I. Mail/Wire Fraud - §§ 1341, 43

A. Generally
   1. §§1341, 43 are to be given parallel construction
   2. Purpose – Congress/prosecutors use to punish fraudulent scheme which use
      the mail, even if can’t punish the scheme separately (w/out use of the mail)
   3. Fraud undefined, but stat. “condemns conduct which fails to match reflection
      of moral uprightness, of fundamental honesty, and fair play.”

B. Elements (2 of them)
   1. D engaged in a “scheme to defraud”
   2. Defendant used or caused to be used US mail, private courier, or
      interstate/international wires “in furtherance” of the scheme

C. What constitutes a “Scheme to Defraud”
   1. Intended Deceit
      a. Focus on whether D intended to do something that relying pty did not
         expect (Hawkey – sold tickets promises proceeds go to charity → buyers
         still got tickets but some proceeds went to D’s pocket)
      b. Hiding conduct is strong evid. of fraud (why hide if transaction is
         moral/upright)
   2. For the purpose of causing harm to a protected interest
      a. Punishable if D intended harm, but harm never occurred (George – paying
         kickbacks to get K still fraud even though K price was fair).
      b. Must either harm the victim or benefit the D (Czubinski – D unauthorized
         access to ER files not punishable b/c D didn’t disclose info so no harm to
         ER or use the info for own benefit)
      c. Protected interests – must be deprivation of property (or money) in the
         victim’s hands.
         i. Deprivation of any tangible/intangible property right (Carpenter –
            paying off reporter deprived WSJ of exclusive property rights in
            confidential biz. info).
            a. Deprivation of State’s license IS NOT a protected interest
               (Cleveland – license in hands of the state is not property b/c right
               to exclude based on regulatory function, not property interest)
            b. But license in hand of license holder MIGHT constitute property
         ii. Deprivation of money or right to receive money (Pasquantino – not
             declaring liquor at Canadian border deprive Canada of tax revenues)
         iii. Deprivation of “intangible right to honest services” (§1346)
            a. Public officials – Inherent fid. duty to make dec. in pub. interest,
               which is automatically breached whenever self dealing (Czubinski
               – must be serious corruption like bribery or self dealing)
            b. Private sector – EE must be intending to breach clear fid. duty
               AND foreseeable economic harm befall ER b/c of breach
               (DaVegter – D breached duty to ER which foreseeable caused
               economic harm when accepting bribe to select certain UW)
3. The deceit was material – the deceit must be material to constitute fraud rather than an unpunishable lie
   a. Must go to the heart of the bargain (Hypo – not fraud to lie to secretary just to get boss on the phone to make legit. deal).
      i. Puffing is never enough
   b. Literally true statements can be materially misleading if taken as a whole it would effect the decision of reasonable person (Lustinger – pictures of investment property where literally true but misleading as a whole)

D. Use of the mails, interstate/international wires, interstate commercial carriers – jurisdictional hook
   1. Interstate wires includes radio or television communication
   2. Use of the mails/interstate wires need only “incident to an essential part of the scheme” (Schmuck – D rolling back odometers then selling to car deals who then mailed in titled application w/ wrong odometer reading was mail fraud)
      a. Similar to a “but for” test
      b. Use of the mails/interstate wires need only be foreseeable
         i. Even if vic. is the one who uses the mail/wiresTest – Could the fraud have been perpetrated w/out the use of mails
      c. Use of mails/wires can occur even after D has money in his pocket so long as mails necessary to keep scheme going (Sampson – After D fraudulently obtained $, would mail vics false paperwork to lull them).
         i. There needs to be more than one vic. in a continuing scheme for this to apply.
   3. NOTE – each use of the mails is a separate offense

E. Mail/wire fraud that “affects a financial institution”
   1. Important because if “affects a financial institution”
      a. Penalties increase from 20yrs/$25K to 30yrs/$1mil.
      b. SOL increases from 5 to 10 yrs.
   2. Def. of “affecting a financial institution”
      a. Not defined in statute
      b. “Affects” is broad term and encompass:
         i. Fraud on non-financial subsidiaries of financial institutions b/c loss will fall on parent (Bouyea – fraud on sub. which had to borrow money from parent financial institution was enough)
         ii. Merely exposing financial institution to liability (even civil)

F. Other Statutes Prohibiting Specific Fraud
   1. Bank Fraud - §1344
      a. Scheme to defraud a financial institution
         i. Interpreted just like “scheme to defraud” under §§1341, 43 but:
         ii. Must be specific intent to defraud a financial institution
            a. Shielding economic substance of a loan or real relationship of borrower is enough (Doke – Bank has right to know what loan really for and who, in substance, will be paying it back b/c nominee loans put bank if violation of FDIC law)
            b. Putting bank at risk of loss is enough, even if fraud intended to harm a 3d pty (Reaume – D purchasing items at stores on
fraudulent bank accounts was bank fraud b/c put bank at risk of loss.

2. Computer Fraud - §1030
   a. Targets crimes that cause harm (either to an individual or a computer) from unauthorized access to a computer or accessing a computer in excess of authority.
   b. “Protected computer(s)” §1030(e)(2)(A), (B)
      i. Used by fed. gov’t or financial institution OR
      ii. Used in interstate commerce (email, internet, etc)
   c. “Damage to one or more individuals”
      i. Individual includes corporation (Middleton)
      ii. Damage includes
         a. Cause physical harm to a person, threaten public safety, or cause monetary loss of more than $5,000 in 1 yr. §1030(e)(8)
            i. Monetary damages calculation
               a. Damages = any loss that was a natural and foreseeable result of the damage, including measures necessary to repair the computer (Middleton – hrs. EEs had to spend fixing damage to computer were calculable in damages).
            iii. Obtaining something of value (Czubinski – accessing comp. just to satisfy curiosity is not obtaining something of value if use of program doesn’t cost victim money).

3. Major Fraud against US - §1031
   a. Schemes to defraud US
      i. Interpreted just like “schemes to defraud” under §1341 but:
      ii. D must be a contractor or sub-contractor for US gov’t
      iii. K must be for greater than $1mil.
          a. If D is sub-K and sub-K less than $1mil., still liable so long as prime K is more than $1mil. (Brooks – no privity requirement)
             i. Rat.
                a. If contrary rule it would provide perverse incentive for sub-K to keep K under $1mil. to avoid liability
                b. Even fraud in small sub-K can cause real harm to large K.
          b. NOTE – at least one ct. (2d Cir.) requires D be an actual pty to a K w/ US over $1mil.
   b. Can only be punished for each execution of a fraudulent scheme but not every act in furtherance of the scheme.
      i. Test: each act must be chronologically and substantively independent from overall scheme (Sain – D in K to operate plant of Army and submitted false claims for operating expenses, each false claim was punishable)
          a. Substantive – each act sought to obtain a separate amount of money and caused gov’t a distinct loss
          b. Chronological – each act done at a separate time

II. Securities Fraud
   A. Criminal Sanctions
   a. Evid. of “willful” participation in a fraud *(Weiner* – outside auditor found to be willful participate where huge fraud went on for long time and D grossly deviated from GAAP and GAAS):
      i. Magnitude of the fraud
      ii. Duration of the fraud
      iii. Deviation from gen’l accepted accounting standards
      iv. Turning a blind eye when irregularities become know
         a. PSLRA no requires auditors to adopt procedures to detect illegal acts committed by client and notify board of illegalities

2. “No knowledge” proviso 34A §32(a) – not subject to imprisonment if prove no knowledge of provision convicted of violating.
   a. But have no knowledge that conduct violates ANY law, not just the one convicted of *(Lilly* – “no knowledge” not proven if D knew they were committing fraud, even if didn’t know which statute conduct violated)

B. Insider Trading
   1. Generally
      a. No express provisions forbidding
      b. Prosecuted under 34A §10(b), R. 10b-5 which prohibits, inter alia, any “device, scheme, or artiface to defraud…in connection w/ purchase/sale of security.”

2. Elements of insider trading liability
   a. D bought or sold securities
   b. At time of purchase or sale D was in “knowing possession” of nonpublic information
      i. Doesn’t matter whether the inside info. informed decision to trade (no causality element) *(Teicher* – D liable for insider trading even though claimed inside information didn’t effect decision to trade).
      ii. Rat.
         a. Too hard for trader to push a piece of info out of his mind (especially in arbitrage trade like *Teicher* where gather lots of tidbits)
         b. Too hard to distinguish legit trades from causality trades
         c. Absolute rule of abstain or disclose
         d. “In connection with” only requires “touching on” purchase or sale of securities *(TGS)*
   iii. R. 10b5-1: 10b-5 prohibits trading “on the basis of” inside information and “on basis of” = in possession of inside info
      a. Codifies *Teicher* holding
      b. Affirmative defense (3 elements)
         i. Before becoming aware of inside info, trader entered a written plan or instructed another to buy/sell
         ii. Plan to buy/sell provided for
            a. Purchase/sale of certain amount on a certain date OR
            b. Purchase/sale based on written formula OR
c. No way for purchaser/seller to exercise any subsequent influence over the plan
d. NOTE – the plan must be clear (Stewart case – instruction to sell “@ $60” too unclear)
iii. Purchase/sale executed according to the plan/instructions in good faith (no an attempt to evade liability)
c. The non-public info must be material
   i. Test: substantial likelihood that reasonable investor would view the info as significantly altering the “total mix” of information available in making investment decision. (TGS)
      a. Puffery – never material b/c it’s the type of info no reasonable investor would rely on.
d. D was either:
   i. An insider or constructive insider of the company whose securities he traded
      a. Classical theory – insiders owe fid. duty to shareholders to abstain from trading with them or disclose to them nonpublic info material to the trade (TGS)
         i. Duty to abstain/disclose only arises when trade with shareholder of corp. which D is an insider (Chiarella – trading with shareholders of another corp. is not insider trading b/c no fid. duty owed)
   ii. An outsider or company whose securities he traded and obtained the material non-public information by virtue of a fiduciary relationship with a 3d pty
      a. Misappropriation theory – outsider trader breaches fid. duty to the 3d pty when profits off the info obtained by virtue of fid. relationship w/ the 3d pty w/out disclosing the trade. (O’Hagan – D, atty, breached fid. duty to client when traded in stock of company client was going to merge w/ based on info obtained from client)
         i. Similar to D “stealing” the information from the 3d pty
         ii. “In connection with” requirement met by D purchasing or selling securities – although O’Hagan dissent argue too attenuated
   iii. A tipee (see below)
e. D acted willfully (always an element for crim. liability under securities laws)
3. Elements of Tipper/Tipee liability
   a. Tipper
      i. Passes along material non-public information
      ii. Passing of information breaches fid. duty either as insider, constructive insider or misappropriator
      iii. D must receive a personal benefit by making the tip (Dirks – passing along inside information to tippee for purpose of tippee to investigate fraud is not breach of fid. duty)
a. Theory of liability – breach of fid. duty to tip material, non-public information when obtain that information from insider relationship or derivative fid. duty
   i. Note – tipper doesn’t have to know info will be traded on, there only needs to be breach of duty and a subsequent trade somewhere along the tipping line

b. Tippee
   i. D obtains material non-public information from tipper
      a. Tipper must be breaching fid. duty as insider or missapropriator when making the tip (Dirks – tippee not liable b/c tipper didn’t breach fid. duty by asking D to investigate possible fraud)
      ii. D is aware that tipper is breaching fid. duty by making the tip
      iii. D willfully trades on the information or passes along the information

4. All insider trading liability based on the breach of a fiduciary duty
   a. Establishment of a fiduciary relationship – relationship of trust/confidence
      i. Inherently fiduciary relationships:
         a. atty/client, trustee/trust, agent/principal, exec./shareholder
         i. familial relationships not inherently fiduciary w/out more (Chestman – D trading on info obtained from wife was not breach of fid. duty)
      ii. R. 10b5-2 – establishment of relationships of trust/confidence of insider trading liability
         a. Person agree to maintain information in confidence
         b. Ptys have a history of sharing confidences
         c. Immediate familial relationship, but can be rebutted by showing:
            i. Person receiving information had no reason to know source of info expected info to be kept confidential b/c no history or agreement of maintaining confidences
            ii. This rebuttable presumption overrules Chestman

C. False/Misleading Statement
   1. R. 10b-5 also punishes “untrue statement…or omission…of material fact …in connection w/ purchase or sale of securities”
      a. Gov’t can bring charges for “willful” false material statements about a purchase/sale of securities (Stewart case – gov’t charged for making false public statements about reason for sale of ImClone stock)

III. False Statements - §1001
   A. Gen’l
      1. Purpose:
         a. To prevent use of fraud/trickery to subvert gov’t purposes
         b. Often easier for gov’t to prosecute for lying in an investigation than prosecute for the offense that gave rise to the investigation
      2. Policy problem – §1001 punishes unsworn statements more severely than perjury so should be careful how broadly construe it.
   B. Elements
1. D makes a statement
2. Statement is false
   a. no oath requirement, punishes unsworn statements
3. D knew the statement was false
4. Statement made in a matter w/in the jurisdiction of
   5. Executive, legislative, or judicial branch of US

C. False Statements – specific elements
   1. Conduct
      a. Concealments or misrepresentations (Steiner – D switching approval
         stamps on canopies for Navy jets was a false statement)
      b. False promises is a false statement, but only if made w/out any present
         intent to perform the promise (Shah – D promises gov’t agency not to
         reveal its K bid, but with the intention of actually revealing the bid to
         competitor was punishable)
         i. Must show D’s intent when making the promise was not to fulfill
            a. Promise w/out lack of intent to perform not punishable or else all
               broken promises would be punishable.
            ii. Still false promise even if phrase promise as “I can’t promise but I’ll
                try” but have no intent to try.
      c. “Exculpatory No’s” – denial of guilt is punishable (Brogan – D telling
         FBI in informal questioning that “no” didn’t receive payments from briber
         was punishable)
         i. Justification for this harsh consequence
            a. Every lie has the capacity to subvert gov’t investigations
            b. D always has the option to remains silent and 5th A. right is well
               known
         ii. Counter arguments
            a. Gov’t agents shouldn’t expect ppl. to admit crimes (no subversion
               of the investigation)
            b. Put D in cruel dilemma of either admitting guilt or being punished
               for denying guilt
            c. D may not be aware of right to remain silent in informal gov’t
               questioning
   2. Materiality – whether statement has the capacity to influence a gov’t
      investigation
      a. Look at statements capacity to influence, not whether it actually does
         influence
   3. Mental State
      a. D must “knowingly and willfully” make the false statement
         i. This means only that D must be aware of the falsity of the statement
         ii. No “knowledge” requirement that the false statement was w/in the
             jurisdiction of fed agency (Yermian – D’s false statement on
             employment application punishable where ER submitted application to
             the DOD for clearance)
             a. Congress is not required to put a mens rea requirement on
                jurisdictional elements
b. Note – **Yermian** ct. DID NOT say that no mens rea requirement necessary for jurisdictional element, only that “knowledge” was not required (**Green** – 9th Cir. interpreted Yermian as S. Ct. saying NO mens rea requirement at all for jurisdictional element).

c. Counter arg. – the false statement should at least be w/in fed. jurisdiction at time it was made, or else it wouldn’t be a matter of fed. interest

D. “Within the Jurisdiction”
1. All matters which a federal agency has statutory authority to investigate (**Rodgers** - D lying to FBI about missing wife punishable b/c FBI had statutory authority to investigate missing persons).

2. Even if statement is made to the state or 3d pty, so long as fed. agency retains “ultimate enforcement authority” (**Wright** – false statement to state punishable b/c EPPA had “ultimate enforcement authority” over state program; **Steiner** – subcontractor switching approval stamps and sending to prime K who K w/ Navy punishable b/c Nay had “ultimate approval auth”).
   a. Factors in determining “ultimate enforcement/approval authority”
      i. Fed. agency **funding** to state program
      a. **Wright dicta** says this alone is enough – but this would vastly expand §1001 jurisdiction. No ct.s have decided on this yet
      ii. Fed. agency has **ability to monitor** state/3d pty to ensure **compliance** w/ fed. program
      iii. State/3d pty is **enforcing** fed. regulations – just b/c state has primary enforcement auth. doesn’t detract from fed. ultimate enforcement auth.

3. Department or Agency
   a. Executive branch – includes agencies (see cases under “Jurisdiction” above)
      i. This is going to be were the broadest application of §1001 jurisdiction. No ct.s have decided on this yet
   b. Judicial branch – exception for false statements submitted in a “judicial proceeding” (**§1001(b)**)
      i. Elements that must be satisfied to qualify for exception
         a. D was a party or counsel to a party in a judicial proceeding
         b. Statement was submitted to judge/magistrate
         c. Statement made “in that proceeding”
            i. Judicial proceeding begins at indictment (**McNeil** – false statement on appointment of counsel form filed after indictment not punishable)
            ii. Rat. – this action is punishable under Perjury statute
   c. Legislative Branch
      i. False statement must be in the course of an “ongoing investigation” authorized by Congress
         a. False statement can’t spark the investigation (**Pickett** – D’s false statement not punishable were sparked investigation and only touched on a matter that Congress was already investigating)

E. **Other statutes the punish falsities submitted to US gov’t**
1. Major Fraud - §1031
   a. Discussed under mail fraud section

2. False Claims - §287
   a. Like false statements but:
      i. Falsity must be a claim presented to US gov’t for money/property
         a. Also overlaps w/ Major Fraud stat. in Mail Fraud sect. above
      b. Mens rea – only must know statement is false, no intent to defraud gov’t is needed (Maher – D submitting overbill charges to gov’t on K punishable b/c D knew they were false even though he thought they were fair)
         i. Punishes “false, fictitious OR fraudulent claims”
         ii. Purpose of statute is to ensure integrity of submissions to gov’t – filing a false submission, even w/out fraudulent intent, subverts purpose.

3. Certifying Financial Records - §1350
   a. (c)(1) - Crime for exec/auditor to certify financial report KNOWING that it doesn’t comply w/ 34Act and SEC requirements
   b. (c)(2) – More serious crime for exec/auditor to WILLFULLY certify a financial support KNOWING that it doesn’t comply with 34Act and SEC requirements

IV. Perjury and False Declarations - §1621, 23
   A. Gen’l
      1. Basically these crimes are just the sworn statement version of the false statements statute
      2. Both §1621, 23 apply to make false statements under oath
      3. Key differences
         a. Much easier to convict under §1623 b/c
            i. Can prove falsity through inconsistent statements and no 2 witness rule
            ii. §1621 requires falsity to be proved by 2 witness rule and not through inconsistent statements alone
         b. But §1623 much more limited in application
            i. Only applies to court and GJ proceedings and allows for recantation defense
            ii. §1621 applies to any statements under oath and no recantation defense
   B. Jurisdiction
      1. Perjury – very broad
         a. Statement made under oath before “a competent tribunal” OR
            i. Includes SEC, congressional committees, etc.
         b. “In any declaration, certificate, or statement under penalty of perjury”
            i. Includes income tax returns or any other fed. forms
      2. False Declarations – more limited
         a. Statement made under oath in a “proceeding before or ancillary to an court or GJ”
            i. Ancillary proceeding = must be something at least as formal as a deposition.
   C. Elements of both §1621, 23
      1. “Willful” (§1621) or “Knowingly” (§1623) makes an untrue statement
a. Literally true but misleading or non-responsive statement is not enough

(Bronston – D’s response that his company had a swiss bank account was not perjury to question of whether he personally had a swiss account)

i. It is lawyers duty to pin witness down to a responsive answer

ii. **FN Bronston** – if “literally true” statement is quantitative but badly understates the facts and is responsive → probably can argue false

b. If D “willfully” or “knowingly” causes another person to testify untruthfully then liable as aider and abettor under §2.

i. In intermediary’s conduct is imputed to D, even if the intermediary is an innocent and can’t be punished separately b/c lacked mental state.

2. Untrue statement is material

D. Proving falsity of the statement

1. §1621: Two Witness Rule - Gov’t must prove perjury by 2 witnesses testifying to falsity.

a. Can be satisfied by 1 witness and corroborating evid. (Davis – perjury based on cops testimony of previous confession and D’s signed confession drafted by the cop)

i. Corroborating evid. doesn’t have to be very strong

ii. D’s own erratic, confusing testimony can serve as the corroborating evid. of its falsity

b. Rat - Prevents perjury conviction base on oath against oath testimony

c. Exception – 2 witness rule not required where instead of making a false statement, D is claiming a lack of memory

2. §1623: Two ways to prove (neither require 2 witnesses)

a. Proof beyond a reasonable doubt of falsity (any mode of proof)

b. (c)(1) Inconsistent statement - If D made irreconcilable inconsistent statement material to the point, jury entitled to presume one is false without gov’t having to prove which one.

E. Defenses – Only available under §1623

1. Defense to §1623(c)(1)’s inconsistent statement rule – If D proves at the time each inconsistent statement was made, he believed it to be true

a. B/c then there is no “knowledge” on D’s part as to falsity

2. §1623(d) Recantation Def. – 3 elements

a. If D recants false testimony

b. In the same proceeding as the false testimony was made

c. Falsity “has not substantially affected the proceeding or it hasn’t become manifest that the falsity will be exposed”

i. Ct. interpret to require that recantation occur both before it has “substantially affected the proceeding” AND “become manifest falsity will be exposed” (Sherman – D’s recantation after clear that prosecutor knew he was lying was no defense even though falsity hadn’t affected proceeding).

a. Rat – no purpose to provide incentive to recant if D’s falsity has already “affected” the proceeding or D knows he is going to get caught.
d. NOTE – recantation def. does not apply to §1621 b/c the crime of perjury is complete when the witness makes the false statement under oath

3. NOTE – Can’t bring charges under another statute instead of §1623 solely to avoid the defense provided b/c would violate Due Process.
   a. But this is almost an impossibly high standard for D to prove.

F. Perjury by Gov’t Witnesses
   1. Rule: Prosecution based on perjured testimony by gov’t witness will be grounds for a new trial if:
      a. Gov’t aware of reasonable should have been aware of the perjury → reasonably likely that perjured testimony influenced the jury
      b. Gov’t unaware of the perjury → perjured testimony was material and “but for” perjured testimony D wouldn’t have been convicted
      c. Point – D must show that perjured testimony was core to gov’t case (Stewart case – D didn’t meet standard where perjured testimony was on a collateral matter and jury didn’t convict on that matter).
         i. Very high burden for D to meet.

G. Immunized Testimony
   1. §6002 Use Immunity– In exchange for witness giving up 5th A. right, grants witness immunity for being prosecuted, except for perjury or false statements, on basis of testimony.
      a. Note – if witness still asserts 5th A. after being granted immunity, then can be prosecuted for attempt.
   2. Prosecution for falsity’s during immunized testimony
      a. If violate grant of immunity by testifying falsely, then anything testified to, whether true or false, can be used in subsequent prosecution for perjury (Apfelbaum – D testified falsely under grant of immunity, all statement made during the testimony, including true statements, were admissible at perjury prosecution)
         i. Rat: - Immunized testimony is not treated same as if 5th A. had been asserted.
         ii. But the perjury prosecution is limited only to the false statements made during the immunized testimony (true statement can only be admitted to put false statements in context)
   3. Selective Immunization Claims against Gov’t
      a. Rule: Abuse of discretion for gov’t to selectively grant immunity to pros. witnesses but not defense witnesses who refuse to testify und 5th A.
         i. 2 Prong abuse of discretion test:
            a. Pros. used grant of immunity in descritionary way to gain tactical advantage over D or overreached to cause D witnesses to claim 5th A.
               i. Factors: decision to seletivley grant immunity didn’t serve legit. law enforcement interest, intimidation used to force defense witness’ to plead 5th A. (Ebbers case – D didn’t meet his burden b/c defense witnesses were legit. targets of gov’t investigation and pros. witnesses were not central to the fraud)
            b. The defense witness would have been material and exculpatory
i. Alter the total mix of evid. b/f jury
ii. Almost impossible for D to meet his burden of proof
4. Remedy – Don’t let gov’t use their immunized witnesses unless grant immunity to D’s witnesses
   a. Rat. – Only fair remedy b/c D has not ability to seek grant of immunity from ct, only prosecutors, administrative agency, or majority of the house

V. Obstruction of Justice
   A. Generally
      1. Statutory Scheme (5 statutes)
         a. §1503 – applies to participants in civil and criminal judicial proceedings
            i. This is the most relied on
         b. §1505 – applies to participants in administrative and congressional proceedings
         c. §1510 – applies to participants in federal criminal investigations
         d. Victim and Witness Protection Act
            i. §1512 – tampering with witnesses, victims, and informants
            ii. §1513 – retaliating against witnesses, victims and informants
      2. Distinct Purposes (2 of them)
         a. Protect participants in judicial/admin. proceedings from the use of force, intimidation, or corrupt means to influence them in the discharge of their duties
         b. Preserve the integrity of the judicial/admin. decision making process
   B. §1503 Generally
      1. Prohibits some specific acts
      2. Heart is the omnibus clause which prohibits: Corrupt endeavors to “influence, obstruct, or impede, the due administration of justice
   C. §1503 Elements
      1. Summary of elements
         a. Pending judicial proceeding
         b. Endeavor to influence or impede the proceeding
         c. Knowledge of natural and probable consequence of endeavor
         d. Endeavor done for corrupt purpose
      2. Pending Judicial Proceeding – Jurisdictional Hook
         a. Investigation turns into a judicial proceeding once Gov’t obtains subpoena for the bona fide purpose of presenting evid. to a sitting GJ (Simmons)
            i. Test – the subpoena must be issued in furtherance of an investigation in which GJ is sitting (in furtherance of administrative investigation is not enough)
               a. Look to intent of US atty applying for subpoena – was evid. going to GJ or just internal investigation?
               b. Rat – only once GJ is involved is there an “administration of justice”
            ii. But GJ need not be aware of the subpoena (Simmons – b/c in reality GJ is just a formality)
         b. Once civil discovery has commenced (Lundenwall)
            i. Rat
a. Nothing in plain lang. of §1503 limits it to criminal cases
b. Non-party to civil suit may not be subject to civil sanctions, so only way to get at them is through §1503
c. Issuance of subpoena need only be anticipated not actually requested b/c actual issuance is irrelevant to obstructive effect of document destruction (Lundenwall)
d. Pending proceeding continues until all appellate options have been exercised (very long time)

3. Endeavoring to Influence or Impede Admin. of Justice – Actus Reus Element
   a. Destruction/Alteration of documents – see cases above
   b. False testimony
      i. All perjury is not obstruction
      ii. But if commit perjury AND cut off further inquiry = obstruction (Griffin – D giving false answers and claiming didn’t remember was obstruction b/c hindered GJ’s fact finding)
         a. Cutting off further inquiry has effect of concealing evid. which is the same as destroying evid
         b. But mere evasiveness is not enough b/c lawyers have duty to follow-up on narrow or nonresponsive answers
      iii. Diff. from perjury
         a. Easier to satisfy obstruction b/c don’t have to show willfulness, oath b/f covered tribunal, 2 witness rule, or materiality
         b. But unlike perjury, mere falsehood is not enough, must show intent to cut off further inquiry
   c. Encouraging witness to Assert 5th A.
      i. Assertion of 5th A. is not obstructive, but encouraging another to assert 5th A. for self serving purpose is obstructive (Cintolo – lawyer telling client to assert 5th A. even after granted immunity was obstruction)
         a. Jury entitled to find bad faith based on all evid., evid. of good faith does not est. irrebuttable presumption
         b. Instructing client to commit a crime is always bad faith
   d. Witness tampering - see section below

4. Nexus b/t Corrupt Endeavour and the Pending Judicial Proceeding
   a. Endeavour must have the “natural and probable effect” of influencing/impeding justice (nexus requirement)
      i. Doesn’t matter whether endeavor actually does impede justice (Collis – D forging ltr at sentencing hearing was corrupt endeavor even though ltr didn’t influence judge).
   b. D must also have knowledge of the natural and probable consequence(Aguilar – D lying to fed. agents wasn’t obstruction b/c D didn’t know they were going to testify b/f GJ)
      i. This has been read into the “Endeavour” language

5. “Corruptly” Endeavour’s… Mens Rea Element
   a. The endeavor must be for the intent to obstruct and with the knowledge of the natural and probable consequence
   b. Point – look at D’s motive for the action!!!
i. Split whether refusing to testify out of fear satisfies corrupt element

D. Application to lawyers

1. How lawyers can obstruct
   a. If lawyer knows client is obstructing and doesn’t do anything to stop it
   b. If lawyer counsels client to give false testimony
      i. But if only counsels to be evasive that is not enough unless also counsels to block further inquiry (such as denial or claim don’t remember)
   c. If lawyer counsels client to assert 5th A for self serving purposes

2. §1515(c) Safe Harbor for lawyers
   a. Providing lawful, bona fide legal advice in connection with or in anticipation of a judicial proceedings is never obstruction
      i. Burden on gov’t to prove legal advice in bad faith (b/c burden on gov’t this is an element of the offense, not an affirmative defense)

E. Victim and Witness Protection Protections (overlaps and expands on §1503)

1. §1503 omnibus clause protects against noncoercive efforts to prevent witnesses from testifying (which obstructs admin. of justice)
   a. The conduct does not need to be illegal in itself (Lester – paying to take witness out of state, putting up in nice hotel, and given cash was obstruction)
   b. Even though §1512 covers forceful/coercive witness tampering, it does not detract from broad coverage of §1503
      i. Just because word “witness” deleted from §1503 doesn’t indicate congressional intent to lessen coverage

2. §1512(b) protections against: intimidation of witness, corrupt persuasion of witnesses and conduct that misleads witnesses
   a. Whoever “knowingly uses”
      i. Knowingly element modifies corruptly persuades elements to that there must be a consciousness of wrongdoing to subvert an official proceeding (Anderson – When D informed employees to shred documents, merely showing intention to subvert the proceeding (corrupt intent) was not enough)
         a. Rat. – otherwise §1512 could apply to wholly innocent activity (shredding docs not illegal in itself)
      ii. How to show consciousness of wrongdoing (w/ doc. shredding):
         a. Was the policy followed b/f the gov’t investigation began
         b. Were only documents there were the subject of the invest. being shredded
         c. Were only certain employees encouraged to follow
   b. “Intimidation…Corruptly persuades or “engages in misleading conduct towards a person”
      i. Intimidation – involves specific threats (Willard – telling witness will be punished by God is intimidation)
      ii. Corruptly persuades – more like bribes, similar to §1503 but modified by “knowingly” to require awareness that persuasion is wrongful (Anderson)
iii. Misleading Conduct – punishes efforts to influence potential witnesses testimony by misleading that person
   a. b/c no pending judicial proceeding requirement, the witness can just be a “potential witness (Gabriel – D misleading investigator punishable even though no GJ proceeding underway at time)
   c. With intent to:
      i. (b)(1) Influence, delay, or prevent testimony in official proceeding
         a. Even though conduct must be directed towards a witness:
            i. The endeavor need not actually effect that witness b/c stat. only punishes the endeavor, not the effect
            ii. Witness retains his status even after testified (could be remanded for further testimony at any time).
      ii. (b)(2) Cause a person to withhold, alter, or destroy a document or an object for use in an official proceeding
   d. Nexus req.
      i. There need not be a pending judicial proceeding
      ii. But D must have at least foreseen that conduct was going to be material to some particular judicial proceeding (Anderson)
         a. Prior to Anderson ct.’s did not require a nexus in §1512 b/c saw
   e. (c) covers same conduction as (b) but does not require the “knowingly” element
      i. This was Congress response to Anderson holding
3. §1512(d) harassment of witnesses
   a. Whoever intentionally harasses a person
      i. harass = badger, pester, disturb (Wilson – D making a threatening comments to witness was harassment)
      ii. Harassment is more like an opinion, whereas intimidation involves specific threats
   b. And dissuades them from attending or testifying in an official proceeding
      i. Must be done with intent to dissuade testimony, etc (Wilson)
      ii. Must be dual intent: intent to harass and intent to dissuade
         a. Intent to harass can be inferred from D’s demeanor and witness’s adverse reactions
4. §1512(e) Retaliation against Witnesses
   a. Prohibits “knowingly” and with “intent to retaliate” taking any action that is harmful to a person
      i. Includes interfering with employment or livelihood of the person
   b. Who qualifies?
      i. Person must provide information about the commission or possible commission of a fed. crime to law enforcement (blow the whistle)
      ii. The information must be truthful
F. 5th A. Priv.
   1. Priv. Rules
      a. Corp. has no 5th A. priv., only indiv. do
      b. Corp. custodian in possession of corp. documents can’t refuse to produce b/c corp. can only act through custodians.
i. This is so, even where the documents have custodians personal handwriting on it (Lay case)
c. Protections for custodians – the Act of Production Doctrine
   i. Custodian can’t be compelled to testify about whereabouts of corp
documents not in his possession.
   ii. Gov’t can’t introduce evid. of who produced corp. documents (b/c the
act of production has testimonial qualities protected by 5th A.)
      a. Jury only entitled to infer who produced

VI. Bribery of Public Officials and Witnesses
A. 2 Crimes prohibited by §201
   1. §201(b) – Bribery
      a. Bribery = quid pro quo for a specific official act by a public official
      b. Statute punishes both the solicitation/acceptance by the public official and
the offer/promise by the briber
   2. §201(c) – Gratuity
      a. Gratuity = rewarding a public official for a past act or intending to
influence future specific matters pending b/f the official
      b. Statute punishes both the solicitation/acceptance by the public official and
the offer/promise by the briber

B. Elements
   1. “Whoever directly or indirectly” offers/promises or solicits “anything of
value”
      a. Directly/indirectly – applies even if you use a 3d pty
      b. Promises – even if promise to give/receive something in the future
      c. Thing of value - Test is whether the defendant considers it to be something
of worth, even if it has not objective commercial value (Williams –
accepting bribe of stock in corp. that is actually fake is still punishable)
      i. But mere preparation that D doesn’t consider to bestow value on him
is not punishable
   2. To any “public official” – Jurisdictional hook
      a. Appointed public officials
         i. The person need not be directly employed by fed. gov’t
         ii. Test: “Whether person occupies a position of public trusts with
official federal responsibilities” (Dixson – Ds “public officials” even
though employed by organization hired by state to distribute fed.
funds)
            a. Factors that signal position of public trust
               i. Authority to distribute federal funds
               ii. Administering a federal program (e.g., determining eligibility)
               iii. Required to follow federal regulations (fed. policy interests
implicated)
            iii. Limit – the person’s primary responsibilities need to be of fed. interest,
and person must have the decision making power over the funds or
policy (secretary probably not public official)
      b. Elected public officials – Def. in §201(a)
         i. Members of Congress
a. Speech or Debate Clause of constit. grants immunity to congressman for “legislative acts.”
b. Can charge congressman for bribery w/out offending speech or debate clause b/c (Brewster):
   i. Only need to show acceptance or solicitation of the bribe in exchange for promise to do an act, not whether act actually done AND
   ii. Congressman’s motive for accepting the bribe, not motive for doing the act.
   iii. “Officer or employee or person acting for or on behalf of US”
      a. This includes judicial clerks, officers of agencies, etc.
3. The bribe/gratuity must be to influence or reward an “official act”
   a. §201(a) def. of official act – “any decision or action on any…matter” which can by “law be brought before any public official, in his official capacity, or in his place of trust or honor”
   b. “Place of trust or honor” interpreted to encompass acts outside the public official’s official duties/authority
      i. Test: Was the public official in a position to do the act b/c of his position of trust (Parker – law clerk soliciting bribe to create documents which she did not have authority to make was bribery”
   c. Doesn’t matter whether bribe takes place after official act has been performed
      i. Test: Whether the public official gives the briber the impression that there will be a quid pro quo (Arroyo – D soliciting bribe even after the act was complete was punishable b/c gave briber impression that act hadn’t yet been completed)
      ii. Statutes punishes the act of the offer/acceptance, not whether it is possible for the bribe to have any effect
4. Intent – what separates bribery from gratuity
   a. Bribery: must be an “corrupt intent” “to influence” a specific official act
      i. Quid pro quo – donor is giving something specifically in exchange for a particular public act
      ii. This can only be future looking, if D knows that an act has already been done and want to reward, that is gratuity
   b. Gratuity: must be “for or because of” an official act
      i. 2 motivations
         a. Intended to influencing the outcome of matters that are currently pending or could be pending OR
         b. Intended to compensate for an official act
   c. Point – Needs to be more than a gift just b/c of the official’s position b/c influencing by itself is not illegal
      i. Other statutes regulate giving of gifts that fall short of corrupt intent
   d. Factors that distinguish b/t gift just b/c of official position and gift w/ intent to influence a matter/reward an official act (Sun Diamond – Ct. dismissed b/c gov’t only proved gifts given to build up good will w/ no nexus to an official act)
i. Temporal – how close in time was the gift to the official act
ii. Size – how big was the gift
iii. Continuity – are gifts continually given (not a crime to build up reservoir of good will)
iv. Exchange – was gift given in exchange for legit. service provided (e.g., Senator speaking at a conference)
e. Note – the donor’s intent can be completely different than recipient
   (Anderson – donor convicted of bribery but recipient only convicted of gratuity)

C. Bribing Federal Witness
1. §201(b)(c) apply but:
   a. Witness is substituted for public official and
   b. Testimony b/f any court, agency or congress is substituted for official act
2. This prohibition doesn’t apply to the US gov’t giving leniency to cooperating witnesses in exchange for their testimony
   a. Criminal statutes don’t apply to US gov’t if:
      i. Deprives the sovereign of an est. prerogative (plea agreements well est.)
      ii. Would work an absurdity (plea agreements allowed by FRCrImP, immunity statutes, and Fed. Sentencing Guidelines)

D. Federal Program Bribery - §666
1. Generally – Designed to expand reach of §201 to state and local officials
2. Elements
   a. D is an agent of a state or local organization or gov’t entity
      i. Intended to codify Dixson holding (above) b/f Dixson was decided.
   b. Local organization or gov’t entity receives more than $10K of fed. funds under a “Federal Program” in 1 yr.
      i. Broad language of §666 does not require that the bribe affect the fed. funds (Salinas – deputies accepting bribes in prison that was receiving fed. funds to house fed. prisoners punishable even though bribe was to receive conjugal visits)
      ii. Debate over whether any sort of nexus b/t the bribe and the fed. funds is needed
         a. Arg. for nexus
            i. Federalism – almost every city receives more than $10K in fed. funds, if not connection were required all bribes by local agents would be federal crimes
            ii. Should be a federal interest in punishing the crime
            iii. Case where nexus met - DeLaurentis – Cop receiving bribes from bar to help keep it open was connected w/ fed. funds to pay for more cops b/c problem bar staying open required allocation of police manpower
         b. Arg. against nexus (Sabri)
            i. Necessary and Proper Clause gives Congress authority to take measure to ensured fed. funds are being spent how they see fit
a. The allocation of the fed. funds is what gives the fed. interest

ii. Money is fungible and if fed. gov’t gives money for one program, it can be drained out through another channels

b. Point – try to find a connection b/t the D’s bribes and the fed. funds, but can always argue that no connection needed b/c fungible nature of money

c. Limit – “Federal Program” language requires the fed. money must be for assistance, not a purely commercial transaction (Copeland – agent for Lochheed who receives lots of money in K from gov’t not covered by K were commercial transactions, not assistance)

c. D “corruptly solicits…or accepts” something of value “intending to be influenced or rewarded”

   i. Intent requirements
   a. “Corruptly” language indicates that the quid pro quo bribery is punishable
   b. “Rewarded” language indicates that gratuity rewards are punishable

d. In connection with a transaction involving more than $5K

3. Note – can be prosecuted under both §201 and §666

   a. Blockburger test (last section) is met

      i. §666 requires the element of more than $10K, which 201 does not
      ii. §201 requires public official/act or witness/testimony, which 666 does not

VII. RICO

A. Elements of Criminal RICO - §1962

1. Existence of an enterprise

   a. §1961(4) def. – two types

      i. “any…legal entity” – includes “individual, partnership, corporation, association”

      ii. “group of individuals associated in fact although not a legal entity”

   b. Plain lang. of §1961(4) doesn’t dist. b/t legit. and illegit. enterprises

      i. The enterprise can be a group of criminals associated to conduct wholly illegit activities (Turkette – group of criminals working together was an enterprise)

      ii. The enterprise can be completely legit. and just one person using it as a conduit for rest of the elements (e.g., on person using governor’s office to accept bribes)

2. Enterprise is engaged in or affects interstate commerce

   a. The enterprise need not have an economic motive, only so long as “affects” the economy (NOW – group of proliferers were an enterprise b/c active, though not economically motivated, affected commerce by shutting down abortion clinics forcing ppl. to leave state to get abortions)

3. Defendant engaged in a “pattern of racketeering activity”

   a. §1961(5) def. of pattern = 2 or more predicate acts

   b. S. Ct. expansion of def. of pattern in HJ Case
i. 2 predicate crimes is just the minimum, there also needs to be:
   a. Relationship b/t the racketeering acts = same or similar purpose
      i. Gets this from def. of “pattern” in Title X
      ii. Examples: same purpose, results, victims, or methods
   b. Must be continuity b/t the racketeering acts (temporal requirement)
      i. If racketeering activity is close ended (has stopped)
         a. Racketeering activity must have gone of for a “substantial
            period (a few weeks or months probably isn’t enough)
            i. Majority of circuits = must be at least 1 yr.
            ii. Scalia’s dissent – this makes the first few months free
                and not good statutory construction to borrow def. from
                another title
      ii. If racketeering activity is open ended (conduct was still going
          on)
         a. Racketeering activity must threaten to continue indefinitely
            into the future
   iii. Note – gov’t can argue that activ. is both open and close ended
   c. Racketing activity (the predicate acts)
      i. §1964(2) def. – lists federal predicate crimes
         a. §201 – bribery
         b. §1341, 43, 44 – mail, wire, bank fraud
         c. §1503, 12, 13 – obstruction of justice, witness tampering &
            retaliation
      ii. §1942(1) def. – lists few state crimes that can serve as predicate
         a. “bribery” is one of the crimes
            i. Refers to bribery in its “generic sense,” even if the act is called
               something else under the state law (Garner – IL stat. called
               receiving gratuities “official misconduct.” Ct. held fell under
               bribery predicate b/c punished receiving gratuities which falls
               under generic meaning of bribery).
               a. This is necessary b/c diff. states refer to the same conduct
e              differently
            ii. “Generic sense” includes bribery and gratuity
         b. Must also be “chargeable under State law and punishable” by more
            than 1 yr. in prison
            i. Dual sovereignty doctrine does not bar successive state and
               fed. prosecutions for the same predicate crime (even if D
               acquitted in the state prosecution)
               a. Fed. gov’t shouldn’t be deprived of authority to vindicate
                  its interest just b/c state beat them to the courthouse
            ii. “Chargeable” only requires the conduct, not the actor, be
                chargeable at the time it occurs
               a. If SoL has run on the actor, that is not a bar b/c conduct
                  still chargeable
c. Federalism concern – Federal interest in state crimes such as bribery b/c it could infer other branches of state gov’t corrupt and the crime could never be punished
d. Defendant’s pattern of racketeering activity has one of the following **relationships with the enterprise:**
i. §§1962(a), (b) – the enterprise itself can be the D
  a. (a) use income from racketeering activity to operate or acquire interest in an enterprise
     i. Ex. – corp. sells worthless securities and uses the proceeds for operating capital
  b. (b) acquire or maintain an interest in enterprise through racketeering activity
     i. Ex. – corp. engages in stock manipulation to squeeze out minority shareholders
ii. §1962(c) *(The biggie)* D is “employed or associated with the enterprise” and “conducts or participates, directly or indirectly, in the conduct of the enterprise’s affairs through a pattern of racketeering activity”
  a. “Employed or associated with an enterprise” = the enterprise can’t be the D, the D must be a person who exists separately from the enterprise *(McCullough v. Suter)*
     i. If D is a sole proprietor and the enterprise is the proprietorship, then D can only be “associated with the enterprise” if the proprietorship has multiple employees b/c can’t associate with self
     ii. But if D is sole shareholder of corp., then corp. doesn’t need multiple employees b/c a corp. is a legal entity with own distinct priv.
  b. **Operation or Mgt. test** *(Reeves test – outside auditor not liable b/c didn’t participate in management of the firm)*
     i. Conduct = management or direction
        a. although “conduct” in the second clause is a noun, Reeves ct. held that it must have parallel construction to the verb “conduct” in the first clause
     ii. Participate = to take part in the management or direction
     iii. Outsider can only meet this test if has some control over the enterprise by influencing mgt. (e.g., bribes)
     iv. Gray area over how far down the mgt. chain can go.

4. **NOTE** – RICO one of few criminal statutes that contain clause that it should be liberally construed (contrary to normal principle of strict construction of criminal statutes)

**B. RICO Conspiracy**

1. §1962(d) prohibits “conspiring to violate” either §1962(a), (b), or (c)
  a. D must only agree to facilitate a co-conspirator’s committing the “pattern of racketeering activity” (2 or more predicate acts)
i. D does not have to agree to commit the predicate acts himself (Salinas – D acquitted of substantive RICO predicates of bribery but convicted on conspiracy b/c facilitated other deputies accepting bribes)

ii. Facilitate = further a common criminal objective

iii. Justification for not requiring conviction on the predicate counts
   a. Jury may have granted leniency or committed error
   b. Not a requirement that D be charged w/ substantive predicates

C. RICO Forfeiture (didn’t go over very deep in class)

1. RICO imposes mandatory forfeiture of all property covered by §1963

2. Important points
   a. It is mandatory and triggered on conviction
   b. It is in personum, meaning that D is ordered rather than suit having to be brought against the property
   c. D’s are jointly and severally liable – pros. not required to trace which amount of money/assets came from which D
   d. Relation back – gov’t vests interest in property at the time it was acquired
      i. Means that even if D sells, 3d pty has to give it up unless they can prove they were a bona fide purchaser for value who was reasonably w/out cause to believe property was subject to forfeiture
      a. THIS INCLUDES FEES USED TO PAY ATTY!!!

3. Forfeitable property
   a. Property derived from RICO violation
      i. proceeds of crime (ALL proceeds, not just net proceeds)
      ii. rights and interests in property (real, intangible, and securities) acquired by proceeds of the crime
      iii. contractual rights – Union offices, pensions, etc.

4. Point – Congress wants to separate criminals from their power base

D. Civil RICO

1. Elements - §1964(c)
   a. Every element of criminal RICO AND
   b. P sustained injury to “his business or property by reason of”
      i. 3 contit. requirements for standing (Libertad v. Welch)
         a. P must have suffered injury in fact – to business or property
            i. Personal or physical injury is not enough under RICO
            ii. But if physical injury caused monetary losses could argue that
         b. Causal connection b/t the injury and acts complained of
            i. Injury must be traceable to D’s conduct and not that of a 3d pty
            ii. Requires proving both “but for” and “proximate cause”
               a. Proximate cause = direct relationship b/t injury asserted and D’s conduct (Commercial Cleaning)
                  i. less direct injury → harder it is to determine whether damages caused by D’s conduct or other factors
                  ii. problem of apportioning damages if allowed indirectly injured P’s to have standing
               iii. goals of RICO adequately vindicated by suit from directly injured pty.
b. Cases where direct relation proved
   i. **Holmes** – P who became solvent b/c held shares of manipulated stocks had standing but not P’s who were creditors of the solvent P’s
   ii. **Commercial Cleaning** – P who was direct competitor w/ D and D stole a K from P due to lower prices from D’s hiring illegal immigrants

c. Cases where direct relation not proved
   i. **Ebbers hypo** – stockholders bringing suit for drop in price due to CEO’s misconduct not have standing b/c that is derivative and harm was to corp.
   ii. **Union hypo** – Union having to pay out claims on smoking injuries not have standing against tobacco company b/c direct harm to smoker, not the Union
   iii. **Whistleblower hypo** – Whistleblower fired for reporting fraud not have standing b/c direct injury is retaliatory action
   iv. **Anza** – P was competitor w/ D in same mkt and D lowered prices by not charging sales tax. Ct. held no standing b/c State was the direct victim and things other than not charging sales tax could have lowered D’s prices

   iii. Predicate act must be what causes the harm (**Anza**)
      a. Thomas dissent – Anza majority focuses on wrong kind of directness
      b. Brickey – problem w/ this case is P failed to show a direct loss (like the loss of a K in **Commercial Cleaning**)

c. Likely that injury redressed by favorable decision

c. The RICO “violation”
   i. This does not require P to prove a “racketeering” type injury (**Sedima**)
   ii. D doesn’t have to be criminally convicted (or even charged) (**Sedima**)
      a. “violation” = failure to adhere to legal requirements
         i. Ct. hints that preponderance would be the standard for predicate crimes in civil context
         b. Requiring prior conviction would undercut congress. intent of expanding RICO beyond criminal sanctions (incentivize civil suits b/c gov’t has limited resources and really want to punish these Ds)
      iii. “By reason of” = causation

2. Policy
   a. Congress used Civil RICO to incentive more suits against D’s (P’s get treble damages, atty fees, costs) b/c really want to punish these D’s and gov’t has limited resources.
   b. But Ct’s have gotten fed up with high number of Civil RICO suits
      i. **Sedima** – S. Ct. had to dispel false rules lower courts were using to limit Civil RICO suites (see 2 rules above there were abolished)
c. PSLRA – responds to complaints about broad use of Civil RICO by eliminating most actions involving securities (by far the most popular kind)
   i. But in the quite Congress keeps adding more and more predicates

VIII. Currency Reporting & Money Laundering

A. Generally
1. 3 Statutory provisions work together to require the reporting of large amounts of funds and prohibit moving those funds around.
   a. Currency Reporting Crimes – creates paper trail of the funds
   b. Money Laundering Crimes – focuses more on funds from illegal crimes only b/c all the paperwork from Currency Reporting Crimes can make enforcement difficult.
2. Policy – concealment of funds facilitates criminal activity

B. Currency Reporting Crimes
1. Bank Secrecy Act – §5324 - contains the CFTRA
   a. Requirements
      i. Financial institution
      ii. Must report – fill out a CTR listing certain info about the transaction and file w/ Treasury Dept.
      iii. Transactions (deposit or withdrawl) involving more than $10K
          a. Applies to ALL transactions – no req. that related to crime
   b. Elements to prove violation
      i. Failure to file CTR OR
         a. Either financial institution, or individual who caused financial insti. to fail to file (e.g., bribe)
      ii. Structuring transaction to avoid reporting requirements
         a. Either financial institution, or individual who structured the transaction
      iii. Act was willful
   c. Element to prove enhanced penalties (double)
      i. Same as above AND
      ii. Violation occurred while violating another law of the US OR
         a. Must be a violation of a law different than the CFTRA
      iii. Violation are part of a “pattern of any illegal activity involving more than $100K” in 1 yr.
         a. Pattern = repeated and related violations of CFTRA
            i. Repeated = numerous violations
            ii. Related = violations involve same customers, same forms of transfer, or funds used for same purpose
               a. But flagrant continued failure to file and CTR’s does not require any more evid. of relatedness (St. Michael’s)

2. IRC §6050I
   a. Requirements
      i. Any person engaged in “trade or business”
         a. Law practice is “trade or biz” b/c they take biz. expense deductions
      ii. To report to IRS certain info about the payor of
iii. $10K in CASH
iv. In one or more related transactions
   a. Transaction is broad term encompassing almost any type of payments (also applies to bank transactions)
b. Elements to prove violation
   i. Failure to file or causing failure to file
   ii. Structuring to avoid filing requirements
c. Increased penalty if failure to file due to “intentional disregard”
   i. Requires “willfulness” = voluntary, conscious, and intentional”
      a. Believing in good faith that not required to file is not defense b/c bad faith is not an element (*Lefcourt* – D claimed didn’t think lawyers had to file)
d. §6050I doesn’t offend that A/C Priv.
   i. A/C Priv only protects disclosures necessary to obtain legal advice
      a. “Absent special circumstances,” client identity and fee structure (required by 6050I) are not necessary to obtain legal advice b/c not incriminating info (*Goldberg & Dublin*)
      b. Client always has option to pay lawyer in something other than cash
   ii. State rules of prof. responsibility irrelevant b/c §6050I is viewed under fed. common law of A/C priv.
   iii. Federal policy trumps state priv. concerns

C. Money Laundering
   1. Elements - §1956
      a. D conducted a financial transaction
         i. Not limited to cash transactions
      b. D knew the financial transaction involved proceeds from unlawful activity
         i. Requires D’s subjective actual knowledge
      ii. Doctrine of willful blindness (*Campbell*) - Can substitute for subjective knowledge where there is no evid. that D was actually told the source of the proceeds
         a. Test: D willfully closed her eyes to something that otherwise would have been obvious to her.
            i. How does this satisfy subjective requirement?
               a. D must be **subjectively aware** of the high probability of circumstances indicating the source of the proceeds and
               b. D **consciously avoids** confirming that fact (turning a blind eye)
            b. Evid. of willful blindness
               i. Lifestyle and behavior of the buyer/seller
               ii. Reputation of buyer/seller if known to D
               iii. D voiced suspicion about source of the proceeds
               iv. Transaction structured in a fraudulent manner
      c. D intended to (1 of 4 options):
         i. Promote the unlawful activity Or
         ii. Commit tax fraud OR
iii. Avoid reporting requirements of the CFTRA
iv. “Conceal or disguise the nature or the source” of the proceeds of the unlawful activity
   a. D can be guilty of concealment even if uses own name on bank accounts
   b. Evid. of concealment (Tencer)
      i. Using multiple bank accounts to disburse funds
      ii. Bank accounts are located neither where D lives or works
      iii. Lying to bank EEs about source of funds

2. Elements - §1957
   a. D engaged in monetary transaction of more than $10K
      i. Monetary transaction = any transaction involving a medium of currency by or through a financial institution
   b. D knows the transaction involves proceeds from criminal activity
      i. Same subjective knowledge/willful blindness as required above

IX. Overlapping Statutes
A. Test for whether same act can be prosecuted as separate offenses under separate statutes:
   1. Each statute must require proof of an element that the other does not (Blockburger) AND
      a. ex. Ramos – D lied in passport application and properly prosecuted under §1001 and §1542(false statement w/in intent to secure passport) b/c §1001 requires the false statement be material and §1542 does not and §1542 requires intent to defraud and §1001 does not.
      2. No contrary Congressional intent
      3. If test is not met, prosecution under multiple statutes for same act would be double jeopardy

B. Aiding and Abetting - §2
   1. Whoever “willfully” causes an act to be done, which if done directly by him, would be offense against US, is punishable as principle.
      a. If D has the “willfully” mental state and causes another person to do an act which satisfies the rest of the elements under any criminal statute → D is liable as aider and abettor