**18.7 Money Laundering (18 U.S.C. § 1957)**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with money laundering in violation of Section 1957 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly engaged or attempted to engage in a monetary transaction;

Second, the defendant knew the transaction involved criminally derived property;

Third, the property had a value greater than $10,000;

Fourth, the property was, in fact, derived from [*describe the specified unlawful activity alleged in the indictment*]; and

Fifth, the transaction occurred [[in the [United States] [special maritime and territorial jurisdiction of the United States]] [*specify defendant’s status which qualifies under 18 U.S.C. § 1957(d)(2)*].

The term “monetary transaction” means the [deposit] [withdrawal] [transfer] [exchange], in or affecting interstate commerce, of funds or a monetary instrument by, through, or to a financial institution. [The term “monetary transaction” does not include any transaction necessary to preserve a person’s right to representation as guaranteed by the Sixth Amendment to the Constitution.]

The term “financial institution” means [*identify type of institution listed in 31 U.S.C. § 5312 as alleged in the indictment*].

The term “criminally derived property” means any property constituting, or derived from, the proceeds obtained from a criminal offense. The government must prove that the defendant knew that the property involved in the monetary transaction constituted, or was derived from, proceeds obtained by some criminal offense. The government does not have to prove that the defendant knew the precise nature of that criminal offense, or knew the property involved in the transaction represented the proceeds of [*specified unlawful activity as alleged in the indictment*].

Although the government must prove that, of the property at issue, more than $10,000 was criminally derived, the government does not have to prove that all the property at issue was criminally derived.

**Comment**

The above definition of “criminally derived property” refers to the “proceeds” of a criminal offense. For cases involving conduct on or after May 20, 2009, “proceeds” means “any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.” 18 U.S.C. § 1957(f)(3); 18 U.S.C. § 1956(c)(9) (Section 1957 subsection (f)(3) was modified by Pub. L. 111-21, 123 Stat. 1618, which also added § 1956 subsection (c)(9)). For cases involving conduct before May 20, 2009, “proceeds” means “gross receipts” unless the money laundering transactions were a “central component” of the criminal scheme. *United States v. Phillips*, 704 F.3d 754, 765-66 (9th Cir. 2012); *see also United States v. Van Alstyne*, 584 F.3d 803, 814 (9th Cir. 2009) (stating that when defining “proceeds” as “receipts” would present a merger problem, “proceeds” means “profits”); Instruction 18.6 (Transporting or Attempting to Transport Monetary Instruments for the Purpose of Laundering (18 U.S.C. § 1956(a)(2)(B))).

The term “specified unlawful activity” in 18 U.S.C. § 1957 has the same meaning as that term is given in 18 U.S.C. § 1956. *See* 18 U.S.C. § 1957(f)(3). In § 1956(c)(7)(B)(iv), the “specified unlawful activity” of bribery of a public official “should be interpreted to take the ordinary, contemporary, common meaning” of that phrase at the time Congress enacted the statute. *See United States v. Chi*, 936 F.3d 888, 893-97 (9th Cir. 2019) (applying term “bribery of a public official” to include bribery under foreign law and not restricted to federal bribery statute, 18 U.S.C. § 201, or foreign law that mirrors federal bribery statute).

Because it is a specific intent crime, it is reversible error to give Instruction 4.8 (Knowingly) in a money laundering case in a manner that indicates the defendant need not know that the money being laundered was proceeds of criminal transactions. *United* *States v. Stein*, 37 F.3d 1407, 1410 (9th Cir. 1994); *see also United* *States v. Turman*, 122 F.3d 1167, 1169 (9th Cir. 1997) (applying *Stein* retroactively), *abrogated on other grounds by Henderson v. United States*, 568 U.S. 266 (2013). *But see United States v. Lonich*, 23 F.4th 881, 899-901 (9th Cir. 2022) (concluding district court did not err by using general “knowingly” instruction in money laundering case because district court modified instruction to clarify that it applies only to act of engaging in monetary transactions); *see also United States v. Jaimez*, 45 F.4th 1118, 1123 (9th Cir. 2022).

*Revised Sept. 2022*