

Internet Gambling: An Abridged Overview of Federal Criminal Law

Charles Doyle
Senior Specialist in American Public Law

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Summary

This is a summary of the federal criminal statutes implicated by conducting illegal gambling using the Internet. Gambling is primarily a matter of state law, reinforced by federal law in instances where the presence of an interstate or foreign element might otherwise frustrate the enforcement policies of state law. State officials and others have expressed concern that the Internet may be used to bring illegal gambling into their jurisdictions.

Illicit Internet gambling implicates at least seven federal criminal statutes. It is a federal crime (1) to conduct an illegal gambling business under the Illegal Gambling Business Act, 18 U.S.C. 1955; (2) to use the telephone or telecommunications to conduct an illegal gambling business involving sporting events or contests under the Wire Act, 18 U.S.C. 1084; (3) to use the facilities of interstate commerce to conduct an illegal gambling business under the Travel Act, 18 U.S.C. 1952; (4) to conduct the activities of an illegal gambling business involving either the collection of an unlawful debt or a pattern of gambling offenses, the Racketeer Influenced and Corrupt Organizations (RICO) provisions, 18 U.S.C. 1962; (5) to launder the proceeds from an illegal gambling business or to plow them back into such a business under money laundering provisions of 18 U.S.C. 1956; (6) to spend more than $10,000 of the proceeds from an illegal gambling operation at any one time and place under the money laundering provisions, 18 U.S.C. 1957; or (7) for a gambling business to accept payment for illegal Internet gambling under the Unlawful Internet Gambling Enforcement Act (UIGEA), 31 U.S.C. 5361-5367.

Enforcement of these provisions has been challenged on constitutional grounds. Attacks based on the Commerce Clause, the First Amendment's guarantee of free speech, and the Due Process Clause have enjoyed little success. The commercial nature of a gambling business seems to satisfy doubts under the Commerce Clause. The limited First Amendment protection afforded crime facilitating speech encumbers free speech objections. The due process arguments raised in contemplation of federal prosecution of offshore Internet gambling operations suffer when financial transactions with individuals in the United States are involved.

This report is an abridged form, without footnotes, full citations, or supplementary material, of CRS Report 97-619, *Internet Gambling: Overview of Federal Criminal Law*. Related CRS reports include CRS Report RS22749, *Unlawful Internet Gambling Enforcement Act (UIGEA) and Its Implementing Regulations*, and CRS Report R41614, *Remote Gaming and the Gambling Industry*.

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Background

Internet gambling is gambling on, or by means of, the Internet. It encompasses placing a bet online with a bookie, betting shop, or other gambling enterprise. It also encompasses wagering on a game played online. A few states ban Internet gambling per se. Most states, however, rely upon their generally applicable gambling laws. Gambling outlawed when conducted in person is ordinarily outlawed when conducted online.

There are many federal gambling laws, most enacted to prevent unwelcome intrusions of interstate or international gambling into states where the activity in question has been outlawed. This is examination of principal federal criminal laws implicated by Internet gambling and of a few of the constitutional questions associated with their application. In very general terms, it is a federal crime (1) to use wire communications to place or receive bets or to transmit gambling information relating to sporting contests or events; (2) to conduct a gambling business in violation of state law; (3) to travel interstate or overseas, or to use any other facility of interstate or foreign commerce, to facilitate the operation of an illegal gambling business; (4) to conduct a gambling business and accept payment for illegal Internet gambling participation; (5) to systematically commit these crimes in order to acquire or operate a commercial enterprise; (6) to launder the proceeds of an illegal gambling business or to plow them back into the business; (7) to spend or deposit more than $10,000 of the proceeds of illegal gambling in any manner; or (8) to conspire with others, or to aid and abet them, in their violation of any of these federal laws.

The Wire Act

Commentators most often mention the Wire Act when discussing federal criminal laws that outlaw Internet gambling in one form or another. Early federal prosecutions of Internet gambling generally charged violations of the Wire Act. In fact, *Cohen*, perhaps the most widely known of federal Internet gambling prosecutions, involved the Wire Act conviction, upheld on appeal, of the operator of an offshore, online sports book.

The courts have said that in order to prove a Wire Act violation, "the government must show that (1) 'the defendant regularly devoted time, attention and labor to betting or wagering for profit,' (2) the defendant used a wire communication facility: (a) to place bets or wagers on any sporting event or contest; or (b) to provide information to assist with the placing of bets or wagers on any sporting event or contest; or (c) to inform someone that he or she had won a bet or wager and was entitled to payment or credit, and (3) the transmission was made from one state to another state or foreign country." Offenders are subject to imprisonment for not more than two years and/or a fine of the greater of not more than twice the gain or loss associated with the offense or $250,000 (not more than $500,000 for organizations).They may also have their telephone service canceled at law enforcement request, and conduct that violates the Wire Act may help provide the basis for a prosecution under the money laundering statutes, the Travel Act, the Illegal Gambling Business Act, RICO, or the Unlawful Internet Gambling Enforcement Act.

The Wire Act is addressed to those "engaged in the business of betting or wagering" and therefore apparently cannot be used to prosecute simple bettors. The government must prove that the defendant was aware of the fact he was using a wire facility to transmit a bet or gambling-related information; it need not prove that he knew that such use was unlawful. The courts have also

rejected the contention that the prohibition applies only to those who transmit, concluding that "use for transmission" embraces both those who send and those who receive the transmission.

As a practical matter, the Justice Department appears to have resolved the question of whether the section applies only to cases involving gambling on sporting events. The vast majority of prosecutions involve sports gambling, but cases involving other forms of gambling under the Wire Act are not unknown. One federal appellate panel concluded that the Wire Act applies only to sports gambling. A subsequent district court concluded that it applies to non-sports gambling as well. The Justice Department's Office of Legal Counsel, however, ultimately opined that "interstate transmissions of wire communications that do not relate to a 'sporting event or contest,' fall outside the reach of the Wire Act."

An accomplice who aids and abets another in the commission of a federal crime may be treated as if he had committed the crime himself. The classic definition from *Nye & Nissen* explains that liability for aiding and abetting attaches when one "in some sort associates himself with the venture, participates in it as in something that he wishes to bring about, [and] seeks by his action to make it succeed." The Department of Justice advised the National Association of Broadcasters that its members risked prosecution for aiding and abetting when they provided advertising for the online gambling operations. In addition to such accomplice liability, a conspirator who contrives with another for the commission of a federal crime is likewise liable for conspiracy, any completed underlying crime, and for any additional, foreseeable offense committed by a confederate in furtherance of the common scheme.

A complication in construction of the Wire Act arises in the context of horse racing. There are some suggestions that the Wire Act was amended sub silentio by an appropriations rider rewording a provision in the civil Interstate Horseracing Act. The Justice Department does not share this view. Uncertainty over the issue apparently led an Appellate Body of the World Trade Organization (WTO) to conclude that the United States permits domestic entities to offer Internet gambling on horse racing, but denies offshore entities such an opportunity.

Illegal Gambling Business Act

Section 1955, which outlaws conducting an illegal gambling business, appears on its face to reach any illegal gambling business conducted using the Internet. Commentators seem to concur. However, prosecutions under the Wire Act have been more prevalent, at least thus far. Violations of Section 1955 are punishable by imprisonment for not more than five years and/or fines of the greater of not more than twice the gain or loss associated with the offense or $250,000 ($500,000 for an organization). Moreover, the federal government may confiscate any money or other property used in violation of the section. The offense may also provide the foundation for a prosecution under the Travel Act, the money laundering statutes, and RICO.

The courts have said that to prove a violation of the Illegal Gambling Business Act, "the government must show that the defendant conducted, financed, managed, supervised, directed, or owned a gambling business that: (1) violated state law; (2) involved five or more persons; and (3) was either in substantial continuous operation for more than 30 days or had gross revenue of $2,000 or more in a single day"). And they have noted that "numerous cases have recognized that 18 U.S.C. 1955 proscribes any degree of participation in an illegal gambling business except participation as a mere bettor." Or as more recently described, "'[c]onductors' extends to those on lower echelons, but with a function at their level necessary to the illegal gambling operation."

The section bars only those activities that involve illegal gambling under applicable state law and that meet the statutory definition of such a business. Illegal gambling is at the threshold of any prosecution under the section, and cannot to be pursued if the underlying state law is unenforceable under either the United States Constitution, or the operative state constitution. The business element can be satisfied (for any endeavor involving five or more participants) either by continuity ("has been or remains in substantially continuous operation for period in excess of thirty days") or by volume ("has a gross revenue of $2,000 in any single day"). The volume prong is fairly self-explanatory, and the courts have been fairly generous in their assessment of continuity. They are divided, however, on the question of whether the jurisdictional five individuals and continuity/volume features must coincide.

The accomplice and conspiratorial provisions attend violations of Section 1955 as they do violations of the Wire Act. Although frequently difficult to distinguish in a given case, the difference is essentially a matter of depth of involvement. "[T]o be guilty of aiding and abetting a Section 1955 illegal gambling business ... the defendant must have knowledge of the general scope and nature of the illegal gambling business and awareness of the general facts concerning the venture ... [and he] must take action which materially assists in 'conducting, financing, managing, supervising, directing or owning' the business for the purpose of making the business succeed." Unlike conspiracy, one may only be prosecuted for aiding and abetting the commission of a completed crime; "before a defendant can be found guilty of aiding and abetting a violation of Section 1955 a violation of Section 1955 must exist ... [and] aiders and abettors cannot be counted as one of the statutorily required five persons."

As a general rule, a federal conspiracy exists when two or more individuals agree to commit a federal crime and one of them commits some overt act in furtherance of their common scheme. "A conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense. The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for acts of each other. If the conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators." Conspiracy is a separate crime and thus conspirators may be convicted of both substantive violations of Section 1955 and conspiracy to commit those violations. In fact, under the *Pinkerton* doctrine, co-conspirators are liable for conspiracy, the crime which is the object of the conspiracy (when it is committed), and any other reasonably foreseeable crimes of their confederates committed in furtherance of the conspiracy.

Travel Act

The operation of an illegal gambling business using the Internet may easily involve violations of the Travel Act, as several writers have noted. Like Section 1955, Travel Act convictions result in imprisonment for not more than five years and/or fines of the greater of not more than twice the gain or loss associated with the offense or $250,000 ($500,000 for an organization). The act may serve as the foundation for a prosecution under the money laundering statutes and RICO. It has neither the service termination features of the Wire Act nor the forfeiture features of Section 1955.

The courts often abbreviate their statement of the elements to: "The government must prove (1) interstate travel or use of an interstate facility; (2) with the intent to ... promote ... an unlawful activity and (3) followed by performance or attempted performance of acts in furtherance of the

unlawful activity." The Supreme Court determined some time ago that the Travel Act does not apply to the simple customers of an illegal gambling business, although interstate solicitation of those customers may certainly be covered.

When the act's jurisdictional element involves mail or facilities in interstate or foreign commerce, rather than interstate travel, evidence that a telephone was used, or an ATM, or the facilities of an interstate banking chain will suffice. The government is not required to show that the defendant used the facilities himself or that the use was critical to the success of the criminal venture. It is enough that he caused them to be used and that their employment was useful for his purposes. Moreover, intrastate telephone communications constitute the use of "facilities in interstate or foreign commerce."

Thus in the case of Internet gambling, the jurisdictional element of the Travel Act might be established at a minimum either by reference to the telecommunications component of the Internet, to shipments in interstate or foreign commerce (in or from the United States) associated with establishing operations on the Internet, to any interstate or foreign nexus to the payment of the debts resulting from the gambling, or to any interstate or foreign distribution of the proceeds of such gambling. A criminal business enterprise, as understood in the Travel Act, "contemplates a continuous course of business—one that already exists at the time of the overt act or is intended thereafter. Evidence of an isolated criminal act, or even sporadic acts, will not suffice," and it must be shown to be involved in an unlawful activity outlawed by a specifically identified state or federal statute. Finally, the government must establish some overt act in furtherance of the illicit business committed after the interstate travel or the use of the interstate facility.

Accomplice and co-conspirator liability, discussed earlier, apply with equal force to the Travel Act. The act would only apply to "business enterprises" involved in illegal gaming, so that e-mail gambling between individuals would likely not be covered. And *Rewis* seems to bar prosecution of an Internet gambling enterprise's customers as long as they remain mere customers. But an Internet gambling venture, that constitutes an illegal gambling business for purposes of Illegal Gambling Business Act and is engaged in some form of interstate or foreign commercial activity in furtherance of the business, will almost inevitably have included a Travel Act violation.

Unlawful Internet Gambling Enforcement Act (UIGEA)

The Wire Act, the Illegal Gambling Business Act, and the Travel Act implicitly outlaw Internet gambling and related activity. The Unlawful Internet Gambling Enforcement Act (UIGEA) does so explicitly. More exactly, it prohibits those who engage in a gambling business from accepting payments related to unlawful Internet gambling. Violations are punishable by imprisonment for not more than five years and/or a fine of not more than $250,000 (not more than $500,000 for organizations). Offenders may be subject to civil and regulatory enforcement actions as well.

The Unlawful Internet Gambling Enforcement Act declares that (1) No person, (2) engaged in the business of betting or wagering, (3) may knowingly accept, (4) in connection with participation of another person in unlawful Internet gambling, (5)(a) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card; or (b) an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of

such other person; or (c) any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or (d) the proceeds of any other form of financial transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.

UIGEA's proscription draws meaning from a host of definitions, exceptions, and exclusions—some stated, others implied. It does not define "person." Nevertheless, as elsewhere in the United States Code, "persons" for purposes of UIGEA means individuals as well as "corporations, companies, associations, firms, partnerships, societies, and joint stock companies." It does not define the "business of betting or wagering," although it defines what it is not and defines the terms that provide the grist for such a business: bets or wagers. The business of betting or wagering does not encompass the normal business activities of financial or communications service providers, unless they are participants in an unlawful Internet gambling enterprise. On the other hand, Congress chose the term "business of betting or wagering" rather than the term "illegal gambling business," found in the Illegal Gambling Business Act. This implies that UIGEA covers businesses regardless of whether they met the threshold requirements of Illegal Gambling Business Act, that is, (1) five participants and (2) continuous operations for at least thirty days or gross revenues in excess of $2,000 a day.

To come within the statute's reach, a business must involve "bets or wagers" and must accept payment relating "unlawful Internet gambling." To bet or wager is to stake something on the outcome of a game or event. More exactly, "[t]he term 'bet or wager'—(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome."

Earlier in UIGEA's legislative history, the definition of "bet or wager" used the phrase "a game predominantly subject to chance" rather than simply "a game subject to chance." The Justice Department questioned whether the original phrase was "sufficient to cover card games, such as poker." The change in language appears to accommodate that concern by extending coverage to games that have an element of chance, even if not necessarily a predominant element. The definition also explicitly covers lotteries and information relating to the financial aspects of gambling. The list of other common activities exempted from the definition includes securities and commodities exchange activities, insurance, Internet games and promotions that do not involve betting, and certain fantasy sporting activities.

"Unlawful Internet gambling" refers to an Internet bet or wage that is illegal in the place where it is placed, received, or transmitted. The term does not encompass various forms of Internet use by the horse racing industry, regardless of their legal status over other provisions of law. If certain conditions are met, the definition also exempts from UIGEA's prohibitions certain intrastate and intratribal forms of gambling, like state lotteries and Indian casinos that operate under state regulations or compacts. To qualify for the intrastate exception a bet must (1) be made and received in the same state; (2) comply with applicable state law that authorizes the gambling and the method of transmission including any age and location verification and security requirements; and (3) be in accord with various federal gambling laws.

The intratribal exception is comparable, but a little different. Compliance with the various federal gambling laws remains a condition, 31 U.S.C. 5362(C)(iv). And there are comparable security as

well as age and location verification demands. The intratribal gambling, however, may involve transmissions between the lands of two or more tribes and need not be within the same state.

Definitions aside, UIGEA's prohibitions can only be breached by one who acts "knowingly." As a general rule, "the word 'knowingly' means that the defendant realized what she was doing and was aware of the nature of her conduct and did not act through ignorance, mistake or accident." However, "the term 'knowingly' does not necessarily have any reference to a culpable state of mind or to knowledge of the law."

There is nothing to shield UIGEA defendants from the same general accomplice and conspirator liability provisions that apply in the case of any other federal felony. Those who aid or abet a violation, that is, those who knowingly embrace the criminal activity and assist in its commission with an eye to its success, are liable to the same extent as those who commit the offense directly. Conspirators are liable for conspiracy, for any completed crime that is the object of the plot, and for any additional, foreseeable offense committed by a confederate in furtherance of the common scheme.

Section 5362(2) excludes the activities of financial institutions, communications and Internet service providers from the definition of "business of betting or wagering." Section 5367 declares that such entities may nonetheless incur liability under the act if they are directly engaged in the operation of an Internet gambling site. Neither section precludes their incurring liability as accomplices or co-conspirators. As noted earlier, whether a federal law applies to conduct committed entirely outside the United States is ordinarily a matter of congressional intent. The most obvious indicia of congressional intent is a statement within a particular statute that its provisions are to have extraterritorial application. UIGEA contains no such statement. Its legislative history of the act, however, leaves little doubt that Congress was at least as concerned with offshore illegal Internet gambling businesses as with those operated entirely within the United States.

Offenders may also suffer civil constraints. UIGEA creates a limited federal civil cause of action to prevent and restrain violations of the act. It authorizes federal and state attorneys general to sue in federal court for injunctive relief to prevent and restrain violations of the act. It does not foreclose other causes of action on other provisions of state or federal law, but it does preclude suits in state court to enforce the act. It does not expressly authorize a private cause of action. It does not expressly offer attorneys general or anyone else any prospect of relief other than the federal court orders necessary to prevent and restrain. Moreover, it expressly limits the instances when the attorneys general may institute proceedings against Internet service providers and financial institutions. They may only proceed civilly against financial institutions to block transactions involving unlawful Internet gambling unless the institution is directly involved in an unlawful Internet gambling business. Barring application of the same direct involvement exception, the attorneys general may sue Internet service providers under the act only to block access to unlawful Internet gambling sites or to hyperlinks to such sites under limited circumstances. Subject to an exception that mirrors the direct involvement exception, the act also removes providers from the coverage of the Wire Act provision under which law enforcement officials may insist that communications providers block the wire communications of Wire Act violators. Neither of the provisions restricting the civil liability of financial institutions and of Internet service providers explicitly immunizes them from criminal prosecution for aiding or abetting or for conspiracy.

Although UIGEA restricts the civil liability of financial institutions, it binds them under a regulatory enforcement scheme outlined in the act. The act calls upon the Secretary of the Treasury and the Governors of the Federal Reserve Board in conjunction with the Attorney General to create a regulatory mechanism that identifies and blocks financial transactions prohibited in the act. Among its other features, the mechanism must admit to practical exemptions and ensure that lawful Internet gambling transactions are not blocked. Good faith compliance insulates regulated entities from both regulatory and civil liability. Regulatory enforcement falls to the Federal Trade Commission and to the "federal functional regulators" within their areas of jurisdiction, that is, the Governors of the Federal Reserve, the Comptroller of the Currency, the Federal Deposit Insurance Commission, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission and the Commodities Exchange Commission.

The Third Circuit has concluded that UIGEA is neither unconstitutionally vague nor unconstitutionally intrusive on any recognized right to privacy.

Racketeer Influenced and Corrupt Organizations (RICO)

Illegal Internet gambling may trigger the application of federal racketeering (RICO) provisions. Section 1955, the Wire Act, the Travel Act, and any state gambling felony are all RICO predicate offenses, which expose offenders to imprisonment for not more than twenty years and/or a fine of greater of not more than $250,000 (not more than $500,000 for an organization) or twice the gain or loss associated with the offense. An offender's crime-tainted property may be confiscated, and he may be liable to his victims for triple damages and subject to other sanctions upon the petition of the government.

The courts have said that "to establish the elements of a substantive RICO offense, the government must prove (1) that an enterprise existed; (2) that the enterprise affected interstate or foreign commerce; (3) that the defendant associated with the enterprise; (4) that the defendant participated, directly or indirectly, in the conduct of the affairs of the enterprise; and (5) that the defendant participated in the enterprise through a pattern of racketeering activity by committing at least two racketeering (predicate) acts [*e.g.*, 18 U.S.C. 1084 (Wire Act), 18 U.S.C. 1952 (Travel Act), 18 U.S.C. 1955 (illegal gambling business)]. To establish the charge of conspiracy to violate the RICO statute, the government must prove, in addition to elements one, two and three described immediately above, that the defendant objectively manifested an agreement to participate ... in the affairs of the enterprise."

Money Laundering

Congress has enacted several statutes to deal with money laundering. It would be difficult for an illegal Internet gambling business to avoid either of two of the more prominent, 18 U.S.C. 1956 and 1957, both of which involve financial disposition of the proceeds of various state and federal crimes, including violation of the Wire Act, the Illegal Gambling Business Act, the Travel Act, or any state gambling law (if punishable by imprisonment for more than one year). In fact, *Santos*, one of the landmark cases in the development of federal money laundering law, is a gambling

case. In other instances, the lower federal courts have frequently upheld money laundering convictions predicated upon various gambling offenses.

The crimes under Section 1956 are punishable by imprisonment for not more than twenty years or a fine of the greater of not more than twice the value of the property involved in the transaction or not more than $500,000; those under Section 1957 carry a prison term of not more than ten years or a fine of the greater of twice the amount involved in the offense or not more than $250,000 (not more than $500,000 for an organization). Any property involved in a violation of either section is subject to the civil and criminal forfeiture provisions of 18 U.S.C. 981, 982.

Section 1956 creates several distinct crimes: (1) laundering with intent to promote an illicit activity such as an unlawful gambling business; (2) laundering to evade taxes; (3) laundering to conceal or disguise; (4) structuring financial transactions (smurfing) to avoid reporting requirements; (5) international laundering; and (6) "laundering" conduct by those caught in a law enforcement sting.

In its most basic form the promotion offense essentially involves plowing the proceeds of crime back into an illegal enterprise. Section 1956 has two promotional offenses: those involving financial transactions and those involving international monetary transfers. The elements of the two are roughly comparable. The transaction offense applies to whoever "(1) knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, (2) conducts or attempts to conduct such a financial transaction, (3) which in fact involves the proceeds of specified unlawful activity, (4) with the intent to promote the carrying on of specified unlawful activity."

The knowledge element is subject to a special definition which allows a conviction without the necessity of proving that the defendant knew the exact particulars of the underlying offense or even its nature. The "proceeds" may be tangible or intangible, for example, cash, things of value, or things with no intrinsic value, for example, checks written on depleted accounts. Nor need "proceeds" be confined to the profits realized from the predicate offense, i.e., the "specified unlawful activity." Section 1956 specifically defines "proceeds" as "any property derived from or obtained or retained, directly or indirectly through some form of unlawful activity, including the gross receipts of such activity."

The "financial transaction" necessary to satisfy that element of the crime may take virtually any shape that involves the disposition of something represent the proceeds of an underlying crime, including a disposition as informal has handing cash over to someone else. The statutory definition of the necessary "financial transaction" provides the basis for federal jurisdiction. To qualify, the transaction must be one that affects interstate or foreign commerce or must involve a financial institution whose activities affect such commerce. The "intent to promote" element of the offense can be satisfied by proof that the defendant used the proceeds to continue a pattern of criminal activity or to enhance the prospect of future criminal activity.

To establish an intent to promote, the courts have said, "the government must show the transaction at issue was conducted with the intent to promote the carrying on of a specified unlawful activity. It is not enough to show that a money launderer's actions *resulted* in promoting the carrying on of specified unlawful activity. Nor may the government rest on proof that the defendant engaged in 'knowing promotion' of the unlawful activity. Instead, there must be evidence of *intentional* promotion. In other words, the evidence must show that the defendant's

conduct not only promoted a specified unlawful activity but that he engaged in it *with the intent* to further the progress of that activity."

The government must also establish that proceeds of the transaction are derived from a predicate offense and that they are intended to promote a predicate offense. All RICO predicate offenses are automatically money laundering predicate offenses. The RICO predicate offense list includes state gambling felonies as well as violations of the Travel Act and the Illegal Gambling Business Act.

The elements of the travel or transportation version of promotional money laundering are comparable, but distinctive. They apply to anyone who: "(1) transports, transmits, transfers, or attempts transport, transmit, or transfer, (2) a monetary instrument or funds, (3)(a) from a place in the United States to or through a place outside the United States or (b) to a place in the United States from a place outside the United States, (4) with the intent to promote the carrying on of an specified unlawful activity."

One of the distinctive features of the transportation promotional money laundering provision is that the transported, transmitted, or transferred funds do not have to be the proceeds of a predicate offense. The defendant, however, must be shown to have transmitted, transferred, or transported the funds with the intent to promote a predicate offense. The measure by which that question will be judged is the same as that used in the case of a transactional promotion offense, discussed above. Section 1956 is subject to general federal law with regard to accomplice and conspirator liability, except that it permits the same punishment for conspirators as for simple launderers.

The "concealment" offenses share several common elements with the promotion offenses. For instance, the courts have explained that transaction offenses, like the promotion transaction offenses in all but one aspect, apply to anyone who: "(1) knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity; (2) conducts or attempts to conduct such a financial transaction; (3) which in fact involves the proceeds of specified unlawful activity (A)(i); *(4) knowing that the transaction is designed in whole or in part to conceal or disguise the nature, location, the source, the ownership, or the control of the proceed of specified unlawful activity*."

The fourth and distinctive element of the transactional concealment offense covers more than simple spending and more than simple concealment of the proceeds. Concealment must be designed to concern, that is, it must be purposeful concealment. The courts have made it clear that conviction for the concealment offense requires proof of something more than simply spending the proceeds of a predicate offense. That having been said, the line between innocent spending and criminal laundering is not always easily discerned. "Evidence of a purpose to conceal can come in many forms including: [deceptive] statements by a defendant probative of intent to conceal; unusual secrecy surrounding the transactions; structuring the transaction to avoid attention; depositing illegal profits in the bank account of a legitimate business; highly irregular features of the transaction; using third parties to conceal the real owner; a series of unusual financial moves cumulating in the transaction; or expert testimony on practices of criminals."

The transportation concealment offense tracks both the transportation promotional and the transaction concealment offenses. Like promotional offenses and unlike the transaction offenses, the government must prove that the defendant knew of the tainted nature of the transported funds. The transportation concealment offense covers anyone who: "(1) transports, transmits, transfers, or attempts transport, transmit, or transfer; (2) a monetary instrument or funds; (3)(a) from a place in the United States to or through a place outside the United States or (b) to a place in the United

States from a place outside the United States; (4) knowing that the monetary instrument or funds represent the proceeds of unlawful activity; (5) knowing the transportation, transmission, or transfer is designed in whole or in part to conceal or disguise the nature, location, the source, the ownership, or the control of the proceed of specified unlawful activity."

The concealment clause requires that concealment be the motivating force, at least in part, for the transportation. Subsection 1956(h) imposes the same penalties for conspiracy as for substantive violations of the section. Otherwise, the general accomplice and conspiracy principles of law apply throughout the section.

The tax evasion and structured transactions or report evasion offenses shadow the promotion and concealment offenses. A tax evasion, laundering prosecution requires the government to show that the defendant acted intentionally rather than inadvertently, but not that the defendant knew that his conduct violated the tax laws. Similarly, conviction for the structuring offense does not require a showing that the defendant knew that his conduct was criminal as long as the government establishes that the defendant acted with the intent to frustrate a reporting requirement. Here too, the general principles of law applying to accomplices and conspirators apply.

The final crime found in Section 1956 is a "sting" offense, the proscription drafted to permit the prosecution of money launderers taken in by undercover officers claiming they have proceeds in need of cleansing from illegal gambling or other predicate offenses. The provision has promotional, concealment, and report evasion components.

Section 1956 does not make spending tainted money a crime, but Section 1957 does. Using most of the same definitions as Section 1956, the elements of 1957 cover anyone who: "(1) (a) in the United States, (b) in the special maritime or territorial jurisdiction of the United States, or (b) outside the United States if the defendant is an American, (2) knowingly engages or attempts to engage in a monetary transaction, (3) [in or affecting interstate commerce], (4) in criminally derived property that is of a greater value than $10,000 and derived from specified unlawful activity."

The requisite monetary transaction may involve any number of "financial institutions"—a bank, credit union, any of the statutorily designated high-cash flow businesses, or any comparable business designated by the Secretary of the Treasury. The statute, however, expressly exempts monetary transactions of the accused, necessary to secure legal representation in criminal proceedings.

Author Contact Information

Charles Doyle
Senior Specialist in American Public Law
cdoyle@crs.loc.gov, 7-6968