

**US Sentencing Commission
Hearing on Guidelines**

**Testimony
of
Charles H. Morley**

U.S. SENTENCING COMMISSION
HEARINGS ON SENTENCING GUIDELINES

TESTIMONY OF CHARLES H. MORLEY
ON
MONEY LAUNDERING GUIDELINES

March 22, 1993

Introduction

I am here today to offer my comments with respect to the Sentencing Commission's consideration of the sentencing guidelines for money laundering and currency reporting offenses. As the Commissioners can see from my attached Curriculum Vitae (Attachment 1), I have been working with these issues since at least 1979.

For the last seven and one half years I have been in private practice as a consultant to attorneys, law enforcement officials, prosecutors, and foreign governments on the subjects of money laundering, financial investigative techniques, and currency reporting laws. I am an associate member of the American Bar Association, and I am active in the Money Laundering Subcommittee of the ABA's White Collar Crime Committee (Criminal Justice Section).

In late 1992, the co-chairs of the Money Laundering Subcommittee asked me to join the Sentencing Guidelines Working Group. As a member of the working group, I drafted several monographs which explained the types of activities that are common to money laundering (Attachment 2). I also drafted my suggestions for revising the guidelines (Attachment 2). The Commission staff considered these monographs and suggestions in their deliberations of the money laundering portion of the guidelines revision.

I appear today before the Commission in my capacity as an expert on the subjects of money laundering and the currency reporting laws and regulations. I urge the Commission to approve the proposed revised guidelines 2S1.1 and 2S1.2 intact. In the words of the staff report, the revised guidelines establish offense characteristics which reflect "greater sensitivity to such factors as sophistication of the money laundering conduct." I believe the proposed guidelines do an excellent job of accomplishing this important revision. On the other hand, I believe the Commission should consider lowering the offense levels for the currency reporting guidelines (2S1.3 and 2S1.4) to level 6 to bring them in conformity with proposed guideline 2S1.2. I believe level 6 would more realistically reflect the seriousness of these offenses.

The Scope of the Problem

I would like to commend the Commission's staff for their excellent work. They thoroughly researched the sentencing practices under the statutes, and solicited a wide range of sources for information, assistance, and opinions.

The Sentencing Commission had specific expectations when they adopted U.S.S.G. 2S1.1

"The Commission expected that U.S.S.G. 2S1.1 would be applied in cases in which financial transactions 'encouraged or facilitated the commission of further crimes,' and to offenses that were 'intended to...conceal the nature of the proceeds or avoid a transaction reporting requirement.'"

....
"Thus, it appears that the base offense levels in 2S1.1 may reflect a view that 18 U.S.C. 1956 would generally be applied primarily to 'traditional,' and perhaps large-scale, professional money launderers."

However, the staff found that prosecutors have stretched the guidelines far beyond the Commission's expectations.

"The statutory phrase 'to promote the carrying on of specified unlawful activity' has not been limited to offenses in which the defendant 'encouraged' or 'facilitated' the commission of further crimes, as the Commission indicated in commentary that it expected."

....
"Offenses that technically qualify as 'money laundering' are frequently simply incidental to, or component parts of, an underlying crime...."

This prosecutorial over-reaching of the Commission's intentions has creating widespread anomalous charging and sentencing practices.

"Despite the fact that this 'money laundering' conduct may reflect little additional harm to society beyond that reflected in the underlying offense, practitioners assert that, due to the operation of the guidelines, when a money laundering count is charged the sentence can be significantly higher than it would have been if the underlying offense were charged alone."

The staff report provides ample evidence that this has indeed been the case.

The government has prosecuted "incidental" conduct under 18 U.S.C. 1956 using the theory that such incidental conduct encourages or facilitates the commission of further crimes. Take for example corporate officers White and Black, both of whom are bribing foreign officials in order to secure lucrative contracts. White illegally takes funds from his corporation by wiring funds to his own bank account. He does not attempt to otherwise conceal the funds. He then uses the funds to make the bribe payments.

Black on the other hand sets up a number of sham foreign corporations in various offshore secrecy haven countries. He funnels payments through this intricate web in such a way as to make the disbursements appear legitimate to the company and its auditors. He later converts the payments to cash which he then passes under the table to the foreign officials.

Here we have two corporate officers engaged in the same two predicate offenses to the money laundering statutes: wire fraud and violations of the Foreign Corrupt Practices Act. White, admittedly not too bright, has simply misappropriated corporate funds to make the payments. Black on the other hand has constructed a complicated web of offshore transactions that may never be discovered. Yet under the current guidelines, both White and Black could receive the same sentence for their money laundering activities. The guidelines consider White's "incidental" laundering of the funds (his wiring them to his own bank account), as serious as Black's highly sophisticated, and nearly impenetrable laundering network.

As the staff so aptly put it in their report, *"this kind of outcome...conflicts with just punishment principles and gives undue weight to charging decisions."*

Concealment

The Key Element of Money Laundering

I believe the root of the problem arises from the conflict between the guidelines and the universally accepted definition of money laundering. Money laundering is the attempt to hide the source or ownership of money. Concealment is an integral part of the money laundering process.

The laundering of currency (the most common type of laundering found today) is a three step process: placement, layering, and integration.

Placement occurs when currency is "placed" into a financial institution.

Layering is the process of moving the placed funds among many financial institutions, often in the names of various companies and often in different countries.

Integration is the process of returning the funds to "legitimate" use in such a manner that they appear to be from legal sources.

Concealment is an integral part of each of these steps, and is the ultimate goal of the entire process. Yet as the staff's report and the above example indicate, the current guidelines do *not* necessarily take concealment into account.

The staff report shows that in almost 40% of the cases surveyed, the defendant charged with money laundering had not taken any steps to conceal or disguise the proceeds of criminal conduct. Of the 60% that, as the staff states, "...could be said to meet the test of 'traditional' money laundering activity," only one third engaged in "any meaningful degree of complexity or sophistication." According to the staff, "the Commission's selection of relatively high alternative base offense levels (20 and 23) was presumably based on the general conclusion that 18 U.S.C.1956 would apply to relatively serious offenses." Yet only 20% of the cases brought under the current guidelines actually involve these types of offenses.

Unfortunately the government's ability to prosecute this "incidental" activity as laundering has resulted in a dramatic skewing of sentences.

The report shows that a similar sentencing disparity has arisen from the guidelines for currency reporting violations. This is particularly evident in the guidelines for structuring currency transactions. According to the report, 68% of the persons sentenced for structuring neither knew nor believed they were dealing with criminally derived funds. Yet under the guidelines, these defendants could receive the same sentence as a person recruited as a so-called Smurf for a major laundering organization.

The courts have recognized this disparity, as they have granted downward departures in 24.1% of the monetary reporting cases surveyed.

Take the Guidelines Out of the Driver's Seat

The Commission staff unequivocally states that the sentencing disparity created by the current guidelines "...conflicts with just punishment principles and gives undue weight to charging decisions." I agree.

Some would argue that the revised guidelines take the punishment out of money laundering offenses. This simply is not true. The proposed guidelines punish both "incidental" laundering and laundering under 18 U.S.C. 1957. Thus the proposed guidelines would still punish laundering that does not involve, in the staff's words, "traditional laundering activities." However the punishment for this less serious laundering would be more directly linked to the punishment for the underlying offense. The proposed guidelines reserve enhancement for those who actively conceal transactions, who engage in sophisticated laundering activities, and for those who launder the proceeds of illegal drug transactions.

There is a key distinction between the current guidelines and proposed guideline 2S1.1. The facts show that the current guidelines punish "incidental" conduct with the same severity as they punish sophisticated laundering. Proposed guideline 2S1.1 assures that the offense levels match the seriousness of the conduct. The proposed guideline provides the criminal justice system with a far more realistic result.

In a similar vein, the proposed guidelines take a much more realistic approach to structuring. Defendants who structure transactions with the intent to evade the reporting requirements are still punished, even if they do not know or believe they are using funds derived from unlawful activity. Proposed guideline 2S1.2 enhances the sentence for those who act with reckless disregard as to the source of the funds. ~~They enhance the sentence further for those who know or believe the funds are proceeds of unlawful activity.~~ These distinctions that give rise to sentence enhancement are a much more realistic approach to matching the punishment to the seriousness of the offense.

Unfortunately, I do not believe proposed guideline 2S1.3 achieves the same result. I believe a base offense level of 6 for 2S1.3 and 2S1.4 is a much more realistic approach to these violations. As with structuring violations, defendants who intend to evade these requirements are still punished. Those who do so with the belief or knowledge that the funds are derived from unlawful activity would receive enhanced sentences.

Unfortunately the current guidelines have made it very attractive for prosecutors to charge these offenses in order to elicit greater sentences for incidental conduct, non-willful conduct, or conduct by a defendant who does not know or believe he/she is dealing with proceeds of unlawful activity.

As the staff has correctly concluded, the punishment dictated by the current guidelines exert an undue influence over prosecutors' charging decisions.

A Classless Approach to Sentencing

The staff report indicates that a class distinction has arisen under the current guidelines. The staff found that about 70% of all cases involving laundering counts involve drug money. Yet in some cases, the government charged money laundering rather than drug offenses in order to reach a *lower* guideline sentence. The money laundering offense level was higher than the underlying conduct in only 52.5% of the drug cases.

This contrasts sharply with the 25% of cases classified as non-drug cases. In these cases, the money laundering offense level was higher than the underlying conduct in 96% of the cases. In both types of cases, the disparities ranged from minor to very large. In one case the money laundering guideline was 21 levels above that of the underlying offense. Other evidence already cited indicates these disparities may have more to do with the type of underlying offense rather than seriousness or sophistication of the laundering conduct. Prosecutors have charged drug defendants with money laundering to reduce their potential sentences. On the other hand they have used money laundering counts to increase the potential sentence faced by non-drug defendants.

The proposed guidelines make no such class distinction. Sentencing is a function of the laundering conduct, not the nature of the underlying offense.

I recently heard the argument that the proposed guidelines are an attempt to lessen the penalties faced by white collar defendants. From my perspective I can say this is categorically untrue. At the time I offered my suggestions to the Commission staff, I was unaware that they had prepared a report. I was also unaware of the degree to which existing cases reflected such disparities in sentencing. I based my recommendations solely upon my belief that the Commission could modify the guidelines to reflect more realistically the various degrees of sophistication in money laundering. As I stated early in this paper, I believe the proposed guidelines achieve that objective.

I have also heard the argument that these revisions are premature, that we should give the Justice Department's new money laundering policies time to work. But the Justice Department policies do not address the fact that the sentencing guidelines do not match the severity of the laundering or currency reporting violation. I therefore fail to see how waiting for the effect of these policies will make any difference as to the disparities and inequities present in the existing sentencing guidelines. While I applaud the Department's new policies as being long overdue, they do not address the problem at issue here.

Conclusion

I view money laundering in the abstract, whether the laundering involves drug proceeds, the fruits of wire fraud, or structuring currency transactions to evade the currency reporting requirements. I believe proposed guidelines 2S1.1 and 2S1.2 correctly and fairly match the severity of penalties to the seriousness of the laundering activity, without regard to who does the laundering. These proposed guidelines correctly link the penalties to the underlying offense, but provide for incremental enhancements where appropriate.

Sections 2S1.3 and 2S1.4 should achieve the same result. I therefore urge the Commission to amend these guidelines and provide for a base offense level of 6, with appropriate enhancement language for those who believed or knew the funds involved were proceeds of unlawful activity.

By adopting the revised money laundering and structuring guidelines and making appropriate adjustments to the currency reporting guidelines, we will achieve the goals of Congress and the Commission: To severely punish those who would engage in sophisticated laundering activities, or the laundering of drug proceeds. To continue under the current money laundering sentencing guidelines is to ignore the realities of money laundering while continuing to mete out disproportionate and unfair sentences to both drug and non-drug defendants.

- C H M -

The MORLEY Group

P.O. Box 3691, Arlington, VA 22203-9990

Fax: (703)525-8792

(703)525-6253

CHARLES H. MORLEY

**THE MORLEY GROUP
(1985 - PRESENT)**

FINANCIAL INVESTIGATIONS, CONSULTING, AND TRAINING

Sampling of cases

Investigations include: Bank Secrecy Act civil and criminal investigations; re-insurance fraud against major insurer; money laundering investigations; criminal tax cases; limited partnership fraud; Medicaid fraud risk assessment; commercial fraud; locating hidden or laundered assets; civil & criminal forfeiture cases; and bank fraud.

Complete data base management and spread sheet analysis of financial data

GOVERNMENT CONSULTING

Central Intelligence Agency/Gama Corporation (1990)

Participated in a strategic analysis session dealing with the current and future programs in international drug money interdiction. The 29 participants were drawn from senior levels of government and the banking industry.

U.S. Information Agency/State Department, International Narcotics Matters (1990-91)

Retained as a consultant with U.S.I.A./State Department to advise senior foreign government officials and private sector leaders on issues involving narcotics money laundering.

Countries Visited: Venezuela, The Bahamas, Costa Rica, Colombia, Ecuador, Paraguay, Brazil, and Argentina.

Government Officials Briefed Included: Presidential, Legislative and Judicial Commissions; Legislators; Supreme Court Justices and staffs; Attorneys General and prosecutors; senior federal and regional law enforcement officials; Central Bank Directors and staffs; bank examination staffs; and senior military officials.

Private Sector Briefings Included: Senior bank executives; bank security officers; banking associations; industry leaders; and trade associations.

Broadcast World-Net program on money laundering to Latin America and Nigeria.

VIDEO PRODUCTIONS

DEA Financial Investigations Course

Computer Systems, Business Organizations & Attorney Coordination (1988)

Searching Public Records (1988)

Tracing Financial Transactions Through Banks (1989)

Tracing Stock & Commodity Transactions (1990)

Investigating Money Laundering (1990)

Using Indirect Methods of Proof (1990)

Seizure and Forfeiture of Assets (1990)

The DEA series consists of multiple, half hour video scripts for the Drug Enforcement Administration's advanced Financial Investigations course.

Blue Skies and Black Money (1986)

A dramatization of money laundering, produced for the federal government.

Operation Buckstop (1986)

An enforcement video on money laundering produced for the U.S. Customs Service.

U.S. Secret Service (In Process)

An enforcement video on money laundering and forfeiture.

PAPERS PRESENTED OR PUBLISHED

The Bank Secrecy Act

Bank Administration Institute (1986 Seminar)

The Institute for Strategy Development (1986 Seminar)

Bank Secrecy Act Compliance and the Money Laundering Control Act

National Assn of Criminal Defense Lawyers (1987 Seminar)

U.S. League of Savings Associations (1987 Seminar)

Bank Administration Institute (1987 Seminar)

Federal Financial Institutions Examination Council (1987 Training class)

The Illegal Use of Offshore Shell Banks

Federal Financial Institutions Examination Council (1987 Training class)

The Role of Wire Transfers in Money Laundering

Monograph and testimony presented to the U. S. Senate Banking Committee (1989)

The New Treasury Targeting Regulations, No Room For Error

Article for *The Journal of Bank Accounting And Auditing* (1990)

Suspicious Banking Transactions

Article for *Money Laundering Alert* (1990)

What the Feds Look For (And How to Find It First)

Executive Enterprises, Inc. (1990)

Protecting A Secured Interest From Government Forfeiture

Article for *The Journal of Bank Accounting And Auditing* (1990)

The Financial Institution's Guide to Suspicious Transactions

Monograph for the 1990 ABA/ABA Money Laundering Conference (1990)

Cnasing The Drug Dollars (How Financial Investigations Are Snaring the Drug Lords)

Feature Article for U.S. Information Agency World-wide Distribution (1991)

Recent Developments in International Financial Fraud and Suggested Preventative Techniques
Banker's Association of the Bahamas and the Central Bank of the Bahamas (1992 Training class)

BOOKS PUBLISHED

Tracing Transactions Through Financial Institutions
Written for the Police Executive Research Forum (1987)

Financial Investigations Check List and Quick Reference Guide
Written for the U.S. Department of Justice, Executive Office of Asset Forfeiture (1992)

Financial Investigations Source Book and Quick Guide
Published for the Morley Group, Ltd., to be sold to local and state enforcement officials (1992)

OTHER SERVICES

Money Laundering/Bank Secrecy Act Compliance Systems

Designing/reviewing financial institution compliance, training, and internal control systems.
Analyzing financial institution potential exposure to money laundering/Bank Secrecy Act violations.

Financial Investigations Training

Designing financial investigation training systems. Conducting training for domestic and foreign government law enforcement and banking agencies.

Clients include: Police Executive Research Forum (1987 - present); U. S. Customs Service (1992); National Association of Attorneys General (1991 - present); Institute of Internal Auditors (1992); Venezuelan Bankers Association (1992); South Carolina Bank Fraud Working Group (1992); NY District Attorney's Office of Special Narcotics (1992); Bankers Association of the Bahamas (1992); and law enforcement officials from Brunei, Czechoslovakia, Ghana, Greece, Israel, Kuwait, Nigeria, Pakistan, Uganda, Croatia, Italy, Bulgaria, Morocco, Saudi Arabia, Syria, and the United Arab Emirates.

PRESIDENT, CGM GROUP, INC. (1985 - PRESENT)

Video Training Production Company

Producers of the *DIRTY MONEY* series (Written by Charles Morley, Produced by the CGM Group)

A Banker's Guide to Self-Defense (1985)
Recognizing Laundering Schemes (1986 In cooperation with INTERPOL)
Teller Compliance and the Bank Secrecy Act (1987; Revised, 1989)
Exempting Transactions Under the Bank Secrecy Act (1987)
What the Feds Look For (And How to Find It First) (1989)

The *DIRTY MONEY* series is endorsed and licensed by the major U.S. banking associations. The series is standard training for the U.S. bank regulatory agencies, the banking industry, all the major U.S. law enforcement agencies, INTERPOL and several major foreign enforcement agencies.

**CHIEF INVESTIGATOR
U.S. SENATE PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS (1980 - 1985)**

Investigations

Investigations and Senate hearings included: Home Health Care Fraud; International Narcotics Trafficking; Commodities Fraud; Criminal Dumping of Toxic Waste; Crime & Secrecy: The Use of Offshore Banks & Companies; Prevention of Drug Abuse Among Youth; The Role of the Entertainment Industry in De-glamorizing Drugs; Domestic Money Laundering: The Bank of Boston; Domestic Money Laundering: Puerto Rico

Books Published

Crime & Secrecy: The Use of Offshore Banks & Companies
Senate Staff Study (Co-editor, 1983)
Senate Report (Co-editor, 1985)

Papers Presented or Published

Laundering Money Through Offshore Secrecy Havens
FBI/DEA Field Supervisors' Seminar (1983 Training class)
IRS Criminal Investigation Mid-Atlantic Region (1983 Training class)
Battelle Memorial Institute (1984 & 1986 Seminars)
University of Maryland Law School (1985 Seminar)

**SPECIAL AGENT
IRS CRIMINAL INVESTIGATION DIVISION (1969 - 1980)**

National Office representative to Operation Greenback formation task force. Group Manager (1 1/2 yrs). Training Division (4 yrs). Led Special Agent Basic School redesign task force. Led Special Agent Intermediate School design task force. Newark NJ Strike Force (1 yr).

**REVENUE AGENT
IRS EXAMINATION DIVISION (1967 - 1969)**

Completed basic and advanced training. Examined individual, partnership, fiduciary, and corporate returns. Examined issues involving mergers, liquidations, excess retained earnings, controlled groups, sham transactions, and other complex issues.

TOUCHE ROSS CPA FIRM (1965 - 1967)

EDUCATION AND MEMBERSHIPS

University of Maryland honors graduate in accounting and finance (1965)
Completed 61 quarter hours of law at University of Denver (evenings, 1971 - 1972)
Associate member, National Association of Criminal Defense Lawyers
Associate member, American Bar Association
Member Litigation, Tax, & Criminal Justice Sections
Member White Collar Crime Committee & Money Laundering Sub-Committee
Member Money Laundering Sentencing Guidelines Working Group
Member Complex Crimes Committee & Securities Fraud Sub-Committee

The
MORLEY
Group

P.O. Box 3691, Arlington, VA 22203-9990
Fax: (703)525-8792 (703)525-6253

Fax 703/525-8792

Date: November 4, 1992

MEMORANDUM

To: The Money Laundering Subcommittee
From: Chuck Morley
Subject: Sentencing Guidelines for Money Laundering

In my second memorandum on sentencing guidelines, I refined my initial notes on money laundering and grouped the various offense characteristics under three headings: placement, layering, and integration. I have now further reduced these elements of money laundering and have put them into a hierarchy. The result is the following broad offense characteristics.

Note that these are not separated by placement, layering, and integration, but take these laundering steps into account. Note also that using an alias, presenting false information, or making false statements, only increase the levels for transactions involved in the layering or integration phase of money laundering. I think to make this work, we will need a short paragraph giving the agreed upon definition of placement, layering, and integration. That paragraph will save us the trouble of trying to use more words in the explanation of the characteristics themselves.

In my first memorandum of September 30, I recommend the base offense level for 2S1.1 and 2S1.2 be the *same* base offense level as the predicate offenses proven to sustain the section 1956 or 1957 offense. Section 2S1.1(b)(1), 2S1.2(b)(1)(A)&(B) remain the same as they now are. Sections 2S1.1(b)(2) and 2S1.2(b)(2) remain the same, but I recommend the value of the funds increase be capped *for increases resulting from government sting or reverse sting operations*. A new section is added under the Specific Offense Characteristics for both 2S1.1 and 2S1.2. The wording of the new section reflects the specific offense characteristics detailed below.

I have ranked the various characteristics below, but query whether or not these characteristics should be given specific levels (ie., 20, 23, etc), independent of the level assigned to the underlying offense. What we are saying is without the characteristics below, money laundering carries the same penalties as the underlying offense. This presumably would give rise to concurrent sentences (?). But once the defendant undertakes overt

Memo to the Money Laundering Subcommittee
Sentencing Guidelines for Money Laundering
November 4, 1992
C.H. Morley
Page 2

laundering, a separate crime with separate guidelines has taken place, and separate sentencing is indicated.

As of the hour of this fax, I have not completed my work on 2S1.3 and 2S1.4. I hope to have that completed by later today.

SPECIFIC OFFENSE CHARACTERISTICS

1. If the defendant conducted, attempted to conduct, or assisted in conducting a transaction through a straw party, a front company, or by concealing transactions in one or more legitimate businesses, increase by 2 levels.
 - a. If the transaction is an attempt to layer or integrate the funds, or if as part of layering or integrating, an alias is used, increase by 3 levels.
2. If the defendant prepared or presented, attempted to present, or assisted in preparing or presenting altered, false or fraudulent documents with the intent of disguising the true source or ownership of funds, increase by 2 levels.
 - a. If the transaction is an attempt to layer or integrate the funds, or if as part of layering or integrating, false information is supplied or false statements are made, increase by 3 levels.
3. If the defendant placed funds into, or moved funds through a company or financial institution outside the United States, increase by 3 levels.

- C H M -

Date: October 14, 1992

MEMORANDUM

To: The Money Laundering Subcommittee
From: Chuck Morley
Subject: Sentencing Guidelines for Money Laundering

I am further refining my initial thoughts on the money laundering sentencing guidelines in accordance with our committee members' telephone conference call today.

The universally agreed upon definition of money laundering involves three steps: placement, layering, and integration. I have therefore attempted to group the offense characteristics detailed in my 9/30/92 memorandum under each of these three laundering steps.

I. PLACEMENT

- A. Conducting currency transactions involving the proceeds of SUA in such a way as to evade the currency reporting/record keeping thresholds.

Examples

1. Structuring currency transactions involving the proceeds of SUA with the intent to evade the currency reporting/record keeping requirements;

Examples

- a. Depositing the currency proceeds of SUA in amounts of \$10,000 or less into a financial institution.
- b. Using cadres of third parties to structure currency transactions involving the proceeds of SUA, or allowing oneself to be so used.
- c. Purchasing multiple monetary instruments for oneself or another with less than \$3,000 of currency proceeds of SUA for the purpose of evading the currency record keeping requirements.

**Memo to the Money Laundering Subcommittee
Sentencing Guidelines for Money Laundering
October 14, 1992
C.H. Morley**

- d. Transporting currency proceeds of SUA across U.S. borders in amounts of \$10,000 or less for oneself or another for the purpose of evading the CMIR filing requirements.
 - e. Breaking up large blocks of currency proceeds of SUA into smaller amounts for oneself or another for the purpose of keeping any other type of currency transaction under the currency reporting/record keeping thresholds.
2. Presenting false information or making false statements in order to cause a false currency report to be filed or a false currency record to be made with respect to proceeds of SUA.

Examples

- a. Using a false drivers license.
- b. Using a false passport or alien identification card.
- c. Using a false credit card.
- d. Giving a false name.
- e. Using a false address.
- f. Using a false telephone number.
- g. Giving false identification numbers.
- h. A person giving false information to a third party who is to make a currency transaction on behalf of the person.
- i. A person intentionally keeping a transaction secret from third parties who, in the normal course of events, would have knowledge of the transaction.
- j. A third party providing false documents to be used to cause a false currency report/record to be made.

Memo to the Money Laundering Subcommittee
Sentencing Guidelines for Money Laundering
October 14, 1992
C.H. Morley

3. **Presenting false information in order to obtain an exemption from a bank with respect to the proceeds of SUA.**

Examples

- a. **Making false statements or presenting false documentation to a bank in order to obtain an exemption.**
 - b. **Bribing or offering other illegal inducement to a banker in order to obtain an exemption.**
 - c. **A third party making false statements as part of a "cover story."**
4. **Bank, non-bank financial institution, or non-financial institution business employees, business employees, or others knowingly assisting in the placement of the proceeds of SUA.**

Examples

- a. **Holding the currency proceeds of SUA back and feeding it into accounts/purchases in amounts under the currency reporting/record keeping thresholds.**
- b. **A Casa de Cambio recording a single large transaction with one party as multiple small transactions conducted in the names of fictitious parties.**
- c. **Preparing CTRs/8300s on a customer's transactions involving the proceeds of SUA, but willfully failing to file them.**
- d. **Filing false CTRs/8300s with respect to a customer's transactions involving the proceeds of SUA.**
- e. **Not filing CTRs/8300s on a customer's transactions involving the proceeds of SUA.**
- f. **Preparing fraudulent bank exempt list information or documentation on behalf of a customer.**

**Memo to the Money Laundering Subcommittee
Sentencing Guidelines for Money Laundering
October 14, 1992
C.H. Morley**

- g. Willfully failing to aggregate currency transactions involving the proceeds of SUA, and known to be by or on behalf of the same person.**
- h. Willfully preparing false bank, financial institution, or business records in order to conceal the placement of proceeds of SUA.**

Example

- (1) In Puerto Rico, in 1985, certain financial institution officers knowingly entered false names on ledgers used to identify the purchasers of bearer certificates of deposit. The officers kept a code book which identified the true owners of the certificates.**
- 5. Conducting a currency transaction involving the proceeds of SUA in the name of an alias, a straw party, a front business, or through a legitimate business for the purpose of having a false currency report filed or a false currency record made.**

Examples

- a. A Casa de Cambio deposits a customer's currency proceeds of SUA into the Casa's bank account to make it appear that the currency belongs to the Casa rather than the Casa's customer.**
- b. A trafficker has an associate buy a luxury automobile with the proceeds of SUA in the name of the associate in order that the trafficker's name will not appear on the form 8300.**
- c. A customer presents false identification in order that a currency report/record filed with respect to the proceeds of SUA will contain false information.**
- d. A person allows his/her name to be used in a currency transaction involving the proceeds of SUA, knowing the result will be a false currency report/record being made.**

**Memo to the Money Laundering Subcommittee
Sentencing Guidelines for Money Laundering
October 14, 1992
C.H. Morley**

- e. An attorney allows a client to place the proceeds of SUA into his/her escrow or other accounts to make it appear that the currency belongs to the attorney, rather than to the client.
 - f. A person forms a front cash business in order to disguise the true source of currency deposits from SUA.
 - g. A person co-mingles proceeds of SUA with legitimate revenues of a legitimate business in order to hide the true source of the dirty money.
 - h. In *U.S. vs Sharir*, a jeweler shipped over \$100 million in currency to a third party jewelry company in order to "buy" gold bullion to be used in the manufacture of gold rope. Sharir knew the currency was proceeds from the sale of narcotics and the purported gold purchases were in fact sham transactions designed to disguise the true nature of the currency. The bank filed CTRs on the jewelry company, not Sharir.
- B. Placing the proceeds of SUA into a financial institution, business or asset in such a way as to conceal the true nature or ownership of the proceeds.**
- C. Using offshore bank accounts to receive the proceeds of SUA.**

Examples

1. Currency proceeds of SUA illegally smuggled out of the source country is deposited into a haven bank account.
2. Funds representing the proceeds of SUA are wire transferred to an offshore bank account of an offshore shell company; the company and account having been established to receive the proceeds of SUA.

**Memo to the Money Laundering Subcommittee
Sentencing Guidelines for Money Laundering
October 14, 1992
C.H. Morley**

II. LAYERING

- A. Conducting a transaction involving the proceeds of SUA in the name of an alias, a straw party, or a business.**

Examples

1. Opening a bank, stock or investment account in the name of an alias and moving funds through the account to additional accounts or assets.
2. Forming a corporation, partnership, or other business entity in the name of an alias, in order to move funds through it to additional entities.
3. Obtaining identification documents or other types of documents in the name of an alias in order to facilitate creating layers between the source of funds and the disposition of the funds.

- B. Knowingly using a business (whether a legitimate business or a shell company) to facilitate the laundering of the proceeds of SUA.**

Examples

1. Establishing and using one or more businesses that have no legitimate business purpose other than to act as conduits for the proceeds of illegal activities.
2. Incorporating offshore shell corporations that have no legitimate business purpose other than to create layers of transactions to facilitate laundering of the proceeds of SUA.
3. Using offshore corporations to commit fraud.

Memo to the Money Laundering Subcommittee
Sentencing Guidelines for Money Laundering
October 14, 1992
C.H. Morley

- C. Creating or using two or more controlled (directly or indirectly) business entities for the transfer of funds in such a way as to facilitate laundering of the proceeds of SUA.**

Examples

- 1. Repeatedly moving funds representing the proceeds of SUA among various controlled businesses, where the evidence shows that the movement of such funds has no apparent legitimate business purpose.**
- 2. Moving funds representing the proceeds of SUA among various controlled businesses solely in order to create multiple layers of transactions between the origin of the funds and the ultimate transactor.**

- D. Knowingly assisting in subverting a business (whether a legitimate business or a shell company) to facilitate laundering of the proceeds of SUA.**

Examples

- 1. An attorney incorporates one or more businesses for the primary purpose of creating layers to facilitate laundering of the proceeds of SUA.**
- 2. A bank official, stock broker, etc., sets up a series of accounts and/or transactions for a person or business for the primary purpose of creating layers of transactions to facilitate laundering of the proceeds of SUA.**
- 3. Knowingly making false or fraudulent entries in the business records to hide the true nature of transactions involving the proceeds of SUA.**
- 4. Knowingly preparing, presenting, or accepting false or fraudulent documents to hide the true nature of transactions involving the proceeds of SUA.**
- 5. Knowingly altering records to hide the true nature of transactions involving the proceeds of SUA.**

Memo to the Money Laundering Subcommittee
Sentencing Guidelines for Money Laundering
October 14, 1992
C.H. Morley

6. Purposefully not keeping the types of records normal for the business in order to conceal the true nature of transactions involving the proceeds of SUA.
7. Purposefully destroying records that would normally be retained under normal business circumstances in order to conceal the true nature of transactions involving the proceeds of SUA.
8. Knowingly using false, altered, counterfeit, stolen, or otherwise non-legitimate documents to conceal the true nature of transactions involving the proceeds of SUA.

Examples

- a. Submitting a false credit application.
 - b. Submitting a false bank or stock brokerage account opening form.
 - c. Using a false stock, bond, certificate of deposit, or other security.
 - d. Submitting false tax returns.
9. Knowingly making false statements in order to conceal the true nature of transactions involving the proceeds of SUA.

III. INTEGRATION

- A. Knowingly using a business (whether a legitimate business or a shell company) to facilitate laundering of the proceeds of SUA.

Examples

1. Opening a bank account, stock account, or other type of investment account in the name of a minor child, a spouse, a

**Memo to the Money Laundering Subcommittee
Sentencing Guidelines for Money Laundering
October 14, 1992
C.H. Morley**

spouse's maiden name, a mother's maiden name, a third party's name, etc., and conducting transactions through the account in order to avoid having any records of the transactions in the defendant's accounts.

2. Establishing and using one or more businesses that have no legitimate business purpose other than to act as resting places for the proceeds of SUA.
3. Intentionally conducting transactions involving the proceeds of SUA through an otherwise legitimate business or business account in such a manner as to disguise the proceeds or otherwise make them appear "normal".

- B. Conducting a transaction in the name of an alias, a straw party, or a shell company for the purpose of concealing the illegal nature of the proceeds of SUA and making the proceeds appear legitimate.**

Examples

1. Purchasing assets in the name of a third party (who may or may not be aware of the purchase) in order to hide the fact that the defendant is the true owner.
2. Allowing one's name to be used to buy an asset, knowing the purpose to be an attempt to hide the true identity of the owner of the asset.
3. An attorney allowing his/her escrow or other accounts to be used to hide the true identity of the owner of an asset.
4. Using secretly owned or controlled offshore corporations to "loan" money or otherwise "finance" the purchase or operations of U.S. based assets or businesses.
5. Using offshore corporations to provide fraudulent documentation for transactions.

**Memo to the Money Laundering Subcommittee
Sentencing Guidelines for Money Laundering
October 14, 1992
C.H. Morley**

C. Falsifying records to make illegal transactions appear legitimate.

Examples

1. Inflating invoices to fraudulently "document" the receipt of the proceeds of SUA.
2. Inflating purchase documents, shipping documents, etc., to fraudulently "document" the transfer of the proceeds of SUA.
3. Inflating currency receipts to fraudulently "document" the receipt of currency proceeds of SUA.
4. Submitting false or fraudulent documents to fraudulently "document" transactions involving the proceeds of SUA.

Examples

- a. In Operation Polar Cap I, the defendants attempted to document the legitimacy of over \$1 billion in proceeds from SUA by claiming the transactions involved the purchase and sale of gold bullion.
- b. In U.S. vs Sharir, a jeweler shipped over \$100 million in currency to a third party jewelry company in order to "buy" gold bullion to be used in the manufacture of gold rope. Sharir knew the currency was proceeds from the sale of narcotics and the purported gold purchases were in fact sham transactions designed to convert the proceeds of SUA into "legitimate" holdings of gold bullion.

- C H M -