LAUNDERING 1 (1991) (discussing origins of term). Although recently considered commonplace, the term predates to biblical times. See id. (quoting Acts 5, Verses 1 through 11 of the Bible).

Today, money laundering has been defined in a number of ways. See, e.g., HERBERT E. ALEXANDER & GERALD E. CAIDEN, THE POLITICS AND ECONOMICS OF ORGANIZED CRIME 39 (1985) ("[T]he process of converting quantities of cash — generally currency that has been tainted in some way — to a form that can be used more conveniently in commerce and usually conceals the origin of converted funds."); Kirk W. Munroe, Surviving the Solution: The Extraterritorial Reach of the United States, 14 Dick. J. Int'l L. 505, 508 (1996) ("[T]he cleansing of money earned from an illegal business to appear to be a product of a lawful business."); Nicholas Clark, The Impact of Recent Money Laundering Legislation on Financial Intermediaries, 14 Dick. J. Int'l L. 467, 469 (1996) ("[T]he process by which the proceeds of crime or fraud are made to appear as if they have emanated from a legitimate source."); Scott E. Mortman, Note, Putting Starch in European Efforts to Combat Money Laundering, 60 Fordham L. Rev. S429, S429 (1992) ("[T]he process of using legitimate institutions to conceal the source of illegitimate gains."). As one author states, the "goal of every criminal enterprise is to 'get away clean.' Money laundering hides the trail of illegal profits and thus aids the 'getaway.'" Mathew B. Comstock,
of money laundering is to free the illegitimate income’s use in the legitimate economy. Money laundering is estimated to legitimize US$500 billion each year.

1. The Purpose of Money Laundering

Money laundering is an indispensable element to most criminal operations. By disguising the existence, source, and use of criminally derived income, money laundering liberates the income for use in the legitimate economy. Liberated income, in turn, assists the criminal operations to continue their particular operation or fund new operations. Absent the money laundering process, criminal operations could function only at a fraction of current levels.

29. Alford, supra note 26, at 439; see Comstock, supra note 25, at 140 (stating that “money laundering empowers crime.”); Money Laundering, supra note 24, at 29 (stating that once a criminal’s income is disguised, “the criminal can enjoy the profits.”).
31. Kaufman, supra note 25, at 794. Combating money laundering, therefore, has become one of the primary methods used by law enforcement authorities to reduce criminal operations. Clark, supra note 25, at 469.

Originally, these [authorities] fought organized crime by seeking to imprison those at its heart. This was ineffective and thus asset forfeiture was viewed as the key to combating such crime. If the criminal is prevented from enjoying the fruits of his labor, then his motivation for committing that crime also disappears.

Id. There is, however, the possibility of a “vicious circle . . .: stringent legislation enabling asset forfeiture merely makes it necessary for the criminal to launder his money.
2. The Process of Money Laundering

The process of money laundering involves the placement of criminally derived income into the field of commerce where the income is exchanged into an asset that is free from criminal taint although not necessarily free from the original taint of criminality. The process of money laundering is not precluded to any single method, however. The process of money laundering entails an innumerable array of methods. The goal, however, is more effectively... which, in turn, requires further anti-money laundering legislation."

Id. at 470.

32. ALEXANDER & CAIDEN, supra note 25, at 39; see Alford, supra note 26, at 439: Money laundering essentially consists of three stages: (1) the placement of money, (2) the layering of money, and (3) the integration of money. The placement of money refers to the physical disposal of cash into a financial institution. The layering of money refers to the transfer of money through several accounts or institutions in order to separate the money from its original illegal source. The integration of money refers to the shifting of funds to a legitimate business.

Id. at 439 (citations omitted); see Comstock, supra note 25, at 141-42 (detailing three stages); see also Money Laundering, supra note 24, at 29 (providing example of three stages):

A criminal who has a lot of cash may go to a money launderer who decides to convert the cash into cashier's checks. The money launderer may take the cash and go from bank to bank purchasing cashier's checks, each with a face amount under [US]$10,000... The money launderer then can open a bank account in the name of a fictitious company and deposit the checks into the account. Because the deposits do not involve cash, the bank does not have to report the transactions. Once in the bank, the funds can be transferred by wire to an account, perhaps in Panama, where certificates of deposit can be purchased. With those certificates, the criminal can go to another country — England, for example — take out a loan using the certificates as collateral, and the money returns to the United States.

Id. at 29.

33. U.S. DEP'T OF STATE, INT'L NARCOTICS CONTROL STRATEGY REPORT 46 (1988) [hereinafter STRATEGY REPORT]. "The techniques of money laundering are innumerable, diverse, complex, subtle, and secret." Id. "More than 95% of all money launderers identified by the [U.S.] federal government in the last few years have used at least one of roughly a dozen methods." Andrew P. Doppelt, The Telltale Signs of Money Laundering, 69 J. Acct. 1, 1 (1990).

34. STRATEGY REPORT, supra note 33; Alford, supra note 26, at 439; see, e.g., INTERIM REPORT, supra note 3, at 8 (describing method of exchanging small denominations of bills into larger denominations); BARBARA WEBSTER & MICHAEL S. MCCAMPBELL, U.S. DEP'T OF JUSTICE, INTERNATIONAL MONEY LAUNDERING: RESEARCH AND INVESTIGATION JOIN FORCES 5 (1992) (describing method of depositing denominations of bills in a bank and then transferring the bills to another bank); id. (describing method of depositing denominations of bills into offshore entities and then transferring the denominations into other entities). Additional methods include establishing trusts, forming corporations, and organizing banks. Alford, supra note 26, at 439-40. Evidence of money laundering include:
always to disguise the existence, source, or use of illegitimate income.\textsuperscript{35}

In the international field,\textsuperscript{36} the typical money laundering process involves several sophisticated stages.\textsuperscript{37} Criminally derived income is first removed, often electronically, from the jurisdiction where the income was created to a haven jurisdiction.\textsuperscript{38}

\begin{enumerate}
\item 'structuring accounts' by making repeated [small] deposits . . . ;
\item a series of deposits into a single account by several individuals within a short period of time;
\item transfers from accounts located at the same bank to a single account in another financial institution;
\item the transfer of funds to 'suspect' locations (Cayman Islands, the Netherlands Antilles, Hong Kong, Luxembourg, Switzerland, and Central American and Caribbean offshore banks);
\item multiple transfers in or out of accounts held in trust by accountants or attorneys;
\item obviously suspicious names used to open accounts;
\item names of associations often used as front companies such as "Import/Export Limited," "Investment Company," "Trading Company," "S.A.," "Ltd.," or "GmbH;"
\item very large deposits by small businesses;
\item unusual 'spikes' in accounts . . . ; and
\item false social security numbers.
\end{enumerate}

Doppelt, supra note 33, at 1.

\textsuperscript{35} INTERIM REPORT, supra note 3, at 20; Barbot, supra note 30, at 166; see Clark, supra note 25, at 469 (stating that "[t]he aim is thoroughly to confuse any investigator attempting to trace the 'hot' money either by 'losing' it or by creating an intricate web of transactions that is virtually impossible to follow.").


\textsuperscript{37} Alford, supra note 26, at 440; see, e.g., Munroe, supra note 25, at 507-08 (discussing how international banking offers opportunities for "higher forms of money laundering.").

Generally [international banking] excludes the cruder or 'retail' form of money laundering, namely the structuring of cash deposits to avoid the currency reporting laws, commonly called 'smurfing,' simply because international banking is not a cash oriented business. Rather, international banking lends itself to larger non-cash deposits and to more sophisticated financial transactions.


An example of the sophistication involved in international money laundering is where money is deposited into a foreign bank under a shell company, and then using the money in the foreign bank as security, the shell company takes out loans, the money of which is used in any country, for any purpose. Walter, supra note 24, at 81.

\textsuperscript{38} FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING REPORT (Feb. 6, 1990) [hereinafter THE MONEY LAUNDERING REPORT]. "Haven jurisdictions" are those countries in which bank laws conceal the identity of depositors. Id. at 8; see Comstock, supra note 25, at 143 (defining haven jurisdictions as those jurisdictions with strong bank secrecy laws); Barbot, supra note 30, at 167 (providing examples of "haven jurisdictions," such as Bahamas, Bermuda, Cayman Islands, Costa Rica, Hong Kong, Netherlands, Switzerland, and Panama).
The criminally derived income is then deposited in one of the jurisdiction's smaller banks, often under the name of a shell corporation\(^9\) that is simultaneously created with the deposit transaction.\(^40\) The criminally derived income is then transferred to a larger international bank, where the income can be transferred to other locations worldwide.\(^41\) Because of the complexity involved in the international money laundering process, international money launderers enjoy near immunity from prosecution.\(^42\)

3. The Problem of Money Laundering

According to the United Nations, international money laundering amounts to approximately US$120 to US$500 billion a year.\(^43\) International money laundering also touches in some form or another more than 125 nations around the world.\(^44\) In

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\(^{39}\) Comstock, *supra* note 25, at 143. A shell corporation is a fictitious corporation established solely as a vessel for criminally derived income. *Id.*

\(^{40}\) Barbot, *supra* note 30, at 167.

\(^{41}\) *Id.* at 168.

\(^{42}\) Evans, *supra* note 30, at 211.

The use of multiple jurisdictions greatly exacerbates problems of investigation and prosecution. . . . Once the proceeds of crime are successfully deposited in the financial system, many laundering operators take the precaution of moving money, not just offshore, but through more than one tax haven and through a maze of shell companies and respectable nominees. Investigators run into obstacles that are nearly impossible to penetrate, even if they get cooperation from their opposite numbers in the jurisdiction in question. . . . [T]he most sophisticated operations may effectively be immune from prosecution . . . . *Id.* at 211.

\(^{43}\) *STRATEGY Report*, *supra* note 43, at 19-20. U.S. President Clinton recently addressed the growing problem of money laundering:

Criminal enterprises are moving vast sums of ill-gotten gains through the international financial system with impunity. We must not allow them to wash the blood off profits from the sale of drugs, terrorism, or organized crime. Nations should bring their banks and financial systems into conformity with international anti-money laundering standards. We will work to help them do so. And if they refuse, we will consider appropriate sanctions. *Money Laundering, supra* note 24, at 28. After the speech, President Clinton issued an executive order freezing the assets of the Mexican Cali cartel, its associates, and front companies, estimated at 60 individuals and business, and prohibiting U.S. businesses from dealing with them in the United States and abroad. *Id.* The list of businesses involved included one of the largest drug store chains in Colombia, pharmaceutical companies, chemical companies, import/export companies, holding companies, and automobile dealerships. *Id.*

\(^{44}\) *Money Laundering, supra* note 24, at 28. Money laundering affects and subverts a nation's banking and financial institutional system, small businesses, multinational
contrast to these figures, the international community has collectively passed more than 50 pieces of new legislation against international money laundering.45

With the increase in anti-money laundering legislation, however, the process of money laundering has become more sophisticated.46 Rather than directly depositing money in banks, money launderers are resorting to the professional industry to disguise the illegitimacy of the money.47 Professionals will often have only a circumstantial understanding of the money illegitimacy.48 Consequently, law enforcement authorities are less likely to successfully prosecute professionals because of the mens rea required under many anti-money laundering statutes.49
Nations around the world have made several efforts against money laundering. These efforts have been recent phenomena, however. European efforts have historically focused on combating money laundering solely in connection with drug trafficking. Only recently have European efforts moved into combating money laundering in connection with all major offenses. In contrast, North American efforts have always prohibited money laundering in connection with all major offenses. In either instance, however, the focus has always been to forcefully combat money laundering.

1. European Efforts

Money laundering passes an estimated twenty-two billion
pounds a year through Europe.\textsuperscript{56} In an effort to combat the problem, European nations have participated in a variety of legislation.\textsuperscript{57} The most significant piece of legislation is the European Community Council Directive 91/308 ("Directive").\textsuperscript{58} The Directive requires all European Community members to criminalize money laundering.\textsuperscript{59} Currently, most European nations have met the Directive's mandate.\textsuperscript{60}

a. Great Britain

Great Britain's domestic drug trade earns roughly 2.4 billion pounds a year.\textsuperscript{61} More than half of the 2.4 billion is laundered through Great Britain's financial centers.\textsuperscript{62} Preventing the proliferation of money laundering, consequently, has become one of Great Britain's foremost objectives.\textsuperscript{63}

Since 1986, Great Britain's chief piece of legislation against money laundering has been the Drug Trafficking Offenses Act ("Offenses Act").\textsuperscript{64} The Offenses Act prohibits any person from laundering income derived from drug trafficking.\textsuperscript{65} Specifically, the Offenses Act prohibits any person from retaining, controlling, or investing the proceeds of drug related activities belonging to a person they know or suspect of drug trafficking.\textsuperscript{66} The

\begin{itemize}
\item \textsuperscript{56} John Willcock, \textit{City at Risk From Cleanup}, \textit{The Independent} (London), Nov. 27, 1993.
\item \textsuperscript{57} See Mortman, \textit{supra} note 25, at S430 (reviewing European efforts against money laundering).
\item \textsuperscript{58} Council Directive 91/308, 1991 O.J. (L 166) 77.
\item \textsuperscript{59} Id.
\item \textsuperscript{60} See Mortman, \textit{supra} note 25, at S431-35 (reviewing European nations attempts to comply with Directive).
\item \textsuperscript{62} Id.
\item \textsuperscript{63} See Willcock, \textit{supra} note 56 (reporting on Great Britain's "tough new" money laundering laws). "There is already a perception in [London] that the U.K. is tougher on enforcing [money laundering] rules . . . ." \textit{Id.}
\item \textsuperscript{64} Drug Trafficking Offenses Act, 1986, ch. 32 (Eng.) (effective January 1987); see Lee, \textit{supra} note 55, at 232 (addressing Offenses Act as "chief piece of legislation" against money laundering); see also Criminal Justice Act, 1987, ch. 41 (Scotland) (setting forth comparable act for Scotland).
\item \textsuperscript{65} Drug Trafficking Offenses Act, 1986, ch. 32, § 24. The Offenses Act also contains provisions for the investigation of suspected drug-derived assets prior to arrest, the freezing of assets on arrest or upon issuance of a summons, and the issuance of confiscation orders following a conviction. Lee, \textit{supra} note 55, at 232. The Prevention of Terrorism Act of 1989 made it an offense to launder the funds of terrorist organizations. Prevention of Terrorism Act, 1989 (Eng.).
\item \textsuperscript{66} Drug Trafficking Offenses Act, 1986, ch. 32, § 24(1). Section 24 of the Off-
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Offenses Act provides for a penalty of up to fourteen years imprisonment.\textsuperscript{67} Expanding the reach of the Offenses Act, the British legislators implemented the Criminal Justice Act ("Act") in 1993.\textsuperscript{68} The Act prohibits a person from laundering income derived not only from drug trafficking, but from all serious offenses.\textsuperscript{69}

Prior to the enactment of the Act, a person was permitted to claim as a defense that he or she did not know or suspect that the proceeds were related to drug trafficking.\textsuperscript{70} In regard to criminal offenses other than drug trafficking, persons, including financial institutions, had a right, but not a duty, to report their suspicions to law enforcement authorities.\textsuperscript{71} With the enactment of the Act, however, it appears a person may no longer rely on the defense.\textsuperscript{72}

Both statutes have effectively combated money laundering.\textsuperscript{73} Since the implementation of the statutes, British courts have made more than 4500 confiscation orders.\textsuperscript{74} Drug dealers specifically were deprived of more than forty-two million pounds of illegitimate income.\textsuperscript{75}

\section*{b. France}

France is a world leader in the effort against money laundering.\textsuperscript{76} France is not a major money laundering site, however.\textsuperscript{77}

\begin{thebibliography}{99}
\bibitem{67}Drug Trafficking Offenses Act, 1986, ch. 32, § 24(1).
\bibitem{68}Criminal Justice Act, 1993 (Eng.).
\bibitem{69}Criminal Justice Act, 1993.
\bibitem{70}Drug Trafficking Offences Act, 1986, ch. 32, § 24(4). It is also a defense if the accused can prove that he intended to disclose his suspicion or belief to law enforcement officials but there was a reasonable excuse for his failure to do so. Drug Trafficking Offences Act, 1986, ch. 32, § 24(4).
\bibitem{71}Mortman, \textit{supra} note 25, at S447 n.144.
\bibitem{72}Criminal Justice Act, 1993.
\bibitem{74}Id.
\bibitem{75}Id.
\bibitem{76}See France, 3 Money Laundering, Asset Forfeiture and International Financial Crimes (Oceana), at 3-4 (June 1996) [hereinafter France] (discussing France's leadership efforts against money laundering); see also France Battles Money Laundering with Small
France is also not a drug producing or consuming country.\(^7\) France is, however, an important world financial center, and, as such, a potential target for money launderers.\(^7\)

France has criminalized money laundering since as early as 1987.\(^8\) The French statute, like Britain’s Offenses Act, prohibits a person from knowingly laundering drug proceeds.\(^8\) The statute prohibits, specifically, a person from knowingly assisting in any transaction for the investment, exchange, or concealment of drug proceeds.\(^8\) The statute provides for a penalty of up to ten years imprisonment and a fine of up to 500,000 francs.\(^8\) A separate statute prohibits a person from knowingly laundering drug proceeds, internationally.\(^8\) The statute provides for the same penalties as the statute prohibiting domestic money laundering.\(^8\)

The French statute criminalizes money laundering only in connection with drug trafficking.\(^8\) The mens rea requirement behind the French statute, consequently, requires proof that the accused knew the proceeds involved were derived from drug trafficking.\(^8\) As of 1994, however, French authorities have considered amending the statute to criminalize money laundering in connection with all major organized crime and terrorist activities.\(^8\)

\(^{77}\) See France, supra note 76, at 3 (stating that U.S. State Department does not consider France major money laundering site). France does serve, however, as a transfer point for the movement of drug proceeds through Europe. \(I d.\)

\(^{78}\) Gazale, \(I d.\) in \(I d.\) 63 (Richard Parlour ed., 1995).

\(^{79}\) Id.

\(^{80}\) Gazale, supra note 78, at 63.

\(^{81}\) Public Health Code, art. L.627, ¶ 3 (Fr.). \(See generally Bruce Zagaris & Markus Bornheim, When the Walls Come Tumbling Down, Security Management, May 1, 1990, at 69 (discussing article L.627).\)

\(^{82}\) Public Health Code, art. L.627. The statute also prohibits a person from falsely explaining the origin of drug proceeds. \(I d.\)

\(^{83}\) Id.

\(^{84}\) Id.

\(^{85}\) Customs Code, art. 415.

\(^{86}\) Public Health Code, art. L.627; Customs Code, art. 415.

\(^{87}\) Zagaris & Bornheim, supra note 81, at 69.

\(^{88}\) France, supra note 76, at 5. In February 1996, the French National Assembly approved an amendment that would allow the state to seize the proceeds of illegal activities ranging from prostitution and illegal arms sales to counterfeiting. \(I d.\) at 7. However, a similar anti-laundering measure was approved by the French Leviate. \(I d.\)
c. Italy

Italy is one of the leading money laundering centers in Europe.89 Italy is home to one of the most extensive organized criminal networks in the world, the Italian Mafia.90 The Italian government estimates the total annual revenue of the Mafia at US$75 billion.91

Italy’s efforts against money laundering predates to the late 1970s, where the Italian Penal Code’s article 648bis punished the intentional laundering of proceeds derived from either aggravated robbery, aggravated extortion, or kidnaping for extortion or terrorist purposes.92 On March 19, 1990, Italy extended the scope of article 648bis by adding the fourth predicate offense of drug trafficking.93 On August 9, 1993, Italy further extended the scope of article 648bis by adding all predicate offenses of a serious nature.94 The statute provides for a penalty of up to twelve years imprisonment and a fine of up to 50 million lire.95

Unlike the French statute, the Italian anti-money laundering statute criminalizes money laundering in connection with all major offenses.96 The mens rea requirement behind the Italian statute, consequently, is broad.97 The Italian statute requires proof that the accused knew the proceeds involved had an illicit origin.98

Differences between the two versions must be settled before the either bill may become law. Id.

89. See Italy, 3 Money Laundering, Asset Forfeiture and International Financial Crimes (Oceana), at 3 & 5 (June 1996) (hereinafter Italy) (stating that money laundering is significant problem in Italy and that Italy is one of leading money laundering centers in Europe).

90. See id. (discussing Italian Mafia’s role in Italy’s money laundering problem).

91. Mortman, supra note 25, at 455. Other sources estimate the figure at US$400 billion. Italy, supra note 89, at 3.


94. Article 4 & 5, Act 328/1993; see Magliveras, supra note 92, at 94 (discussing Act 328/1993).

95. Italian Penal Code, art. 648bis; see Magliveras, supra note 92, at 93 n. 57 (discussing article 648bis’s penalties).

96. Italian Penal Code, art. 648bis.

97. Razzano, supra note 50, at 301 n. 135.

98. Id.
d. Germany

Like Italy, Germany is one of the leading money laundering centers in Europe. Germany suffers from an influx of organized criminal operations, particularly from East Germany, where money laundering controls are weak. Germany’s government estimates that up to US$80 billion is laundered each year in Germany.


The mens rea requirement behind the German statute is more liberal than either the Italian or French statutes. The statute requires proof that the accused recklessly disregarded the possibility that the proceeds involved were connected with a major criminal offense. The German courts will see the accused as acting recklessly if the criminal nature of the proceeds were self evident.

2. North American Efforts

The United States led the effort against money laundering in the North American and Central American regions. Other

99. See Germany, 3 Money Laundering, Asset Forfeiture and International Financial Crimes (Oceana), at 3 (June 1996) (hereinafter Money Laundering in Germany) (stating that U.S. and German officials consider Germany a major money laundering center).
100. Id.
101. Id.
103. Penal Code, section 261 (Ger.).
104. Id.
105. See Money Laundering in Germany, supra note 99, 5 (discussing mens rea requirement).
106. Germany, supra note 102, at 76.
107. Id.
108. See Rudnick, supra note 22, at 227 (discussing U.S. role in effort against money laundering).
nations, however, have quickly followed. For example, Mexico and Canada have either passed new legislation or reinforced existing legislation against money laundering.

a. Mexico

Critics rank Mexico second in the Western Hemisphere as a money laundering center. In 1991, the Mexican government seized approximately US$90 million in laundered assets. Mexico has taken a number of regulatory and enforcement actions to suppress its money laundering problem.

On April 29, 1996, the Mexican legislature passed its second anti-money laundering statute. Mexico’s first statute, part of its tax code, was enacted in 1989 and amended in 1993. The first statute prohibits anyone from knowingly conducting a financial transaction knowing that the funds involved in the transaction represent the proceeds of some form of unlawful activity. The new statute differs little from the first statute. The new law prohibits anyone from conducting a financial transaction, including an international transaction, knowing that the funds involved in the transaction represent the proceeds of some form of unlawful activity, and with the further purpose of hiding the origin, location, destination, or ownership of the property. The new law also creates a presumption that the proceeds are derived from an unlawful activity when its legitimate origin can-
not be established.  

b. Canada

Canada, although not historically a money laundering center, is currently becoming one.  As much as US$10 billion of illegitimate proceeds are generated annually by drug trafficking in Canada. Much of the proceeds are laundered through Canada's extensive international banks.

On January 1, 1989, Canada issued its first money laundering statute. The statute prohibits anyone from transporting property, knowing that the property was obtained from an enterprise crime or drug offense. To date, the statute has proven

119. Id.
120. See Canada, 3 Money Laundering, Asset Forfeiture and International Financial Crimes (Oceana), at 1-2 (October 1996) [hereinafter Canada] (discussing the Canada's growing problem of money laundering).
121. Id. at 1.
122. Id.
124. R.S.C., ch. C-46, 462.31. The statute reads in full,
(1) Every one commits an offense who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds and knowing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of
(a) the commission in Canada of an enterprise crime offense or a designated drug offense; or
(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an enterprise crime offense or a designated drug offense.
R.S.C., ch. C-46, 462.31. Designated drug offenses include drug trafficking, drug pos-
The language of the statute is broad. Proving the element of knowledge, moreover, is unsophisticated. The prosecution must prove that the accused intended to convert or conceal property that the accused knew to be the proceeds of an illegal nature.

session, conspiracy, and attempts, among others. Evans, supra note 123, at 201. Enterprise crime offenses include bribery, fraud, murder, robbery, and counterfeiting, among others. Id. at 202.

The statute is a near mirror image of R.S.C. 1985, C. N-1, § 19.2, titled Laundering Proceeds of Crime, which reads,

(1) No person shall use, transfer the possession of, send or deliver to any person or place, transport, transmit, alter, dispose of or otherwise deal with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds and knowing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

(a) the commission in Canada of an offense under section 4, 5, or 6 [drug related offenses]; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offense under section 4, 5, or 6.


125. Evans, supra note 123, at 207-08. In discussing the Proceeds of Crime Act, the umbrella legislation that included the money laundering statute, the author states that since 1989, more than US$150 million assets have been seized and more than US$30 million assets have been forfeited. Id. Further, as a result of the legislation, some significant criminal operations have been greatly reduced. Id. Evans warns, however, that any further judgments regarding the effectiveness of the legislation would be premature. Id. at 207.

126. Evans, supra note 123, at 202.

127. Id.

128. Id.; cf Regina v. Hayes, 104 C.C.C.3d 316 (Quebec Court of Appeal 1995). In Hayes, the Court addressed whether section 19.2(1) of the Narcotic Control Act, supra note 124, a statute analogous to Canada's principal money laundering statute, discussed here, required prosecutors to prove that the defendant had knowledge that the proceeds he attempted to launder were from one of section 19.2(1)'s listed offenses. Id. The Court held that section 19.2(1) did require such specific proof. Id.. The Court then went on to note that section 354 of the Criminal Code did not require the same specificity. Id.

In the present case, there is no doubt that the prosecution could have very well charged the appellant under s. 354 and it would have then avoided the burden of proving this specificity as to knowledge of origin under the Narcotic Control Act. The substance of the offense under s. 354 lies in the possession of a thing and in the knowledge of its illegal origin.

Id. Because section 462.31 is more akin to section 354 then to section 19.2, in respect to the specificity of the crimes named in the statutes, section 462.31's knowledge requirement should also only necessitate proof that the accused had knowledge of an illegal origin, rather than a specific knowledge. Hayes, 104 C.C.C.3d at 316.
c. The United States

In 1986, the United States Congress ("Congress") passed the Money Laundering Control Act ("MLCA").\textsuperscript{129} The MLCA was Congress's first attempt at defining and prohibiting money laundering.\textsuperscript{130} Congress's justification for the MLCA was three-fold and interrelated.\textsuperscript{131}

Congress promulgated the MLCA, first, to respond to the rise of money laundering activities in the United States.\textsuperscript{132} Congress did so, more specifically, to paralyze drug trafficking and similar organized crime operations.\textsuperscript{133} Congress also promulgated the MLCA to stunt the growth of a rather new anomaly, the professional money launderer, a profession born out of the

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\textsuperscript{132} See id. at 823-24.

There is more money being laundered than ever before, involving more people, and the schemes to wash dirty money are now often so sophisticated that it is not unusual to find an intricate web of domestic and foreign bank accounts, dummy corporations and other business entities through which funds are moved, almost instantaneously, by means of electronic transfers. Id. at 824 n.3 (quoting House Comm. on Banking, Housing, and Urban Affairs, Comprehensive Money Laundering Prevention Act, H.R. Rep. No. 746, 99th Cong., 2d Sess. 16 (1986)); see also Horvitz, supra note 3 at 138.


U.S. Senator Dennis DeConcini also emphasized that "[w]ithout the means to launder money, thereby making cash generated by a criminal enterprise appear to come from a legitimate source, organized crime could not flourish as it now does." Money Laundering: Hearing Before the Senate Comm. on the Judiciary, 99th Cong., 1st Sess. 30 (1985); see Jason Shuck & Matthew E. Unterlack, Money Laundering, 33 AM. CRIM. L. REV. 881, 882 (stating that without money laundering, "large scale criminal activity could operate only at a small fraction of current levels, and with far less flexibility."); Gurule, supra note 131, at 823-24 (reviewing justifications for MLCA).
necessities of organized crime operations.\textsuperscript{134} 

The U.S. Court of Appeals for the Tenth Circuit considers the last justification the MLCA’s primary concern.\textsuperscript{135} In United States v. Johnson the Court looked into the legislative intent of the MLCA.\textsuperscript{136} The Court held that Congress designed the MLCA to criminalize, in particular, the conduct of third persons who assist in the laundering of unlawfully derived proceeds.\textsuperscript{137}

The MLCA consists of two sections.\textsuperscript{138} The first section, section 1956, contains ten separate crimes.\textsuperscript{139} Section 1956 prohibits any person from knowingly engaging in a transaction involving the proceeds of some form of unlawful activity either with

\textsuperscript{134} See Gurule, supra note 131, at 825 ("[T]he enormous profits generated by organized crime and the drug cartels have created, out of necessity, a new profession within criminal circles — the professional money launder."); see also Clark, supra note 25, at 471 ("Money laundering now an extremely lucrative criminal enterprise in its own right."). The professional money launderer may not necessarily be born out of a discrete criminal profession. \textit{Id.} He or she may be an accountant, a banker, or a lawyer. \textit{Id.}; Gurule, supra note 131, at 825. Furthermore, the professional money launderer may not necessarily be a single individual. \textit{Id.} For example, prior to the enactment of the Act, the United States Organized Crime and Drug Enforcement agency dismantled eighteen criminal organizations dedicated to the laundering of illegitimate proceeds. See \textit{id.}, at 825 n.6. During the House deliberations for the Act, U.S. Congressman Shaw stated: "I am sick and tired of watching people sit back and say, 'I am not part of the problem, I am not committing the crime, and, therefore, my hands are clean even though I know the money is dirty I am handling." Markup by the Subcommittee on Crime of H.R. 5077, Money Laundering Control Act of 1986, Transcript, pp. 22-23, quoted in the Money Laundering Control Act of 1986, H.R. Rep. No. 855, 99th Cong., 2d Sess. 13 (1986).

\textsuperscript{135} See United States v. Johnson, 971 F.2d 562 (10th Cir. 1992).

\textsuperscript{136} \textit{Id.} at 568-69.

\textsuperscript{137} \textit{Id.} The Court reviewed the legislative history of the MLCA and found that when passing the MLCA,

Congress had in mind the 'classic' case of laundering drug money — that is, where a drug trafficker collects large amounts of cash from drug sales and, acting with the complicity of a banker or other person in a financial institution, deposits the drug proceeds in a bank under the guise of conducting a legitimate business transaction. The Act appears to be part of an effort to criminalize the conduct of those third persons — bankers, brokers, real estate agents, auto dealer and others — who have aided drug dealers by allowing them to dispose of the profits of drug activity, yet whose conduct has not been considered criminal under traditional conspiracy law.

\textit{Id.; see also} United States v. LaBrunerie, 914 F.Supp. 340, 347 (W.D. Missouri 1995) (stating that Congress's clear intent in passing MLCA was to criminalize conduct of third persons who assist in laundering of proceeds of unlawful activity).


\textsuperscript{139} 18 U.S.C. § 1956; see Schuck & Unterlack, supra note 133, at 883 (stating section 1956 contains ten separate crimes).
the intent to promote an unlawful activity,\textsuperscript{140} with the intent to violate the United States Internal Revenue Code,\textsuperscript{141} with the knowledge that the transaction is designed to conceal some aspect of the proceeds\textsuperscript{142} or with the knowledge that the transaction was designed to avoid a currency transaction reporting requirement.\textsuperscript{143} Section 1956 also prohibits an individual from knowingly transporting unlawful proceeds in the international environment with the same intent or knowledge.\textsuperscript{144} Section 1956 also prohibits an individual from engaging in transactions with the intent either to promote the carrying on of a particular unlawful activity,\textsuperscript{145} or to conceal some aspect of the funds,\textsuperscript{146} or to avoid a transaction reporting requirement,\textsuperscript{147} if the property is represented by an undercover officer to be the proceeds of a particular unlawful activity.\textsuperscript{148}

The second section, section 1957, contains no subdivisions on the basis of intent or knowledge.\textsuperscript{149} Section 1957 prohibits any person from knowingly engaging in a banking transaction with a financial institution, involving criminally derived property of a value greater than US$10,000.\textsuperscript{150} Sections 1956 and 1957 have similar goals.\textsuperscript{151} Scholars, however, consider section 1957 to have a potentially broader application than section 1956.\textsuperscript{152} U.S. prosecutors, however, seldom utilize section 1957.\textsuperscript{153} Judges and scholars, therefore, consider section 1956 the princi-

\begin{itemize}
\item 148. Id.
\item 149. 18 U.S.C. § 1957.
\item 150. Id.
\item 151. Strafer, supra note 130, at 161.
\item 152. See id. The two sections are different because of their separate evolutions. Id. Section 1956 developed in the U.S. Senate, while section 1957 developed in the U.S. House. Id. (citing S. 2683, 99th Cong., 2d Sess. (1986) and H.R. 5077, 99th Cong., 2d Sess. (1986)).
\item 153. See id. (noting that there has been relatively few prosecutions commenced under section 1957); see also 'Specified Unlawful Activities' Vital in Laundering Cases, supra note 3 (stating that section 1957 is "less used by federal prosecutors.").
\end{itemize}
pal money laundering statute.\textsuperscript{154}

i. Section 1956(a) (2) (B) (i)

The United States Congress exclusively designed section 1956(a) (2) (B) (i) ("International Transportation Offense" or "Offense") to proscribe international money laundering transactions.\textsuperscript{155} The Offense prohibits any person from internationally transporting monetary instruments, knowing that the monetary instruments represent the proceeds of some form of unlawful activity, and knowing that the transportation was designed to disguise some aspect of the proceeds, such as its ownership.\textsuperscript{156}

The Offense is a near mirror image of a prior 1956 subsection: (a)(1)(B)(i).\textsuperscript{157} Subsection 1956(a)(1)(B)(i) differs only

\textsuperscript{154} See 'Specified Unlawful Activities' Vital in Laundering Cases, supra note 3 (stating that section 1956 is principal money laundering law).

\textsuperscript{155} See Strafer, supra note 130, at 163 (stating that subsection was exclusively designed to proscribe international money laundering transactions); Charles Thelen Plombeck, Confidentiality and Disclosure: The Money Laundering Control Act of 1986 and Banking Secrecy, 22 INT'L LAW. 69, 76 (stating that subsection "is essential to reach activities . . . that are conducted outside the United States."); United States v. Piervinanzi, 23 F.3d 670, 680 (2d. Cir. 1994) (stating § 1956(a)(2) is designed to illegalize international money laundering transactions (citing S. Rep. No. 433, 99th Cong., 2d Sess. 11 (1986)); United States v. Hamilton, 931 F.2d 1046, 1051-52 (5th Cir. 1991) (same).

\textsuperscript{156} 18 U.S.C. § 1956(a)(2)(B)(i). The section reads in full:

\begin{enumerate}
\item [(a)(2)] whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—
\item [(B)] knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—
\item [(i)] to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both.
\end{enumerate}

\textsuperscript{157} 18 U.S.C. § 1956(a)(1)(B)(i). The section reads in full:

\begin{enumerate}
\item [(a)(1)] whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—
\item [(B)] knowing that the transaction is designed in whole or in part—
\item [(i)] to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity shall be sentenced to a fine of not more than $500,000 or twice the value
in that it addresses property rather than a monetary instrument, and a transaction rather than a transportation. Judges and scholars consider the subsections so closely related that they often apply the rules applicable to one, onto the other, wherever possible. Thus, a discussion of one may satisfy the discussion of the other.

ii. The Elements

The Offense is divided into five elements, all of which the prosecution must prove to convict a suspected money launderer. The elements are (1) an actual or attempted transportation, transmittal, or transference of (2) a monetary instrument or fund (3) into or out of the United States (4) with the knowledge that (a) the monetary instrument or fund represents the proceeds of some form of unlawful activity, and (b) the transportation, transmittal, or transference is designed to conceal or disguise the nature, location, source, ownership, or the control of the proceeds; and (5) the proceeds must, in fact, come from a specified unlawful activity.

iii. The Actus Reus and Attendant Circumstances

The first element is the actus reus of the offense. The element requires that there be, or attempt to be, a transportation, transmittal, or transference. Although Congress defined most of the operative terms in the statute, it failed to define

Id. 158. Compare 18 U.S.C.A. § 1956(a)(1) (B) (i) with 18 U.S.C.A. § 1956(a) (2) (B) (i).
159. See, e.g., United States v. Hamilton, 931 F.2d 1046, 1052 (5th Cir. 1991) (stating that there is "overlap" between two subsections); United States v. Carr, 25 F.3d 1194, 1204 (3d. Cir. 1994) ("[W]e find the distinction between subsections 1956(a)(1) and 1956(a)(2)(B) so slight"); Villa, supra note 130, at 504 (stating that elements of subsection (a) (2)(B) "are all drawn from those in subsection 1956(a)(1)(B).").
160. See Carr, 25 F.3d at 1204 (analyzing section 1956(a)(1)(B) (i) to come to conclusion on section 1956(a)(2)(B)(i)).
161. See John K. Villa, Elements of Principal Criminal Statutes Applicable to Financial Institutions, C351 ALI-ABA 181, 205-206 (1988) and Schuck & Unterlack, supra note 133, at 886 (offering similar break down of elements).
163. BLACK'S, supra note 6, at 96. Actus reus is defined as the physical aspect of a crime. Id.
these terms. The legislative history, however, provides guidance as to their meaning.

As enacted in 1986, the International Transportation Offense encompassed only the actus reus of transports. Courts assumed that Congress intended the ordinary meaning of that term and, thus, construed it as the physical carrying of a thing from one place to another. But the 1988 amendments to section 1956, which changed transports to transports, transmits, or transfers, made clear that such an interpretation failed to encompass all of Congress's intent. The three words together are now considered to include virtually every kind of movement imaginable.

In contrast, the second element of monetary instrument or funds, which is an attendant circumstance, is partly defined in the statute. Monetary instrument means coin or currency, travelers' checks, personal checks, bank checks, money orders, or investment securities and negotiable instruments, in bearer form or otherwise in such form that title passes upon delivery. The definition has been assumed to include cashier checks.

The term, funds, is not defined in the statute. The U.S. Department of Justice considers the term to include wire transfers or any other electronic fund transfers. The U.S. Court of

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165. See 18 U.S.C. § 1956(c) (defining operative terms of statute).
166. See Villa, supra note 130, at 503 (turning to legislative amendments to find meaning of section 1956's actus reus terms).
167. Id.
169. See supra note 130 (discussing Anti Drug Abuse Act amendments).
170. Villa, supra note 130, at 503. However, Congress annexed the terms "transmits" and "transfers" to "transports" but failed to define them again. Id.
171. Id.; see Strafer, supra note 130, at 163 n.86 (stating, "if the term 'transports' already encompassed 'transmissions' and 'transfers,' then [the] changes would have been both unnecessary and redundant."). But see Pieroinanzi, 23 F.3d at 678 (impliedly rejecting Strafer's position).
172. See BLACK S., supra note 6, at 127. An attendant circumstance is a "fact surrounding an event." Id.; see supra note 6 (discussing role of elements in crime statutes).
173. 18 U.S.C. § 1956(c) (5).
174. Id.
177. Justice Department Monograph (Appendix 8A at App. 8-11, n. 59); see Strafer,
Appeals for the Ninth Circuit agrees, stating that because monetary instrument includes everything that can be carried, the term, funds, must therefore have an independent significance, and in particular include wire transfers.\textsuperscript{178} The third element requires that the monetary instrument or fund be transported, transmitted, or transferred into or out of the United States.\textsuperscript{179} Any movement of monetary instrument or funds that does not originate or terminate in the United States is not within the scope of the statute.\textsuperscript{180} At least one court has held, however, that a transfer of funds from one U.S. bank to another, prior to their transfer abroad, is equivalent to directly transferring out of the United States.\textsuperscript{181}

Skipping the fourth element for the moment, the fifth and final element, which requires the proceeds to be, in fact, the product of a specified unlawful activity, requires cross reference to subsection (c)(7)(D) of section 1956.\textsuperscript{182} That subsection provides a list of offenses which are specified unlawful activity.\textsuperscript{183} A majority of these offenses are U.S. offenses\textsuperscript{184} and only a handful are foreign.\textsuperscript{185} To date, they include extortion, narcotics trafficking, fraud against a foreign bank, kidnapping, robbery, and acts of terrorism.\textsuperscript{186} In whole, then, the fifth element requires

\textsuperscript{178} Piervinanzi, 23 F.3d at 678-79; United States v. Monroe, 943 F.2d 1007, 1015-16 (9th Cir. 1991).


\textsuperscript{180} Villa, supra note 3, at 503.

\textsuperscript{181} Id.

\textsuperscript{182} 18 U.S.C. § 1956(c)(7)(D).

\textsuperscript{183} Id. There are more than 100 "specified unlawful activities" covered, ranging from drug trafficking and labor racketeering to water pollution and copyright infringement. \textit{Id.}

\textsuperscript{184} See Hays & Allen, supra note 3, at A4 (reporting that Raul Salinas case is made more difficult because of limited number of foreign crimes that are covered by U.S. money laundering statutes).

\textsuperscript{185} 18 U.S.C. § 1956(c)(7)(D).

\textsuperscript{186} See Foreign Crimes that are "Specified Unlawful Activities" Under U.S. Money Laundering Law, \textit{Money Laundering Alert}, Jan. 1, 1996 (listing extortion, fraud, kidnaping, narcotics, and robbery as "specified unlawful activities"); \textit{New Law Extends U.S. Laundering Law to More Foreign Crimes}, \textit{Money Laundering Alert}, July 1, 1996 (listing acts of terrorism as murder or destruction of property by means of explosive or fire; assassination of a presidential, congressional or cabinet officer; transactions in nuclear materials; and use of weapons of mass destruction); \textit{see also} Hays & Allen, supra note 3, at A4
prosecutors to prove, beyond a reasonable doubt, that the proceeds were in fact derived from one or more of these offenses. 187

iv. The Mens Rea

The fourth element is section 1956(a)(2)(B)(i)'s mens rea requirements, both of which necessitate proof of knowledge. 188 First, a defendant must have knowledge that the monetary instrument or fund involved in the transportation represents the proceeds of some form of unlawful activity. 189 Second, a defendant must have knowledge that the transportation itself was designed to conceal or disguise the nature of the proceeds. 190

Both mens rea requirements are distinct. 191 The first refers to the defendant's own knowledge. 192 The second, which in the statute is phrased in the passive voice, refers to the knowledge of someone else's intent, the intent of the person who designed the transaction. 193 Thus, it requires the defendant to have known, not that he himself wanted to disguise the nature of the proceeds, but that another person wanted to disguise the nature of the proceeds. 194 The first mens rea requirement, in contrast, requires that the defendant himself know that the proceeds involved in the transportation were derived from some form of unlawful activity. 195 The defendant need not have known, however, the specific crime that generated the proceeds. 196 This precludes the allegation that the defendant thought that the property involved represented the proceeds of a crime not covered within the term, specified unlawful activity. 197 The defendant need not know that the crime that generated the funds was a specified unlawful activity, nor even the specific crime that gen-

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190. Id.
192. Id.
193. Strafer, supra note 130, at 162.
194. Id.
196. Plombeck, supra note 155, at 73.
197. Id. at 73 n.28. It was reported to the U.S. Senate Judiciary Committee that such a defense had been successfully raised in other countries whose statutes did not draw the distinction. Id.
erated the funds, only that the funds were the proceeds of some kind of crime.\textsuperscript{198}

Both mens rea requirements mandate a high degree of proof.\textsuperscript{199} Courts permit, however, the use of circumstantial evidence to prove them.\textsuperscript{200} A jury, thus, is allowed to infer from the evidence that a defendant knew the monetary instrument involved in the transportation represented the proceeds of some unlawful activity and that another person intended to disguise the nature of the proceeds.\textsuperscript{201}

C. The Salinas-Citibank Affair

On February 28, 1995, Mexican authorities arrested Raul Salinas de Gortari for the assassination of Jose Francisco Ruiz Massieu.\textsuperscript{202} Raul Salinas is the infamous older brother\textsuperscript{203} of Car-

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\textsuperscript{198} Id. at 73-74; Strafer, supra note 130, at 166. Section 1956(c)(1) provides that, 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 felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7) [listing specified crimes that fall within the statute].

\textsuperscript{199} U.S.C. § 1956(c)(1). The legislative history behind section 1956 indicates that this knowledge requirement was the result of a compromise. Strafer, supra note 130, at 166. During the Senate hearings on the proposed legislation, the proper mens rea requirement generated a great deal of debate. Id at 166 n.91. Law enforcement authorities wanted the use of a relaxed mens rea requirement to ensure that the Treasury Department would have an ability to deal with money laundering. Id. Civil liberty groups and representatives from the financial community, in contrast, wanted a high mens rea requirement, such as knowledge, to protect legitimate business from prosecution. Id. Congress, having previously rejected the standards of "reason to know" and "reckless disregard" ultimately adopted the "knowledge" standard but significantly relaxes what the defendant had to know to be found guilty. Id. at 166.

\textsuperscript{200} Plombeck, supra note 155, at 71. Consequently, the focus of most U.S. money laundering cases is on the mens rea requirements. Id.

\textsuperscript{201} Id.; see Plombeck, supra note 155, at 73 (stating that particular knowledge of fact or circumstance surrounding transaction may satisfy mens rea requirement if fact or circumstance clearly indicates illegal nature of transaction).

\textsuperscript{202} Id. at A15; Julia Preston, Officials Find Bones and Hint Link to Salinas, N.Y. TIMES, Oct. 19, 1996, at A12. According to the New York Times's report of the assassination, a "gunman walked up to Mr. Ruiz Massieu at mid-afternoon on Sept. 28, 1994 on a crowded street in the heart of Mexico City, shooting [sic] him once at point blank range." Id. The gunman has since been convicted for the killing. Id.

The Wall Street Journal's version of the assassination adds to the underlying story: A prominent politician, one of the president's closest allies and his former brother-in-law, is murdered in public. The incensed president asks the
los Salinas de Gortari, the former president of Mexico. Ruiz Massieu was the Secretary General of the Institutional Revolutionary Party, which was, at the time, the second most powerful political position in Mexico.

During the investigation of Raul's arrest, authorities uncovered more than US$300 million dollars in illegitimate

deceased man's brother to head the investigation. The investigator rounds up the suspects and allegedly tortures them for confessions. After a few weeks he has more than a dozen confessed conspirators in jail. One other conspirator, a national legislator and the alleged mastermind of the assassination remains uncaptured.

The president leaves office thinking that the case is solved, but his own brother is arrested by a new investigator less than three months later. The main piece of evidence is the testimony of one of the conspirators, who after a prolonged silence says that the former president's brother ordered the assassination. The witness claims that he did not come forward earlier because he was pressured by the previous investigator.

Sarmiento, supra note 2, at A15.

203. See Anthony DePalma & Peter Truell, Maneuvering Millions, Orange County Register, June 6, 1996, at A25. "[Raul was] notorious for his lavish way of life. He was often in the company of beautiful women, and he maintained an expensive stable of horses for equestrian competitions in Switzerland and the United States." Id. "There seems to be no question that Raul Salinas was a scoundrel." Sarmiento, supra note 2, at A15.

204. Sarmiento, supra note 2, at A15. Raul's arrest shattered a long tradition in Mexico of impunity for close relatives of former Presidents. Preston, supra note 202, at A12.

Carlos Salinas de Gortari served as Mexico's president from 1988 to 1994. Sarmiento, supra note 2, at A15. He fled Mexico soon after his brother's arrest. Id. Although he has not officially been linked to his brother's investigation, he has issued a statement of his innocence. Stephen Fidler & Leslie Crawford, Britain Freezes Dollars 23m Accounts in Drug Probe, Fin. Times, Dec. 8, 1995, at 3. In it he said he felt deceived by his brother, and that he was willing to return to Mexico to defend his reputation. Id. He now lives in exile in Ireland. Preston, supra note 202, at A12. The scandal has shattered the reputation he earned as a bold modernizer of Mexico. Id.

Raul's arrest also had broader implications. Geri Smith & Amy Borrus, 'Salinas' is Fast Becoming a Dirty Word, Bus. Wk., Dec. 25, 1995, at 54. All of Mexico was fearful of whether there would be further arrests. Id. Those who did business with Raul were concerned about being incriminated, while others were concerned that the investigation would undermine attempts to stabilize the Mexican economy. Id.; see Colin McMahon, Crisis of Confidence Rocking Mexico, Chi. Tri., Sept. 26, 1996, at 6 (reporting that 'a national business group, reflecting the jitters . . . called on Mexican prosecutors to end their 'witch hunt.' ").

205. Preston, supra note 202, at A12. The Institutional Revolutionary Party was, at the time, the governing political party of Mexico. Id.


207. See Preston, supra note 202, at A12. Raul Salinas was arrested on February 28, 1995. Id.
money, all allegedly belonging to Raul.\textsuperscript{208} According to news reports, the authorities uncovered the money in seventy different bank accounts, in over seven different countries.\textsuperscript{209} They also discovered twenty plots of land, six mansions, and thirteen apartments.\textsuperscript{210}

The authorities considered the money illegitimate because of Raul's questionable reputation.\textsuperscript{211} During his brother's reign, Raul was allegedly linked to the Mexican drug cartels.\textsuperscript{212} Raul

\textsuperscript{208} See Laurie Hays, \textit{U.S. is Pressing Probe of How Citibank Handled $100 Million for Raul Salinas}, \textit{WALL ST. J.}, Sept. 23, 1996, at A4 (reporting that the accounts "came to light" after Raul's arrest); \textit{60 Minutes, supra} note 2 (reporting that the accounts were valued at US$300 million).

The money was discovered through a twist of unlikely events. See DePalma & Truell, \textit{supra} note 203, at A25. A car allegedly to have been used in the assassination of Ruiz Massieu was found in the driveway of a house called "La Casa Chica" — the house of women. \textit{Id.} Police checked the ownership of the house and learned it was registered in the name of one Juan Guillermo Gomez Gutierrez, a rather indistinguishable name. \textit{Id.} However, the police also checked the ownership of the car. \textit{Id.} The name Juan Guillermo Gomez Gutierrez also came up but with a \textit{distinguishable} photograph, that of Raul Salinas de Gortari. \textit{Id.} Juan Guillermo Gomez Gutierrez was an alias used by Raul to conceal the ownership of the house as well as the car. \textit{Id.} The Mexican police immediately put out an international alert on the counterfeit name. \textit{Id.}

An unwitting party to Raul's affair was his third wife, Paulina Castanon. \textit{Id.} On his demand, she left Mexico for Switzerland to close his accounts and transfer his money into a trust at Liechtenstein. \textit{Id.} Unaware of the international alert, she was arrested by Swiss police for attempting to maneuver money in one of Raul's accounts. \textit{Id.} She was later released, but the incident enabled the Swiss police to open a safe deposit box belonging to the account, where insider, they found a passport belonging to Juan Guillermo Gomez Gutierrez, but with a photograph of Raul Salinas. \textit{Id.} (citing 1995 deposition of Raul Salinas taken by Swiss authorities and made available to the New York Times). In Raul's deposition, he states that he asked his wife to go because he knew the Mexican government had found out about his passport under his alias, and that he wanted to keep officials from seizing it. \textit{Id.} The evidence confirmed the international alert and launched a world wide search for other accounts hidden under the counterfeit name. Fidler & Crawford, \textit{supra} note 204, at 3.

The search was conducted by Mexican, American and Swiss authorities, which was made possible by international agreements for mutual assistance. David Adams, \textit{Money Trail Leads to Model Bank}, \textit{St. PETERSBURG TIMES}, April 22, 1996, at 1A.

\textsuperscript{209} \textit{60 Minutes, supra} note 2; \textit{News in Brief: Salinas Bank Accounts Found}, \textit{THE GUARDIAN (London)}, June 24, 1996, at 8.

\textsuperscript{210} Adams, \textit{supra} note 208, at 1A. This was considered an "astronomical balance sheet, even for the generous boundaries traditionally allowed to a Mexican ruling class." DePalma & Truell, \textit{supra} note 203, at A25.

\textsuperscript{211} \textit{See 60 Minutes, supra} note 2 (reporting that "Raul's money, allegedly, is $300 million, said to be, plain and simple, loot from illegal dealings in payoffs, in bribes, and possibly drugs.").

\textsuperscript{212} \textit{See Smith & Borrus, supra} note 204, at 54 (stating that according to sources in Washington, officials of Bush and Clinton Administrations have long suspected that some members of Salinas administration had links to Mexican drug cartels); McMahon,
was also allegedly an extortionist, appropriating millions of dollars from wealthy businessmen involved with his brother's administration. According to news reports, the most compelling evidence was Raul's salary. During his brother's reign, Raul made no more than US$190 thousand a year as a civil servant.

Raul is currently in a maximum security prison in Mexico awaiting trial for murder and inexplicable enrichment, a Mexican criminal offense that proscribes the unexplained accumulation of wealth greater than a government official's income. Raul, however, maintains that the money is from legitimate sources. Raul claims the money came from investors who wanted to establish a fund abroad that would make investments

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supra note 204, at 6 (stating that Raul had links with Mexico's most powerful drug cartels). But see Jose de Cordoba & Laurie Hays, U.S. Wins Big Mexican Narcotics Case, WALL ST. J., Oct. 17, 1996, at A18 (stating that Raul allegedly had links to Juan Garcia Abrego, reputed to be one of Mexico's most powerful drug kingpins, but that during trial on October of 1996, when Abrego was convicted on federal charges for smuggling nearly 15 tons of cocaine into United States, few "explosive revelations" had been produced confirming allegation).

213. McMahon, supra note 204, at 6; CBS Evening News (CBS television broadcast, March 7, 1996). During his brothers reign as president, Mexico privatized a host of their government owned corporations. Id. "The word in Mexico was that if you wanted to get a deal on one of those privatizations . . . you needed to pay ten percent to Raul." Id. He knew the administration's inner workings, and most importantly, had the president's ear. Id. "He even earned the nickname 'Mr. Ten Percent' for the cut he allegedly took to push the deals through." McMahon, supra note 204, at 6.

Before the privatization of Mexico's government owned corporations, Mexico had two billionaires. Three years later, it had twenty-four and ranked fourth in the world in the number of billionaires after the United States, Germany, and Japan. 60 Minutes, supra note 2. "All of the [billionaires], in one way or another, owe[d] their ability to be so successful in business to the connections with the Salinas administration." Id. (statement of Adolfo Aguilar Zinser, independent congressman and head of first Mexican congressional investigation of corruption).


216. Preston, supra note 202, at A12.

217. Salinas Probe Examines Citibank, PRIVATE BANKER INT'L, June 1, 1996, at 8. Inexplicable enrichment, also known as "illicit enrichment", appears to be equivalent to the U.S. charge of corruption or extortion. See Hays, supra note 3, at A4 (reporting that Raul was charged for "plotting a political assassination and 'illicit enrichment'"); 60 Minutes, supra, note 2 (stating that 'inexplicable enrichment' is legal label for corruption); NBC Nightly News (NBC television broadcast, June 21, 1996) (reporting that Raul was charged with murder and corruption); Salinas Probe Examines Citibank, supra (stating that "inexplicable enrichment" may be equivalent to extortion).

218. See Preston, supra note 202, at A12. As for the murder charge, Raul denies it, arguing that he was accused as part of a campaign by the current president, Ernesto Zedillo, to discredit his brother. Id.
back into Mexico. Mexican authorities have yet to verify the claim.

In the United States, Raul's arrest has opened an investigation into Citibank, one of the largest banks in the world. Through his lawyers, Raul had implicated Citibank as the party responsible for accepting, depositing, and disseminating most of his money out of Mexico. Specifically, he had pointed to Amy Elliot ("Elliot"), a Citibank vice president. According to Raul, she had devised the whole strategy.

Citibank officials deny misconduct. According to statements issued by their corporate headquarters, Citibank thoroughly examined all transactions with Raul and found no evidence of impropriety. According to her lawyer, Elliot also in-

220. See Strange $30 Million Business Transaction, MILWAUKEE J. SENTINEL, Feb. 1, 1996, at 6. One such "investor friend" has since come forward. Id. The friend is telecommunications entrepreneur Carlos Peralta, head of Grupo Iusa, one of Mexico's largest companies, and the Mexican partner of Bell Atlantic, U.S.A. Id. At an interview in Mexico City held soon after Raul's arrest, Peralta confirmed that in April of 1994, he gave Raul US$50 million, no receipts given, no questions asked. Id. He also said that he did not give Raul the money in exchange for any favors or privileges. Id. At the time, Mexican financial markets were taking a beating and the project Raul had offered seemed like a "golden opportunity." Id.

This supports Raul's contention that he received the money from a group of investors, but in a questionable fashion: no contracts were signed, no other investor has since come forward, and Peralta's money apparently ended up in a Swiss bank account under an assumed name. Id. As Adolfo Aguilar Zinser, an independent congressman in Mexico, said, "what kind of legitimate operation requires a $50 million dollar deposit in Switzerland under the name of someone who doesn't exist?" Id.

221. See DePalma & Truell, supra note 203, at A25. The Justice Department announced for the first time during the week of June 6, 1996, that it had opened a criminal investigation into Salinas's transactions at Citibank. Id. "The aim is to determine if Citibank violated American laws prohibiting banks from knowingly helping criminals hide illicit earnings." Id.

222. 60 Minutes, supra note 2. Raul claimed that, at the least, Citibank arranged to get US$100 million of his money out of Mexico and onto U.S. soil. Id. His statement and the ensuing investigation concerned Citibank. See Smith & Borrus, supra note 204, at 54 (reporting that Citibank Mexico braced for raid by investigators). For quite a while Citibank had been enjoying a "privileged status" in Mexico, primarily because it did not pull out in the late 1930s when other banks withdrew after the Mexican government's nationalization of the oil industry. Adams, supra note 208, at 1A.

223. 60 Minutes, supra note 2.
224. Hays & Allen, supra note 3, at A4; 60 Minutes, supra note 2.
225. Adams, supra note 208, at 1A.
226. Id. Citibank announced, "We have always thoroughly examined all the questions about alleged irregularities." Id. "We have not found any reason to believe that we have acted illegally or unethically." Id.
sisted that everything she had done with Raul's money was in accordance with Citibank policy and was approved by her supervisors.\footnote{227} News reports, however, state that Citibank's involve-

\footnote{227. 60 Minutes, \textit{supra} note 2. Interestingly, Citibank chairman, John Reed, has said that neither he nor other senior managers knew anything about Raul Salinas's accounts until after Mr. Salinas was arrested in February. \textit{Hays \& Allen, supra note 3, at A4. Nevertheless, Citibank is standing firmly in support of Elliot. \textit{Id}.}

U.S. investigators recently deposed Amy Elliot. \textit{See Hays, supra note 208, at A1. The deposition took place at the U.S. attorney's office in Manhattan by representatives of the Mexican attorney general, the Swiss attorney general, and the U.S. Department of Justice. 60 Minutes, \textit{supra} note 2.}

Asked if she had tried to determine where he derived all the money, Elliot replied that Raul Salinas told her he had sold a construction company, and that inquiring further would be "like asking the Rockefellers where they got their money." \textit{Id.}

Analysts remained skeptical: "How could anyone named Salinas using his own name deposit millions of dollars without questions being raised?" asked Ronald K. Noble, a former U.S. undersecretary of the Treasury who heads an international task force on money laundering. \textit{DePalma \& Truell, \textit{supra} note 1, at A25.}

The following information was derived from Elliot's deposition reprinted in the Wall Street Journal. \textit{Hays, supra note 208, at A1: Amy Elliot was introduced to Raul in 1992 by Carlos Hank Rhon, a prominent Mexican businessman and a longtime client of Citibank's private bank — an operation set up to deal discreetly with wealthy individuals. \textit{Id.} Mr. Hank Rhon said that while a lot of Mexicans said they knew the famous first family, "he in fact knew the Salinases rather well." \textit{Id.} He also mentioned that Raul had sold a construction company and needed to open an account to deposit the proceeds. \textit{Id.}

After two meetings, Elliot agreed to accept the funds, but without asking some very important questions, such as the construction company's name, its worth, receipts of sale, or why he even wanted to open up an overseas account. \textit{Id.} Her deposition also reveals that she did not research his employment records or ask for any bank references, a standard procedure for all new accounts. \textit{Id.} Rather, on the word of Mr. Hank Rhon and her own general knowledge, she went ahead and wrote letters of instruction setting up a trust in London and Zurich and a New York checking account funded with a deposit of US$100 thousand. \textit{Id.}

Elliot also revealed that as their relationship grew, Raul began to seek Elliot's assistance more frequently. \textit{Id.} In one instance, he asked her to inspect a California house he wanted to buy, which she did, creating a corporation to be its owner. \textit{Id.} She also took pains to preserve his confidentiality, often bypassing the Mexico City office and speaking over the phone in code. \textit{Id.}

When his brother's term was nearing its end, Raul asked Elliot to move all of his accounts out of Mexico. \textit{Id.} Again she asked no questions, relying only on her old assumptions. \textit{Id.} The subsequent plan was complex, but the basic principle was to get the money out without being traceable. \textit{Id.} It called for Paulina Castanon to take cashier's checks for pesos to Citibank's Mexico City branch. \textit{Id.} Citibank would then change the pesos into dollars and wire the money to New York to a "concentration account" for wire transfers. \textit{Id.} They would come marked attention Ms. Elliot, who would pick them up and personally ship them to the accounts in London and Switzerland. \textit{Id.}

Throughout the affair, as suspicious as it may have seemed, Elliot failed to inquire into any matters. \textit{Id.} "It didn't seem strange to me," she said to the investigators, "that he wanted to do it this way... [H]e was a Salinas." \textit{Id.} The plan came to an end when
ment with Raul’s money is uncontested.\textsuperscript{228} The news reports also contend that Citibank knew the money might have been illegitimate.\textsuperscript{229} As for Elliot, analysts say it is hard to understand how she could not have had suspicions about the money in Salinas’s accounts, considering his officially reported earnings, his conspicuous taste of living, his reputation among ordinary Mexicans as a questionable operator,\textsuperscript{230} and her bank’s own rules regarding dubious funds.\textsuperscript{231}

U.S. authorities are currently investigating the matter.\textsuperscript{232} Specifically, they are inquiring into whether Citibank and Amy Elliot violated U.S. law prohibiting a bank or person from knowingly transporting illegitimate money across international borders codified as Section 1956.\textsuperscript{233}

Elliot discovered from a news report, the first report she attests she ever read on Raul, that he was suspected of being behind the September 1994 killing of Jose Francisco Ruiz Massieu. \textit{Id.}


\textsuperscript{229} \textit{Id.}

\textsuperscript{230} DePalma & Truell, \textit{supra} note 203, at A25; see Adams, \textit{supra} note 208, at 1A ("even people who liked President Salinas knew that his brother was shady."). Mexico is considered among the ten most corrupt countries on a list of forty-one nations. Diego Cevallos, \textit{Mexico: Salinas Casts Corruption Shadow}, INTER PRESS SERVICE, June 25, 1996.

\textsuperscript{231} Adams, \textit{supra} note 208, at 1A. Elliot’s bank’s rules consist of “Know You Customer” guidelines. DePalma & Truell, \textit{supra} note 203, at A25. In her testimony at the 1994 trial of a former colleague accused of money laundering she gave a detailed description of the guidelines:

Know your client, at least in our bank is part of the culture. If you come in with a prospect and/or name of a prospect, you will be sure to be asked, ‘Who is this person, what do they do, who introduced them to you?’ by at least three or four people higher than you. It’s just the way it is. \textit{Id.}

We visit our clients 10 to 12 times a year in their country. They come back three or four times to New York. It’s obviously a growing kind of thing and not just in knowing your customer [to] make sure you know what’s going on, but because the relationship can grow deeper the more you know this person. This is why we go to their business, this is why we remember birthdays. It just increases depth. . . . It’s too risky not to do due diligence, not to know who you are dealing with. \textit{Id.}

Adams, \textit{supra} note 208, at 1A.

As to having Mexican officials as clients, Elliot said, “if you get to know them . . . it’s fairly obvious, I think. Mexican officials are talked about a lot.” \textit{Id.} Elliot also noted that she recognized that government officials in Mexico had a reputation for abusing their official positions for personal enrichment; she said it was not difficult to know who was trustworthy. \textit{Id.}

\textsuperscript{232} DePalma & Truell, \textit{supra} note 1, at A1.

\textsuperscript{233} \textit{Id.}
II. THE SIXTH CIRCUIT'S INTERPRETATION OF SECTION 1956'S FIRST MENS REA REQUIREMENT

The Sixth Circuit has addressed the use of section 1956 in more than six cases. In three of these cases, the Sixth Circuit has specifically addressed section 1956's mens rea requirements. In all three of the cases, the Sixth Circuit, in contrast to the Third and Fourth Circuits, used language interpreting section 1956's first mens rea requirement as requiring proof that the accused knew the proceeds involved in the alleged money laundering transaction represented proceeds derived from a specific unlawful activity, rather than from some form of unlawful activity as expressly mandated by the statute. The principal decision in which the Sixth Circuit interpreted section 1956's first mens rea requirement as requiring such specific knowledge was in United States v. McDougald.

A. Pre-McDougald Decisions

The Sixth Circuit first addressed section 1956 in United


235. See Bencs, 28 F.3d at 561-63 (addressing § 1956(a)(1)(B)(i)'s mens rea requirements); McDougald, 990 F.2d at 262-64 (addressing § 1956(a)(1)(B)(i)'s mens rea requirements); Beddow, 957 F.2d at 1333-45 (addressing §§ 1956(a)(1)(B)(i) & 1956(a)(2)(B)(i)'s mens rea requirements). As already noted, scholars and judges consider § 1956(a)(1)(B) and § 1956(a)(2)(B) indistinguishable. See, e.g., Carr, 25 F.3d 1194, 1204 ("[W]e find the distinction [between the two sections] so slight").

236. Compare Bencs, 28 F.3d at 561-63, McDougald, 990 F.2d at 262-64, and Beddow, 957 F.2d at 1333-45 with Campbell, 977 F.2d 854 and Carr, 25 F.3d 1194. For example, in Beddow, the Sixth Circuit wrote "the government had the burden of proving beyond a reasonable doubt that [the defendant] knowingly conducted a financial transaction with the proceeds of drug distribution." 957 F.2d at 1334 (emphasis added). In Carr, the Third Circuit wrote "the requisite scienter element is established in the present case if the evidence shows beyond a reasonable doubt that [the defendant] knew the funds he was carrying represented the proceeds of any form of unlawful activity which is a felony under state, federal, or foreign law." 25 F.3d at 1204 (emphasis added).

237. 990 F.2d 259.
States v. Beddow. Several months later, the Fourth Circuit addressed section 1956 in United States v. Campbell. In interpreting section 1956's first mens rea requirement, the Sixth Circuit used language markedly different from the language used by the Fourth Circuit.

1. United States v. Beddow

In Beddow, the Sixth Circuit affirmed the conviction of a defendant charged with money laundering in violation of section 1956. The defendant had appealed arguing that the government had failed to present evidence sufficient to establish section 1956's requisite mens rea requirements. The Sixth Cir-

238. 957 F.2d 1330.
240. Compare Beddow, 957 F.2d at 1333-45 with Campbell, 977 F.2d at 856-58. In Campbell, the Fourth Circuit wrote "the Government need only show knowledge that the funds represented 'the proceeds of some form of unlawful activity.'" 977 F.2d at 858 (citation omitted).
241. 957 F.2d at 1332. The Sixth Circuit also affirmed one count of conspiracy to possess and distribute cocaine, pursuant to 21 U.S.C. § 846, and one count of income tax evasion, pursuant to 26 U.S.C. § 7201. Id.

The specific § 1956 offenses on appeal were 18 U.S.C. §§ 1956(a)(1)(B) and 1956(a)(2)(B). Id. In relevant part, 18 U.S.C. § 1956(a)(1)(B) provides for the sentencing of a person who, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity and knowing that the transaction is designed in whole or in part to conceal the nature or ownership of the proceeds or to avoid a transaction reporting requirement under State or Federal law, conducts or attempts to conduct such a transaction, which is later proven in fact to involve the proceeds of a specified unlawful activity. 18 U.S.C. § 1956(a)(1)(B).

In relevant part, 18 U.S.C. § 1956(a)(2)(B) provides for the sentencing of a person who, knowing that the monetary instrument or fund involved in a transportation represents the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part to conceal the nature or ownership of the proceeds or to avoid a transaction reporting requirement under State or Federal Law, transports or attempts to transport such instrument or funds from a place in the United States to or through a place outside the United States, or from a place outside the United States to or through a place in the United States. 18 U.S.C. § 1956(a)(2)(B).

The Court treats both sections as one and the same, neither referring to one over the other, nor distinguishing one from the other. See Beddow, 957 F.2d at 1334 ("We conclude that substantial evidence supports the jury's verdict on the money laundering charges." (emphasis added)); id. at 1335 ("Consequently, a rational jury could find that [the defendant] violated 18 U.S.C. §§ 1956(a)(1)(B) and 1956(a)(2)(B)." (emphasis added)).

The Court also affirms one count of money laundering in violation of 18 U.S.C. § 1957. Id. Section 1957 is outside the scope of this Comment.

242. Beddow, 957 F.2d at 1334. The defendant had been an alleged drug dealer.
The Court first interpreted the mens rea requirements of section 1956. The Court found that section 1956’s mens rea requirements required the government to prove beyond a reasonable doubt that the defendant knowingly conducted a financial transaction with the intent to conceal the nature of the proceeds involved in the financial transaction, the second mens rea requirement, and knowingly conducted the financial transaction with the proceeds of drug distribution, the Court’s interpretation of the first mens rea requirement.

The Court then found that the government had presented sufficient evidence to establish the mens rea requirements. First, the government had introduced tape recorded statements made by the defendant stating that he had invested a large sum of drug money in emeralds. The Court found that through the statements a rational jury could have found that the defendant knew the money used in the emerald deal was illegitimate money, satisfying section 1956’s first mens rea requirement.

Id. at 1333. He also had been an unsuccessful financial venturer, bankrupting such businesses as a restaurant and a charter boat, both of which were allegedly funded his drug proceeds. Id. Finally, he had been a gem smuggler. Id. His purchase and attempted sale of US$50,000 in uncut Brazilian emeralds had led to the money laundering charges. Beddow, 957 F.2d at 1333.

The emerald venture began in May of 1988 when the defendant and an accomplice flew to Brazil with US$29,000 in travelers checks and US$18,000 in cash, all of which belonged to the defendant but was purchased and carried by the accomplice. Id. In Brazil, the defendant and his accomplice purchased 8000 carats of uncut emeralds. Id. They returned to Chicago and solicited buyers for the emeralds. Beddow, 957 F.2d at 1333. Before they were able to find any buyers, however, federal agents seized the emeralds. Id. The agents subsequently arrested both men. Id.

243. Id.
244. Id.
245. Beddow, 957 F.2d at 1333.

[T]he government ha[s] the burden of proving beyond a reasonable doubt that [the defendant] knowingly conducted a financial transaction with the proceeds of drug distribution, and that he did so with the intent to conceal the nature or source of those proceeds or with the intent to avoid a transaction reporting requirement.

Id. (emphasis added). The Court uses “financial transaction” universally, or in other words, to satisfy section 1956(a)(2)(B)’s “transportation.” Beddow, 957 F.2d at 1334.

246. Beddow, 957 F.2d at 1334-35.
247. Id. at 1334-35.
248. Id. at 1335. “A rational jury could find from these statements that [the defendant] knew that the funds involved in the emerald deal were the proceeds of unlawful activity.” Id. (emphasis added). The Sixth Circuit’s language here, interpreting the first mens rea requirement, differs from the language used earlier where the Court
Second, the Court held that a rational jury could also have found that by arranging the transaction so that the accomplice purchased the emeralds rather than the defendant himself, the defendant was using the accomplice as a decoy to disguise his ownership of the illegitimate money, satisfying section 1956's second mens rea requirement.\textsuperscript{249}

The Sixth Circuit refers to Beddow in several subsequent cases dealing with section 1956's mens rea requirement.\textsuperscript{250} The subsequent cases fail, however, to reflect the Sixth Circuit's adjusted interpretation of section 1956's first mens rea requirement.\textsuperscript{251} In the subsequent cases, the decisions rely on the Court's initial interpretation that the first mens rea requirement required proof that the accused knew the proceeds involved in the alleged money laundering transaction were derived from a specific unlawful activity.\textsuperscript{252}

\textbf{2. United States v. Campbell}

Several months after the Sixth Circuit’s decision in Beddow, the Fourth Circuit in United States v. Campbell received its own opportunity to interpret section 1956’s first mens rea requirement.\textsuperscript{253} There, the Fourth Circuit held, in contrast to the Sixth Circuit, that the first mens rea requirement required proof that the defendant knowingly conducted a financial transaction with the proceeds of some form of unlawful activity, rather than the proceeds of a specific unlawful activity, such as drug trafficking.\textsuperscript{254} The case dealt with the prosecution of Ellen Campbell interpreted the first mens rea requirement as requiring proof that the defendant knew the money was "proceeds of drug distribution." \textit{Id}. The Court was correcting its earlier mistake. \textit{Beddow}, 957 F.2d at 1335.

\textsuperscript{249} \textit{Id}. at 1335.

\textsuperscript{250} See, e.g., Samour, 9 F.3d at 535 (1993) (citing to \textit{Beddow}); \textit{Smith}, 39 F.3d at 122 (1994) (citing to \textit{Beddow}).

\textsuperscript{251} See, e.g., Samour, 9 F.3d at 535 (using \textit{Beddow}'s initial interpretation of the first mens rea requirement); \textit{Smith}, 39 F.3d at 122 (using \textit{Beddow}'s initial interpretation of the first mens rea requirement).

\textsuperscript{252} \textit{Samour}, 9 F.3d at 535; \textit{Smith}, 39 F.3d at 122. In \textit{Samour}, the Court states, "[u]nder [section 1956], the United States has the burden of proving beyond a reasonable doubt that the defendant 'knowingly conducted a financial transaction with the proceeds of drug distribution.' 9 F.3d at 535 (citing \textit{Beddow}). In \textit{Smith}, the Court states, "[i]n order to convict the defendant of money laundering, the prosecution must prove that the defendant . . . knew that the money was from a specified unlawful activity." 39 F.3d at 122 (citing \textit{Beddow}).

\textsuperscript{253} 977 F.2d 854.

\textsuperscript{254} \textit{Id}. at 858. "As the text of the statute indicates, the Government need only
(“Campbell”), a North Carolina real estate agent.\(^{255}\) The government had accused her of money laundering in violation of section 1956.\(^{256}\) Specifically, the government accused her of assisting a drug dealer purchase a house, knowing that the money used in the purchase represented criminally derived proceeds, and knowing that the drug dealer was attempting to conceal the nature of the money.\(^{257}\) The issue on appeal was whether the government had provided evidence sufficient to demonstrate that Campbell had the two requisite mens rea requirements.\(^{258}\)

Like the Sixth Circuit in *Beddow*, the Court first interpreted section 1956’s mens rea requirement.\(^{259}\) The Court found the lower court’s interpretation of both mens rea requirements incorrect.\(^{260}\) With respect to the first mens rea requirement, the Court held that the requirement, which the lower court had interpreted to require knowledge of a specific unlawful activity, required only knowledge of some form of unlawful activity.\(^{261}\)

show knowledge that the funds represented 'the proceeds of some form of unlawful activity.'" *Id.* (citation omitted).

\(^{255}\) *Id.* at 855. In the summer of 1989, a drug dealer approached Campbell and proffered the need to purchase a house. *Campbell*, 977 F.2d at 855-56. Within a week, Campbell assisted the drug dealer find a house selling for US$182,500. *Id.* The drug dealer, who could not obtain a mortgage for the full amount, agreed with the owners of the house and Campbell to pay US$60,000 in cash and the balance by mortgage. *Id.* Implicit in the agreement was the understanding that the sales price of the house would only reflect the reduced price of US$122,500, with the US$60,000 considered “under the table” and unreflected. *Campbell*, 977 F.2d at 855-56.

At the closing, the drug dealer, who during the entire relationship with Campbell hid his true occupation but nevertheless drove in either a red or gold Porsche and carried large amounts of cash (US$20,000 in one instance), appeared at Campbell’s office with the US$60,000 in a brown paper grocery bag. *Id.* The money was counted, and a contract was executed reflecting only the US$122,500 sales price. *Id.* Campbell was arrested shortly thereafter. *Id.*

\(^{256}\) *Campbell*, 977 F.2d at 856. Specifically, the government charged her with violating 18 U.S.C. § 1956(a)(1)(B)(i), 18 U.S.C. § 1957(a), and 18 U.S.C. § 1001. *Id.* The last charge was for filing a false statement, which in the case was a statement on the closing form. *Id.*

\(^{257}\) *Id.* at 856.

\(^{258}\) *Campbell*, 977 F.2d at 856. “The central issue in contention is whether there was sufficient evidence for the jury to find that Campbell possessed the knowledge that: (1) [the drug dealer’s] funds were the proceeds of illegal activity, and (2) the transaction was designed to disguise the nature of those proceeds.” *Id.* The lower court had found the evidence insufficient to convict Campbell. *Id.*

\(^{259}\) *Id.*

\(^{260}\) *Campbell*, 977 F.2d at 57.

\(^{261}\) *Id.* at 57 n.3. “[T]he district court’s statement that the Government must show Campbell possessed ‘knowledge of the drug dealer’s activities,’ is . . . incorrect. The statute requires only a showing that the defendant had knowledge that ‘the prop-
Court subsequently found that the government had provided evidence sufficient to convict Campbell, and reversed the lower court's decision.\textsuperscript{262}

\section*{B. United States v. McDougald}

The Sixth Circuit revisited section 1956 and its mens rea requirements in \textit{United States v. McDougald}.\textsuperscript{263} Notwithstanding a dissent, the Court reversed the conviction of defendant, Bobby McDougald, a former U.S. Green Beret and retired army sergeant, for money laundering in violation of section 1956.\textsuperscript{264} Interpreting the first mens rea requirement as requiring specific knowledge of drug trafficking, the Court held that the government's evidence was insufficient to support a conviction.\textsuperscript{265}

\begin{itemize}
\item \textsuperscript{262} \textit{Id.} at 858-59. The government had introduced evidence demonstrating that Campbell had stated at least on one prior occasion that she knew or at least contemplated that the money involved in the transaction was drug money. \textit{Campbell,} 977 F.2d at 859. The government had also introduced evidence demonstrating that Campbell was fully aware of the drug dealer's lifestyle, which included driving a Porsche, using a cellular phone, and carrying large amounts of cash. \textit{Id.} Coupled with the unusual nature of the closing, the Court found the evidence "pointing to Campbell's knowledge of [the drug dealer's] illegal activities." \textit{Id.} at 858.


\item \textsuperscript{264} \textit{McDougald,} 990 F.2d at 259. The Court also addressed the last element of section 1956, requiring proof that the proceeds be in fact the proceeds of a specified unlawful activity. \textit{See} 18 U.S.C. § 1956.

\item \textsuperscript{265} \textit{Id.} Although decided sixth months after \textit{Campbell}, \textit{McDougald} fails to cite \textit{Campbell}, effectively ignoring \textit{Campbell}'s relatively similar facts, analysis, and holding. Compare \textit{Campbell,} 977 F.2d 854, with \textit{McDougald,} 990 F.2d 259.
\end{itemize}
1. Facts

Bobby McDougald ("McDougald") lived in Columbus, Ohio, next door to Ronald and Darlene Watts. McDougald considered the Watts' close friends, referring to himself on occasion as their Uncle Bobby. Ronald Watts ("Watts") managed a promotion company called Wattsline Entertainment. Allegedly unknown to McDougald, Watts was also the head of a California drug ring.

In June of 1990, Watts suggested McDougald drive his Wattsline Entertainment van to California and pick up a friend named Eddie McFadden ("McFadden"). With the meeting to take place at a restaurant, McDougald agreed and drove to California. The meeting never took place, however, and McDougald telephoned Watts from California for further instructions. Another meeting was soon arranged and McDougald found McFadden and drove him back to Ohio. Like Watts, McFadden was a major drug dealer. Allegedly, McDougald was unaware of this, as he was unaware that Watts was also involved in drugs.

On June 4, Watts suggested McDougald purchase a car for McFadden. McDougald agreed and along with Watts and an

266. *McDougald*, 990 F.2d at 260.
267. *Id.* The fact that McDougald was a close friend to the Watts's is significant considering that in *Campbell* the Fourth Circuit held that evidence regarding a person's knowledge of another person's lifestyle may be used to infer actual knowledge of a possible link to unlawful activity. See *Campbell*, 977 F.2d at 859 ("[The defendant's] lifestyle was sufficient to negate the credibility of Campbell's assertion that she believed [the defendant] to be a legitimate businessman.").
268. *McDougald*, 990 F.2d at 260.
269. *Id.*; see U.S. Willful Blindness Weapon Damaged, *MONEY LAUNDERING ALERT INTERNATIONAL*, July 1, 1993 (referring to the facts of *McDougald* as "the stuff of soap operas.").
270. *McDougald*, 990 F.2d at 260.
271. *Id.*
272. *Id.*
273. *Id.* The suspicious nature of McDougald's meeting with McFadden is similar to the "fraudulent nature of the transaction in which Campbell was asked to participate." *Campbell*, 977 F.2d at 859.
274. *McDougald*, 990 F.2d at 260.
275. *Id.* The Government did, however, present evidence that McDougald knew Watts smoked marijuana. *Id.* ("Watts had once lit a marijuana cigarette in McDougald's car. McDougald immediately pulled over and insisted that Watts put the cigarette out and never have drugs in his presence again.").
276. *Id.*
accomplice, McDougald traveled to a local Chevrolet dealership. There, after selecting a 1990 Beretta, McDougald informed the dealer that the purchase would be in cash, US$10,000 in cash. The cash had originally belonged to McFadden. The car was purchased and the three men returned to the Watts' house. Two days later, McDougald drove McFadden back to California in the new Beretta. He left the car with McFadden and flew back to Ohio.

On January 18, 1991, Ohio police searched the Watts' home and found a set of keys to a 1990 Beretta and a registration tag in McDougald's name. Shortly thereafter, the police questioned McDougald, inquiring about the Beretta. McDougald told them that he indeed had at one time owned a Beretta but it had been demolished in an accident in October of 1990. He also told them that he could not remember whether he had purchased the car with cash or credit.

2. The District Court and Sixth Circuit Holdings

The government charged McDougald with money laundering in violation of section 1956. Specifically, the government accused him of knowingly using US$10,000 in drug proceeds to

277. Id.
278. McDougald, 990 F.2d at 260. According to the Court, the accomplice, a friend of Watts's, "passed the cash to McDougald behind the table." Id.; see Campbell, 977 F.2d at 858 ("[T]he fraudulent nature of the transaction itself provides a sufficient basis from which a jury could infer [a defendant's] knowledge.").
279. Id. McFadden had given the cash to the accomplice at Watts' house. Id.
280. Id. The selling price for the car was $9999 plus $3.50 for temporary tags. Id.
281. Id.
282. Id.
283. Id. Leaving the car with McFadden had its own complications. In the fall of 1990, McDougald began receiving by mail California parking tickets connected to the Beretta. Id. at 261. McDougald complained to Watts that he could not afford to pay the tickets. Id. Watts agreed to pay the tickets, "eventually." Id.
284. McDougald, 990 F.2d at 261. The decision fails to explain what the police were doing at Watts's residence. See id. But see U.S. Willful Blindness Weapon Damaged, supra note 269 (reporting that Watts "offered up McDougald to the government following his own arrest for conspiracy to distribute cocaine.").
285. McDougald, 990 F.2d at 261.
286. Id. The officers asked McDougald what cars he owned. He answered that he owned a 1980 Oldsmobile, a 1975 Buick, and a 1978 Eldorado. McDougald, 990 F.2d at 261. The officers asked if he owned any other cars. Id. He finally answered that at one time he indeed had owned a 1990 Beretta. Id.
287. Id.
288. Id. at 259-60.
purchase a car for a drug dealer, and then registering the car in his own name.\textsuperscript{289} At trial, McDougald denied the accusation.\textsuperscript{290} He testified that he had borrowed Watts' van to travel to California, not to meet McFadden, but to visit friends and family.\textsuperscript{291} He also testified that he had never met McFadden in Ohio, but rather had returned alone to Ohio.\textsuperscript{292} As for the car purchase, he denied it was for McFadden.\textsuperscript{293} He testified that the car was for his son and that it was purchased with his own money.\textsuperscript{294} The U.S. District Court for the Southern District of Ohio rejected his story and found him guilty of money laundering.\textsuperscript{295}

The Sixth Circuit reversed.\textsuperscript{296} The Court first found McDougald's version of the events entirely fabricated.\textsuperscript{297} The Court then found, nevertheless, that the Government had failed to prove section 1956's requisite mens rea requirements.\textsuperscript{298} In doing so, the Court interpreted section 1956's first mens rea requirement as requiring proof of actual knowledge, specifically, that a defendant knew the money involved in a transaction was money derived from drug trafficking, rather than from some form of unlawful activity.\textsuperscript{299}

\begin{itemize}
\item \textsuperscript{289} Id. at 260. The Court's language implies that McDougald was charged specifically with section 1956(a)(1)(B)(i). Id. The opinion otherwise fails to state the exact subsection of 1956 at issue. Id.
\item \textsuperscript{290} Id. at 261.
\item \textsuperscript{291} Id.
\item \textsuperscript{292} Id.
\item \textsuperscript{293} Id.
\item \textsuperscript{294} Id. at 261. His son had been stationed at Fort Stewart, Georgia. Id. McDougald testified that his son had called him from the base and told him that the Beretta had been involved in an accident. Id. His son was then sent to the Middle East as part of Desert Shield and was unavailable for trial. Id.
\item \textsuperscript{295} Id. at 260. The district court sentenced McDougald to eight years. Id.
\item \textsuperscript{296} Id.
\item \textsuperscript{297} Id. at 261. \textit{See also} id. at 255 (Boggs, J., dissenting) ("As the court correctly states, a rational jury could certainly conclude 'that this entire story was fabricated.'").
\item \textsuperscript{298} Id. at 261. The Court also found that the record contained insufficient evidence to prove that the money was in fact drug proceeds, the last element of section 1956. Id.
\item \textsuperscript{299} Id. "To uphold this verdict we must find that the record contains sufficient evidence to convince a reasonable juror beyond a reasonable doubt that Bobby McDougald knowingly laundered drug money when he purchases the Beretta for Eddie McFadden." Id. at 261.

The Court interprets the first mens rea requirement this way in over ten instances. \textit{See} id. at 260 ("The case is based on weak... evidence that the defendant knew it was drug money."); id. at 261 ("To uphold this verdict we must find that the record contains sufficient evidence to convince a reasonable juror beyond a reasonable doubt that Bobby McDougald knowingly laundered drug money."); id. at 262 ("Even if there were
The dissent took notice of the majority's language and the language's consequential burden.\textsuperscript{300} The dissent found that with the majority's holding, a defendant would be able to escape liability by merely alleging that the defendant did not know the money involved in the transaction represented the proceeds of drug trafficking.\textsuperscript{301} In the dissent's view, the government had sufficiently established McDougald's guilt.\textsuperscript{302}

C. Post McDougald

While the Sixth Circuit continued to interpret section 1956's first mens rea requirement as requiring proof that the accused knew the money involved in a transaction represented the proceeds of a specific unlawful activity, the other circuits continued to interpret section 1956's first mens rea requirement as requiring proof that the accused knew the money involved in the transaction represented the proceeds of some form of unlawful activity.\textsuperscript{303} Illustrative is United States v. Carr,\textsuperscript{304} where the Third Circuit held that section 1956's legislative intent man-

\begin{footnotesize}
\textsuperscript{300} Id. at 265 (Boggs, J., dissenting).
\textsuperscript{301} Id. The dissent stated, \\
The quality of proof in this case shows no indication of differing significantly from any other money laundering case. A drug dealer in McFadden's position, under the majority's rationale, would appear to be able to use a pawn like McDougald with impunity so long as no witness could be found to testify that McDougald was unmistakably told, in the presence of others, 'we are drug dealers and I am giving you drug money.' The law does no require so extensive a burden.

\textsuperscript{302} Id. “The evidence against McDougald is not that he went bowling or to church with Watts; or that they have friends and acquaintances in common. Instead, the evidence shows that McDougald took three cross-country trips at the behest of Watts and McFadden, for no apparent legitimate purpose; that McDougald lied repeatedly about these transactions; and that McDougald knew that he was engaged in concealing McFadden’s connection with the car.” Id. For a further analysis on McDougald, see U.S. Willful Blindness Weapon Damaged, MONEY LAUNDERING ALERT INTERNATIONAL, July 1, 1993.

\textsuperscript{303} Compare McDougald, 990 F.2d 259 (6th Cir.), with Carr, 25 F.3d 1194 (3rd Cir.).

\textsuperscript{304} 25 F.3d 1194 (1994).
\end{footnotesize}
dated no other interpretation. In 1994, the Sixth Circuit finally relented, holding in *United States v. Bencs* that section 1956’s first mens rea requirement required proof that the accused knew the money involved in the transaction represented the proceeds of some form of unlawful activity, rather than a specific unlawful activity. In doing so, however, the Sixth Circuit did not overrule its language in *McDougald*. Rather, the Sixth Circuit distinguished *McDougald* with further language stating that *McDougald* applied wherever evidence of the accused knowledge was as consistent with innocence as with guilt.

1. *United States v. Carr*

The Third Circuit interpreted section 1956’s mens rea requirements in *United States v. Carr*. There, like in *Beddow, Campbell*, and *McDougald*, the Court’s central issue was whether the evidence regarding the mens rea requirements was sufficient to convict the defendant. The Court, interpreting the mens rea requirements much like the Fourth Circuit in *Campbell*, found the evidence sufficient and upheld the conviction.

The defendant in *Carr*, Robert Carr Jr., was accused of being involved in a money laundering network spanning the boundaries of Colombia and Pennsylvania. Carr’s role in the network was to carry drug proceeds from Philadelphia, Pennsylvania, to Cali, Colombia. On one of these trips, United States Customs agents arrested Carr, finding US$186,000 on his person.

On appeal from conviction, Carr argued that the govern-
ment failed to prove he had the requisite mens rea to commit the act of money laundering.\footnote{316} The Third Circuit, after first stating section 1956's express language, interpreted the section's two mens rea requirements individually.\footnote{317} With respect to the first mens rea requirement, the Court interpreted the requirement to mean that the government had to prove beyond a reasonable doubt that the defendant knew the funds he had been carrying represented the proceeds of some form of unlawful activity.\footnote{318} In arriving at its interpretation, the Court referred to a Senate report relating to section 1956's mens rea requirements, which expressly provided for the interpretation.\footnote{319} The Court then found the government's evidence sufficient to satisfy the section's first mens rea requirement.\footnote{320}

2. United States v. Bencs

In United States v. Bencs,\footnote{321} the Sixth Circuit again addressed section 1956's first mens rea requirement.\footnote{322} The Court used language identical to language found in Beddow and reaffirmed in McDougald.\footnote{323} In Bencs, however, the Court distinguished the

\footnote{316} Id. at 1203.
\footnote{317} Carr, 25 F.3d at 1204.
\footnote{318} Id. "We hold that the requisite scienter element is established in the present case if the evidence shows beyond a reasonable doubt that Carr knew the funds he was carrying represented the proceeds of any form of unlawful activity which is a felony under state, federal, or foreign law." Id.
\footnote{319} Id.; S.Rep. No. 433, 99th Cong., 2d Sess. 12 (1986):
[T]he defendant need not know exactly what crime generated the funds involved in a transaction, only that the funds are the proceeds of some kind of crime that is a felony under Federal or State law. This will eviscerate the defense that a defendant knew the funds came from a crime, but thought the crime involved was a crime not on the list of 'specified' crimes in section (c)(7).
\footnote{320} Carr, 25 F.3d at 1205. The Court found sufficient the evidence of recorded phone conversation between Carr and his co-conspirators, Carr's frequent travels with the leader of the money laundering network, and finally Carr's false statements to airport officials. Id.
\footnote{321} 28 F.3d 555.
\footnote{322} Id.
\footnote{323} See id. at 561 ("[T]hat the transactions involved the proceeds of drug sales, as [the defendant] knew."); McDougald, 990 F.2d at 261 ("To uphold this verdict we must find that the records contains sufficient evidence to convince a reasonable juror beyond a reasonable doubt that [the defendant] knowingly laundered drug money."); Beddow, 957 F.2d at 1334 ("[T]he government must prove . . . that [the defendant] knowingly conducted a financial transaction with the proceeds of rug distribution.").
holding in McDougald and affirmed the conviction of a defendant for money laundering in violation of section 1956.\textsuperscript{324}

Bencs had been charged with five instances of laundering drug proceeds as payroll.\textsuperscript{325} He was convicted on all counts and sentenced to sixty-five months imprisonment.\textsuperscript{326} In affirming the conviction, the Sixth Circuit first drew out the elements of section 1956.\textsuperscript{327} The Court implicitly stated that Bencs had to have entered a transaction; that Bencs knew the transaction was designed to disguise the nature of the money; and finally, that Bencs knew the money involved in the transaction were the proceeds of drug sales.\textsuperscript{328} The Court then found the government’s evidence sufficient as a matter of law to satisfy each of the elements.\textsuperscript{329}

\textsuperscript{324} Id. at 562.

\textsuperscript{325} Id. Defendant Ronald Bencs was the president and sole shareholder of Diversified Financial Enterprises, a company involved in striping parking lots, selling jewelry, selling art work, selling Christmas trees, and renovating houses. \textit{Bencs}, 28 F.3d at 555-57. In 1988, IRS criminal investigators, in relation to a derivative investigation, seized Bencs’ financial records. \textit{Id.} After reviewing the records, the investigators noted that Bencs’ reported income failed to justify his net worth. \textit{Id.} The investigators questioned Bencs. \textit{Id.} Bencs claimed that his income was legitimate and denied any assumptions of illegality. \textit{Id.}

The investigators discovered, however, that Bencs and his company were embroiled in a complicated drug scheme. \textit{Id.} at 555-57. From 1972 to 1989, Bencs bought and sold marijuana. \textit{Id.} In 1978 Bencs formed Diversified to conceal the proceeds of the drug operations. \textit{Id.} At trial, IRS agents demonstrated that a total of US$376,000 in cash and US$42,000 in checks were deposited to Diversified. \textit{Id.} A total of US$318,000 was disbursed, however, in payroll checks to Bencs. \textit{Id.}


\textsuperscript{326} Id.

\textsuperscript{327} Id. at 561. The specific 1956 subsection at issue was subsection (a)(1)(B)(i).

\textit{Id.} at 561.

\textsuperscript{328} Id. The Court stated,

The charges set forth the elements of a § 1956(a)(1)(B)(i) offense in alleging that [Bencs’ accountant] issued checks drawn against Diversified’s account to Bencs and that Bencs negotiated the checks; that the transactions involved the proceeds of drug sales, as Bencs knew; and finally, that Bencs acted knowing that the transaction was designed to conceal or disguise the nature and source of the proceeds.

\textit{Id.}

\textsuperscript{329} Id. at 562. “On the records presented, a rational juror could have found each element of the offense beyond a reasonable doubt. We therefore affirm Bencs’ laundering convictions.” \textit{Id.}
In a footnote, the Court distinguished *McDougald*.*\(^{330}\) The Court stated that in *McDougald* the defendant had been charged with laundering another person's drug proceeds, and that the government had failed to demonstrate that the defendant knew the source of the allegedly laundered money.*\(^{331}\) The Court stated that in *Bencs*, Bencs was charged with laundering the proceeds of his own drug money.*\(^{332}\) The Court repeated its argument parenthetically, that in *McDougald*, the government had failed to prove that the defendant knowingly laundered a third person's drug proceeds.*\(^{333}\) The Court also stated, parenthetically, that in a case where the government introduced no evidence of the third person's source of income and where evidence of the defendant's knowledge of the source of money was as consistent with innocence as with guilt, the government had the burden of tracing the allegedly laundered money to a specific unlawful activity.*\(^{334}\)

### III. THE SIXTH CIRCUIT SHOULD OVERRULE MCDougald BECAUSE IT IS FUNDAMENTALLY INCORRECT

A court may overrule a prior decision upon three traditional grounds.*\(^{335}\) The grounds are that the decision's holding is unworkable, the decision's underlying rationale is outdated, or the decision is subject to an intervening development in the law.*\(^{336}\) Recently, the United States Supreme Court has implicitly recognized several other grounds upon which a court may overrule a prior decision.*\(^{337}\) They include changed conditions, conflicting

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330. See id. at 562 n.8.
331. Id. "In *McDougald*, the defendant was charged with laundering another person's drug proceeds, and the government failed to demonstrate that the defendant knew the source of the allegedly laundered money. *Id.*
332. Id. "In this case, Bencs is charged with laundering the proceeds of his own drug activity." *Id.*
333. *Id.* In *McDougald*, the "government did not prove that the defendant knowingly laundered a third person's drug proceeds." *Id.*
334. *Id.* "[W]here government introduced no evidence of the third person's source of income and where evidence of defendant's knowledge of source of money was as consistent with innocence as with guilt . . . government must trace the allegedly laundered money to specific unlawful activity." *Id.*
336. See id. (discussing three grounds of overruling).
precedents, and fundamentally incorrect decisions.\textsuperscript{338}

Here, the Sixth Circuit should overrule \textit{McDougald} because it is a fundamentally incorrect decision. The \textit{McDougald} decision is in direct conflict with the plain meaning of section 1956, is in direct conflict with the legislative history of section 1956, and is in conflict with national efforts against money laundering. Overruling \textit{McDougald} will also prevent misapplication of section 1956 in future cases, such as the one that will most likely be born out of the Salinas-Citibank Affair.

\textbf{A. McDougald is in Direct Conflict with the Plain Meaning of Section 1956}

The first rule of statutory interpretation is for a court to give effect to the plain meaning of a statute's language.\textsuperscript{339} If the statute's language is unambiguous, the court must regard the language as conclusive.\textsuperscript{340} A court should disregard the plain meaning of a statute only if such an interpretation would lead to absurd results.\textsuperscript{341}

Section 1956's express language prohibits a person from internationally transporting income that the person knows represents the proceeds of some form of unlawful activity, and that the person knows is designed to disguise the nature of the pro-

\textsuperscript{338} Id.; see also Schott Optical Glass v. United States, 750 F.2d 62, 64 (Fed. Cir. 1984) (holding that court may overrule prior decision that was clearly erroneous); \textit{Johns v. Redecker}, 406 F.2d 878, 882 (8th Cir. 1969) (holding that obvious error in prior decision need not be perpetuated by strict adherence to decision); \textit{Helms Bakers v. Commissioner}, 263 F.2d 642, 644 (9th Cir. 1959) (holding that court may overrule prior decision that was erroneous); \textit{Stewart v. United States}, 267 F.2d 378, 381 (10th Cir. 1959) (holding that court may overrule prior decision that cannot be sustained on sound ground).


\textsuperscript{340} See \textit{Reves}, 507 U.S. at 177 ("If the statutory language is unambiguous, in the absence of a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive."); \textit{Chevron v. Natural Resources Defense Council, Inc.}, 467 U.S. 837, 842-43 (1984) ("If the intent of Congress is clear, that is the end of the matter; for the court . . . must give effect to the unambiguously expressed intent of Congress.").

\textsuperscript{341} See WAYNE R. L\textsc{a}FE\textsc{v}E & AUSTIN W. SC\textsc{O}TT, JR., SUBSTANTIVE CRIMINAL LAW \$ 2.2(c), at 106 (1986) ("[S]tatutes, even plain statutes, should not receive a construction leading to injustice, oppression, or an absurd consequence.").
ceeds.\textsuperscript{342} According to the express language, the statute’s first mens rea requirement requires the prosecution to prove that the accused knew the proceeds involved in the transportation were derived from \textit{some form of unlawful activity}.\textsuperscript{345} A 1956 subsection emphasizes the first mens rea’s express language, stating that \textit{some form of unlawful activity} means \textit{some form}, not a \textit{specific form}, of felonious conduct.\textsuperscript{344}

In \textit{McDougald}, the Sixth Circuit disregards section 1956’s express language.\textsuperscript{345} Specifically, the Sixth Circuit interprets section 1956’s first mens rea requirement as requiring the prosecution to prove that defendant, McDougald, knew the proceeds involved in the transportation were derived from drug trafficking, a specific form of unlawful activity, rather than some form of unlawful activity, as expressly provided by the statute.\textsuperscript{346} The Sixth Circuit, in essence, disregards the first rule of statutory interpretation.

A proper reading of section 1956’s first mens rea requirement would have required the prosecution merely to prove that McDougald knew the proceeds involved in the car purchase were derived from some form of unlawful activity. Moreover, in conjunction with section 1956’s subsection emphasizing that \textit{some form of unlawful activity} means \textit{some form}, rather than a \textit{spe-}

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\textsuperscript{342} See supra notes 155-60 and accompanying text (discussing language of section 1956).

\textsuperscript{343} See supra notes 188-201 and accompanying text (discussing section 1956’s first mens rea requirement).

\textsuperscript{344} See supra note 198 and accompanying text (discussing section 1956(c)(1)). Section 1956(c)(1) provides that,

\begin{quote}
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 felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7) [listing specified crimes that fall within the statute].
\end{quote}


\textsuperscript{345} See supra note 299 and accompanying text (discussing Sixth Circuit’s interpretation of section 1956 in \textit{McDougald}).

To uphold this verdict we must find that the record contains sufficient evidence to convince a reasonable juror beyond a reasonable doubt that Bobby McDougald knowingly laundered drug money when he purchases the Beretta for Eddie McFadden.

\textit{McDougald}, 990 F.2d at 261.

\textsuperscript{346} Id.
cific form, of felonious conduct, a proper reading would have satisfied the prosecution’s case. The facts of McDougald show ample evidence that defendant, McDougald, knew the proceeds involved in the car purchase were derived from some form of felonious conduct.\footnote{347} The Sixth Circuits failure to follow section 1956’s express language was fatal to the prosecution’s case.

B. McDougald is in Direct Conflict with the Legislative Intent of Section 1956

A second rule of statutory interpretation is for a court to review the legislative intent of the statute.\footnote{348} Where the legislative intent is discernable, a court must give effect to that intent.\footnote{349}

Section 1956’s legislative history is significant.\footnote{350} In regards to section 1956’s first mens rea requirement, the legislative history provides that the requirement requires the prosecution to prove that the accused knew the proceeds were derived from some form of unlawful activity.\footnote{351} Moreover, the legislative history provides that the first mens rea requirement’s language was intentional, particularly to prevent the use of the defense of ignorance in section 1956 prosecutions.\footnote{352} Ultimately, the legislative history shows that the prosecution need only prove that the ac-

\footnote{347. See supra notes 266-83 and accompanying text (discussing facts of McDougald). For example, McDougald had participated in a suspicious meeting and pickup of McFadden, and a suspicious car purchase with US$10,000 cash for McFadden. McDougald also lied about the cars whereabouts to police and to the court. Compare these facts to Carr, 25 F.3d at 1198-1200, where the Third Circuit affirmed the conviction upon facts that the defendant had traveled with the leader of the money laundering network and that the defendant lied to law enforcement officials. See supra note 320 (discussing holding of Carr). Also compare the facts of McDougald with the facts of Campbell, where the Fourth Circuit affirmed the conviction upon the facts that the defendant had at least contemplated the possibility that the money was derived from some illegal activity, and that the defendant participated in a rather unusual house closing. See supra note 262 (discussing holding of Campbell).}


\footnote{349. See Sinclair Refining Co. v. Atkinson, 370 U.S. 195, 215 (1962) ("[W]e have no power to change deliberate choices of legislative policy that Congress has made . . . . Where congressional intent is discernible . . . we must give effect to that intent.").}

\footnote{350. See supra notes 129-37 and accompanying text (reviewing legislative history of statute).}

\footnote{351. See supra notes 191-98 and accompanying text (discussing legislative intent of section 1956’s first mens rea requirement).}

\footnote{352. See supra note 197 and accompanying text (discussing use of defense of ignorance).}
cused knew the proceeds were derived from some kind of crime.353

In McDougald, the Sixth Circuit disregards section 1956's legislative history.354 The Sixth Circuit, in fact, fails to review section 1956's legislative history. In contrast, the Third Circuit in Carr355 directly reviewed section 1956's legislative history and discovered, properly, the legislatively mandated interpretation of section 1956's first mens rea requirement.356 The Sixth Circuit, by failing to review the legislative history of section 1956 came to an improper interpretation of the section's first mens rea requirement.

A proper reading of section 1956's first mens rea requirement through the use of the section's legislative history would have brought the Sixth Circuit to the conclusion that the defendant, McDougald, need not have known the exact crime that generated the proceeds used in the car purchase, only that the proceeds were derived from some kind of crime. With the facts of the case showing ample evidence that McDougald knew Watts and McFadden were questionable characters, a proper interpretation would have won the case for the prosecution.357

C. McDougald is in Direct Conflict with National Efforts Against Money Laundering

National efforts against money laundering have recently taken on an aggressive posture.358 While before 1990 some nations focused their efforts against money laundering only in connection with drug trafficking, today, most nations focus their efforts against money laundering in connection with all major

353. See supra note 198 and accompanying text (discussing ultimate proof required).
354. See supra notes 296-99 and accompanying text (discussing Sixth Circuit's interpretation of section 1956 in McDougald).
355. 25 F.3d 1194.
356. See supra note 319 and accompanying text (discussing Third Circuit's use of Senate Report No. 433 in coming to conclusion that section 1956's first mens rea requirement requires that prosecution merely prove accused knew that proceeds were derived from some form of unlawful activity rather than specific form of activity).
357. See supra note 347 (discussing facts of McDougald, which should have led Sixth Circuit to affirm conviction of defendant McDougald).
358. See supra note 55 and accompanying text (discussing national efforts against money laundering).
Correlatively, today, most nations promulgate their mens rea requirements to require proof that the accused knew the proceeds involved in an alleged money laundering transaction were derived from some form of unlawful activity, rather than a specific form of unlawful activity. In *McDougald*, the Sixth Circuit's decision impinges upon the international community's efforts against money laundering. The Sixth Circuit, by interpreting section 1956's first mens rea requirement as requiring proof that the accused knew the proceeds were derived from a specific form of unlawful activity, contradicts the international community's efforts. The Sixth Circuit's decision reverses the international trend in broadening money laundering statutes to encompass all crimes, rather than the crime of drug trafficking alone.

A proper reading of Section 1956 would have merely required proof that the accused knew the proceeds were derived from some form of unlawful activity. Such an interpretation would have been consistent with Section 1956's expansive scope. Such an interpretation would also have been consistent with the international community's efforts against money laundering.

**D. Overruling *McDougald* Will Prevent Misapplication of Section 1956 in Future Cases**

The Sixth Circuit should overrule *McDougald* to prevent misapplication or confusion in future section 1956 cases. For example, subsequent to the Sixth Circuit's decision in *McDougald*, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"), in *United States v. Wynn*, was forced to distinguish *McDougald*. The defendant in *Wynn* impliedly argued that the *McDougald* mens rea requirement was applicable to his case. The D.C. Circuit recited the *McDougald* Court's

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359. See supra note 56 and accompanying text (discussing regional efforts against money laundering).

360. See supra notes 94, 106, & 118 and accompanying text (discussing Italy's, Germany's, and Mexico's money laundering statutes, requiring only knowledge of general nature).

361. See supra notes 53-88 and accompanying text (discussing trend broadening anti-money laundering statutes and, in particular, France's move to broaden its anti-money laundering statute).


363. Id.

364. Id.
interpretation of the first mens rea requirement and then demonstrated, with a corrected interpretation, that the defendant's reliance on McDougald was misplaced. Overruling McDougald would have prevented the defendant's misapplication.

Also illustrative of the need to overrule McDougald to prevent misapplication of Section 1956 in future cases is Section 1956's role in the impending Salinas-Citibank Affair. There, Section 1956's interpretation will most likely be a central issue. Therefore, whether McDougald's interpretation is applicable will also be a central issue.

1. Citibank-Salinas Affair with McDougald

If McDougald is not overruled, the court hearing the Salinas-Citibank Affair may rely on McDougald's interpretation of Section 1956's first mens rea requirement. Consequently, the court may require the prosecution to prove beyond a reasonable doubt that Citibank knew the proceeds involved in the transportation of Raul's money were derived from drug trafficking, or any other specific offense. Such a requirement would require an oppressive amount of proof.

The facts of the Salinas-Citibank Affair demonstrate that Raul had indeed a questionable reputation, but do not demonstrate specifically a reputation of drug trafficking. Meanwhile, Citibank's Amy Elliot denies any knowledge of any of Raul's questionable activities. With the burden upon the prosecu-

365. Id.
The cases on which Wynn relies for his insufficiency of the evidence claim are clearly distinguishable. In [McDougald], the defendant was asked by a friend to take [US]$10,000 in cash and use it to purchase a car for a third person whom the defendant had met only once and who turned out to be a drug dealer. In reversing McDougald's money laundering conviction, the Sixth Circuit held that, not only was there insufficient evidence that the [US]$10,000 constituted drug proceeds, there was insufficient evidence that McDougald knew its source. . . . In contrast to the facts of those cases, Wynn's ongoing relationship with Edmond and Lewis and his efforts to disguise their identity as customers suggests knowledge both of illegal activities and of a design to conceal. Wynn, 61 F.3d at 925 (citations omitted).

366. See supra notes 300-02 and accompanying text (discussing McDougald dissenting opinion noting consequential burden of requiring specific proof of knowledge).

367. See supra note 205 (discussing Raul's well known reputation as "scoundrel") and note 212 (discussing conflicting reports of Raul's connection with Mexican drug cartel).

368. See supra note 227 and accompanying text (discussing Elliot's deposition testimony denying knowledge of Raul's reputation).
tion to prove that Amy Elliot knew specifically that Raul's money was from drug trafficking, the prosecution would certainly lose its case.

2. Citibank-Salinas Affair without McDougald

If McDougald is properly overruled, the court hearing the Salinas-Citibank Affair will not rely on McDougald's interpretation of Section 1956's first mens rea requirement. Consequently, the court will properly require the prosecution to merely prove beyond a reasonable doubt that Citibank knew the proceeds involved in the transportation of Raul's money were derived from some unlawful activity. Such a requirement would not carry a heavy burden upon the prosecution.

The facts of the Salinas-Citibank Affair demonstrate that Raul's questionable reputation was highlighted in a number of newspapers and magazines.\textsuperscript{369} Citibank's Amy Elliot, a highly ranked banking executive with a specialization in Mexican clients, will not be able to argue faithfully that she did not read any of these newspapers or magazines.\textsuperscript{370} With the burden on the prosecution to prove that Amy Elliot knew that Raul's money was from an unlawful activity, the prosecution will certainly win their case.

\textbf{CONCLUSION}

The Sixth Circuit should overrule McDougald because it is fundamentally incorrect. McDougald is in direct conflict with the plain meaning of Section 1956 and with the statute's legislative intent. McDougald is also in direct conflict with national efforts against money laundering. Finally, overruling McDougald will prevent misapplication and confusion in future Section 1956 cases, particularly the one that will be born out of the Salinas-Citibank Affair.

\textsuperscript{369} See supra note 203 (discussing Wall Street Journal's report of Raul's reputation) and note 213 (discussing CBS television broadcast report of Raul's reputation).

\textsuperscript{370} See supra note 227 (discussing industry experts' skepticism toward Elliot's ignorance) and note 230 and accompanying text (discussing industry experts' argument that Elliot must have known of Raul's questionable reputation).