
**LOOSE CHANGE: THE SEVENTH CIRCUIT MISSES
AN OPPORTUNITY TO CLARIFY MONEY
LAUNDERING LAW IN *UNITED STATES V. HADDAD***

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INTRODUCTION

Should a criminal be able to evade prosecution for money laundering simply by channeling illegal funds through an account that contains “clean” money in addition to the “dirty” proceeds of crime? The Seventh Circuit Court of Appeals recently tackled this matter for the first time in *United States v. Haddad*.¹ In *Haddad*, a grocery store owner convicted of food stamp fraud was found to have channeled both the profit of fraud and his legitimate profit through the business’ operating account.² The court was required to determine whether the commingling of the funds could foil the evidentiary requirements of a prosecution under 18 U.S.C. § 1957, a money laundering statute whose key element is that the transaction involves “knowingly engaging in or attempting to engage in a monetary transaction in criminally derived property that is valued greater than \$10,000.”³

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¹ *United States v. Haddad*, 462 F.3d 783 (7th Cir. 2006).

² *Id.* at 791.

³ *Id.*; see also 18 U.S.C. § 1957 (2006).

Noting that the issue was one of first impression, and that it had engendered a circuit split amongst the other courts to have addressed it, the Seventh Circuit concluded that the commingling of funds would not foil prosecution.⁴ While the Seventh Circuit achieved the correct result in *Haddad*, they missed an opportunity to reconcile the decisions of the other circuits and articulate a test that fits precedent, the tests of other circuit courts, and the legislative goals incorporated in § 1957 and its companion statute 18 U.S.C. § 1956.⁵ By failing to articulate a test that correctly incorporates legislative intent and precedent, the Seventh Circuit did nothing to clarify § 1957 law.⁶

Part I of this Comment will provide a brief look at the history of money laundering law in the United States, including discussion of the legislative history of both 18 U.S.C. § 1956 and § 1957 and an examination of the primary cases which deal with money laundering and which serve as background for the decisions of the Seventh Circuit. Part II will detail the circumstances in *US v. Haddad*, and examine how the court came to their decision. Part III will analyze the Seventh Circuit's decision and critique its rationale. Part IV will discuss the potential effects of the Seventh Circuit's holding and discuss how the court missed an opportunity to clarify and distinguish the issue of commingled funds in the context of § 1957 prosecutions.

I. BACKGROUND

A. Money Laundering Law

Fundamentally, money laundering is “the process by which one conceals the existence, illegal source, or illegal application of income, and disguises that income to make it appear legitimate.”⁷ The ability to

⁴ *Haddad*, 462 F.3d at 792.

⁵ *Id.*

⁶ *Id.*

⁷ See PRESIDENT'S COMMISSION ON ORGANIZED CRIME, INTERIM REPORT TO THE PRESIDENT AND ATTORNEY GENERAL, THE CASH CONNECTION: ORGANIZED CRIME, FINANCIAL INSTITUTION, AND MONEY LAUNDERING 7 (1984).

conceal the origin and nature of funds and to turn those funds into “clean” money is an essential part of any large scale criminal endeavor.⁸ Prior to passage of federal money laundering statutes, the federal government relied on a combination of Title 21 conspiracy provisions, Title 31 currency transaction reporting, and Title 18 conspiracy statutes to prosecute money laundering activities.⁹ In the mid 1980’s, the huge profits generated by drug cartels and the proliferation of schemes to circumvent currency reporting laws inspired President Reagan to form a commission to investigate money laundering.¹⁰ It soon became clear that financial institutions were turning a blind eye towards transactions which were clearly designed to circumvent established reporting requirements.¹¹ In response to the commission’s findings, Congress passed the Money Laundering Control Act of 1986 (the “Act”), which was codified in 18 U.S.C. §§ 1956, 1957.¹²

⁸ See Christopher Boran, *Money Laundering*, 40 AM. CRIM. L. REV. 847, 848 (2003).

⁹ G. Richard Strafer, *Money Laundering: The Crime of the ‘90’s*, 27 AM. CRIM. L. REV. 149, 150 (1989); see, e.g., *Untied States v. Ospina*, 798 F.2d 1570, 1578 (11th Cir 1986) (combination of Title 18 and Title 31 statutes).

¹⁰ See Executive Order 12,435 on July, 28 1983; see also Strafer, *supra* note 9, at 150 (“The money laundering legislation developed from three otherwise disparate doctrinal threads (a) an evolving law of conspiracy; (b) forfeiture law; and (c) law enforcement authorities’ perceived difficulties with enforcement of the currency transaction reporting requirements of the Bank Secrecy Act”).

¹¹ See *Tax Evasion, Drug Trafficking and Money Laundering as they Involve Financial Institutions: Hearings on H.R. 1367, H.R. 1474, H.R.1945, H.R. 2785, H.R. 3892, H.R. 4280 and H.R. 4573 Before the Subcom. On Financial Institutions Supervision, Regulation and Insurance of the H. Comm. on Banking, Finance and Urban Affairs*, 99TH CONG. 79-109 (1986) (statement of Mr. Friedburg, former money launderer, who testified that he would often convert as much as \$100,000 in cash per day into cashier’s checks at south Florida banks in increments of \$9,000, below the \$10,000 reporting threshold, a practice known as “smurfing”); see also Sarah N. Welling, *Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions*, 41 FLA. L. REV. 287 (1989) (Generally, federal “anti-smurfing” law and structuring crimes).

¹² See Strafer, *supra* note 9, at 161.

Section 1956 criminalizes financial transactions that are intended to hide the proceeds of crimes ranging from securities fraud to espionage to smuggling and drug trafficking.¹³ Section 1956 defines two categories of offense, “transaction” offenses, and “transportation” offenses.¹⁴ To commit a “transaction” offense, one must:

- 1) “conduct” or “attempt” to conduct;
- 2) a “financial transaction”;
- 3) “involv[ing]” property which represents the “proceeds of specified unlawful activity”;
- 4) “knowing” that the property constitutes “proceeds” of “some” unlawful activity.¹⁵

Section 1956 (a)(1)(A) goes on to require intent to either promote “the carrying on of specified unlawful activities” or to violate certain tax codes.¹⁶ Section 1956 (a)(1)(B) requires knowledge either that the transaction is intended to “conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity” or knowledge that the transaction is meant to “avoid a transaction reporting requirement under State or Federal law.”¹⁷ Section 1956 (a)(2) targets the transportation of funds involved in criminal activity.¹⁸ This section defines transportation as “transportation, transmi[ssion] and transfer” of “a monetary instrument or funds” from place to place in the United States, or to or from the United States to a “place outside the United States.”¹⁹ A third section, § 1956 (a)(3), serves to criminalize transfers in property “represented

¹³ 18 U.S.C. § 1956 (a)(1), (a)(1)(D)(2006).

¹⁴ *Id.* at § 1956 (a).

¹⁵ *Id.* at § 1956 (a)(1); *see also* Strafer, *supra* note 9, at 161.

¹⁶ 18 U.S.C. § 1956 (a)(1)(A)

¹⁷ *Id.*

¹⁸ *Id.* at § 1956 (a)(2)

¹⁹ *Id.*

to be the proceeds of specified unlawful activity,” providing criminal penalties for those caught in government “sting” operations.²⁰

Section 1956 does not have any minimum value requirement.²¹ This makes sense in the context of the legislative origins of the law as a tool to deal with structuring crimes meant to evade the requirements of the bank secrecy act, with its currency reporting requirements.²² It also sheds light on the congressional intent of 18 U.S.C § 1957, which has as its central tenet neither a laundry list of predicate offenses nor intent to further the criminal activity, but a minimum value limit of \$10,000 in criminally derived property.²³

Section 1957 targets anyone who “knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity.”²⁴ As such, it is potentially much broader than § 1956, which requires that the money come from a specified illegal activity and be concealed in an attempt to further that activity.²⁵ Importantly, unlike § 1956, it is not necessary for the accused to actually launder the funds, or possess any specific intent to “promote the carrying on of specified unlawful activity.”²⁶ Section 1957 applies to any and every transaction totaling \$10,000 in illegally generated funds, enabling it to affect

²⁰ *Id.* at § 1956 (a)(3); *see also* Max Kaufman et al., *Money Laundering*, 34 AM. CRIM. L. REV. 793, 797 (1997) (“it is illegal to conduct a financial transaction involving property represented by a law enforcement officer to be the proceeds of a specified unlawful activity” as long as the other intent factors are present).

²¹ *See* 18 U.S.C. § 1956.

²² *See generally* 31 U.S.C. § 5313 (2006); *see also* The Money Laundering Crimes Act of 1986, S. REP. NO. 433, 99TH CONG.

²³ *Compare* 18 U.S.C. § 1957 (a), *with* 18 U.S.C. § 1956.

²⁴ 18 U.S.C. § 1957.

²⁵ *See* 18 U.S.C. § 1956; *see also* Kaufman et al., *supra* note 20, at 798 (It is suggested § 1957 is broad enough to criminalize seemingly “innocent” acts or commercial transactions); *see also* Strafer, *supra* note 9, at 160 (“section 1957 potentially is a much broader section”).

²⁶ 18 U.S.C. § 1956 (a)(1)(A)(i).

almost any transaction.²⁷ Indeed, many scholars have noted that this section is “broad enough to criminalize seemingly ‘innocent’ acts or commercial transactions.”²⁸ This however, was arguably Congress’ intent.²⁹ Most scholars stress that the law requires only that the violator in a § 1957 case knowingly engage in the transaction involving criminally derived property.³⁰

B. Cases Dealing with Money Laundering

Despite federal money laundering laws being more than two decades old, there is a virtual absence of Supreme Court case law. Only *Whitfield v. U.S.*, which held in part that a money laundering conviction does not require an overt act in furtherance of the conspiracy deals with money laundering law in a substantial way.³¹ Other Supreme Court cases have obliquely dealt with money laundering through questions of venue, or in questions of sentencing or forfeiture.³² The Supreme Court has never decided a case which involved a question of commingled funds in either a § 1956 or § 1957 prosecution.

While the Supreme Court has hardly dealt with money laundering laws, and has not touched the subject of commingled funds, the lower courts have tackled the issue on several occasions.³³ Generally, the

²⁷ See *United States v. Rutgard*, 116 F.3d 1270, 1291 (9th Cir. 1996) (“statute applies to the most open, above-board transaction”).

²⁸ Kaufman et al., *supra* note 20, at 798; see also Strafer, *supra* note 9, at 161.

²⁹ See Boran, *supra* note 8, at 853 (quoting Representative Lundgren: “It is time for us to tell the local trafficker and everyone else, ‘[i]f you know that person is a trafficker and has this income derived from the offense, you better beware of dealing with that person” H.R. REP. NO. 99-855, pt. 1, at 14 (1986)).

³⁰ See Boran, *supra* note 8, at 853.

³¹ *Whitfield v. United States*, 543 U.S. 209 (2005).

³² See, e.g., *United States v. Cabrales*, 534 U.S. 1 (1998) (venue question); *Ewing v. California*, 538 U.S. 11 (2003) (dealing with sentencing questions); *United States v. Ursery*, 518 U.S. 267 (1996) (forfeiture question).

³³ See, e.g., *United States v. Baker*, 227 F.3d 955 (7th Cir. 2000); *United States v. Davis*, 226 F.3d 346 (5th Cir. 2000); *United States v. Ward*, 197 F.3d 1076 (11th

money laundering statutes have been attacked with little success on a variety of grounds.³⁴ Some rejected challenges have been grounded in the theory that the law is too vague to be constitutionally viable.³⁵ In dealing with challenges raised under a theory that prosecution for both the predicate offense and money laundering amounts to double jeopardy, courts have generally found that money laundering and the unlawful activity which generated the illicit funds are separate offenses, separately punishable.³⁶ Money laundering laws have also been challenged unsuccessfully on grounds that some individual money laundering crimes do not substantially affect interstate commerce, placing them outside the regulation of Congress.³⁷

The issue of commingling of funds has been addressed by the various circuit courts in several cases.³⁸ The majority of these cases, however, deal with prosecutions under § 1956, which lacks § 1957's language requiring that the transaction involve "criminally derived property of a value greater than \$10,000."³⁹ In fact, dissecting the language of many of the § 1956 cases dealing with commingling of

Cir. 1999; *United States v. Cancelliere*, 69 F.3d 1116 (11th Cir. 1995); *United States v. Garcia*, 37 F.3d 1359 (9th Cir. 1994); *United States v. Moore*, 27 F.3d 969 (4th Cir. 1994); *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992); *United States v. Jackson*, 935 F.2d 832 (7th Cir. 1991); *United States v. Blackman*, 904 F.2d 1250 (8th Cir. 1990).

³⁴ Boran, *supra* note 8 at 865 ("Three theories that have been used to attack the Money Laundering Act with virtually no success are constitutional vagueness, double jeopardy, and impermissibility of the Congressional act").

³⁵ *Id.*; see also *United States v. Awan*, 966 F.2d 1415, 1424 (11th Cir. 1992) (holding that "some form of illegal activity is adequately defined").

³⁶ Boran, *supra* note 8 at 865-66; see also *United States v. Edgmon*, 952 F.2d 1206, 1213 (10th Cir. 1991); *United States v. Rude*, 88 F.3d 1538, 1546 (9th Cir. 1996) (conviction for money laundering and underlying offense is not double jeopardy).

³⁷ Boran, *supra* note 8, at 866; see also *United States v. Owens*, 159 F.3d 221 (6th Cir. 1998) (holding that the use of federally insured banks or the transportation of money across state lines creates sufficient nexus with interstate commerce).

³⁸ See, e.g., *Baker*, 227 F.3d 955; *Davis*, 226 F.3d 346; *Ward*, 197 F.3d 1076; *Cancelliere*, 69 F.3d 1116; *Garcia*, 37 F.3d 1359; *Moore*, 27 F.3d 969; *Johnson*, 971 F.2d 562; *Jackson*, 935 F.2d 832.

³⁹ 18 U.S.C. § 1956 (2006); 18 U.S.C. § 1957 (emphasis added).

funds, the lack of a floor value is one of the key factors in determining that the combined funds can form the basis for prosecution.⁴⁰ Rather, § 1956 (c)(1) specifies that “the term ‘knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity’ means that the person knew the property *involved* in the transaction represented proceeds from some form . . . of activity that constitutes a felony under State, Federal, or foreign law.”⁴¹ In *United States v. Jackson*, for example, Judge Flaum of the Seventh Circuit said, “[w]e do not read Congress’s use of the word ‘involve’ as imposing the requirement that the government trace the origin of all funds deposited into a bank account to determine exactly which funds were used for what transaction.”⁴² This language is repeated and agreed with by the Ninth Circuit in *United States v. Garcia*.⁴³ The Fifth Circuit in *United States v. Tencer* again reiterated the courts’ holdings that § 1956 prosecutions can be upheld by the involvement of funds, without the need to trace all funds to a specified transaction.⁴⁴

The Seventh Circuit addressed the issue of commingling funds in *United States v. Baker*, a case which was mentioned in the *Haddad* decision.⁴⁵ In this case, Baker, who ran an illegal prostitution operation as part of a business that also consisted of a legal sex shop and strip club, appealed money laundering charges under § 1956.⁴⁶ Baker alleges that the government must separate out the income from

⁴⁰ See *Baker*, 227 F.3d at 965-66; *United States v. Smith*, 223 F.3d 554, 576 (7th Cir. 2000).

⁴¹ 18 U.S.C. § 1956 (c)(1) (emphasis added).

⁴² *Jackson*, 935 F.2d at 840.

⁴³ *Garcia*, 37 F.3d at 1365.

⁴⁴ *United States v. Tencer*, 107 F.3d 1120, 1131 (5th Cir. 1997).

⁴⁵ See generally *Baker*, 227 F.3d 955. Baker, convicted of money laundering and conspiracy relating to a prostitution ring run in conjunction with a legitimate adult book and video store, striptease bar, and x-rated video arcade, alleged that the government had to take into account the fact that some of the proceeds were “clean.” The court found that the “clean” and “unclean” funds, once commingled, became forfeitable.

⁴⁶ *Id.* at 959.

his legitimate business from that which he gleaned from sexual services for the purpose of prosecution under the money laundering laws.⁴⁷ Again citing cases such as *Jackson*, and *Tencer*, Judge Flaum found that there was no need for the government to trace the proceeds to the individual transactions.⁴⁸ The Seventh Circuit, relying on the language of the *Tencer* and *Jackson* decisions, correctly held that it is not necessary to separate “*bona fide*” income from illegal income because all income is “involved in” the conspiracy that facilitated the crime as a whole.⁴⁹ It is important to note, however, that all of the cases cited in the court’s decision are cases which deal specifically with § 1956 violations, violations which have no minimum value requirement.⁵⁰ *Baker* is notable too for the fact that while Baker was charged with six counts of violating § 1957, that particular statute was not mentioned after the initial recitation of the charges lodged against Baker.⁵¹

While there is a fairly substantial body of case law dealing with the commingling of funds in § 1956 cases that generally indicates that commingling will not defeat prosecution, there are only a few cases that specifically address commingling of funds in § 1957 prosecutions.⁵² These include *United States v. Moore*, *United States v. Davis* and *United States v. Rutgard*.⁵³ These three cases dealing specifically with commingled funds in § 1957 prosecutions are the three main cases that the Seventh Circuit used to decide *Haddad*.⁵⁴

In both *Moore* and *Davis*, the Fourth and Fifth Circuits respectively determined that commingled funds can be treated as

⁴⁷ *Id.* at 965.

⁴⁸ *Id.* at 965-66.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *See generally id.*

⁵² *See, e.g., id.* at 965; *United States v. Tencer*, 107 F.3d at 1120, 1131 (5th Cir. 1997); *United States v. Jackson*, 935 F.2d 832, 840 (7th Cir. 1991); *see also* *United States v. Rutgard*, 116 F.3d 1270 (9th Cir. 1996); *United States v. Davis*, 226 F.3d 346 (5th Cir. 1995); *United States v. Moore*, 27 F.3d 969 (4th Cir. 1994).

⁵³ *Rutgard*, 116 F.3d 1270; *Davis*, 226 F.3d 346; *Moore*, 27 F.3d 969.

⁵⁴ *United States v. Haddad*, 462 F.3d 783, 792 (7th Cir. 2006)

illegitimate for the purposes of a § 1957 prosecution.⁵⁵ In *Moore*, the Fourth Circuit was faced with a transaction that involved the sale of commercial condominiums that were purchased primarily with money from fraudulently acquired loans.⁵⁶ After selling the condominiums, Moore deposited the proceeds of the sale, some \$37,000, in a federally insured bank, giving rise to the § 1957 charge.⁵⁷ The court found that, viewing the evidence in the light most favorable to the government, the evidence was sufficient for the jury to find that the \$37,000 was criminally derived property.⁵⁸ One important aspect of this decision is that the commingling of funds occurred when fraudulent funds were mixed with a small amount of legitimate money in a real estate investment.⁵⁹ While the court noted that “money is fungible” a condominium complex is certainly not, and “the illicitly-acquired funds and the legitimately-acquired funds (or the respective portions of the property purchased with each) cannot be distinguished from each other.”⁶⁰

The court in *Moore* relied on a variety of sources to determine that commingling cannot defeat prosecution.⁶¹ First, they cited cases such as *Johnson* and *Jackson*, which deal with commingling of funds in § 1956 cases.⁶² The court also discussed the use of arbitrary accounting methods as one way of determining the value, though the case they cited, *United States v. Banco Cafetero Panama*, dealt with an entirely different forfeiture law.⁶³ Through this lens, the court

⁵⁵ See *Moore*, 27 F.3d at 976-77; *Davis*, 226 F.3d at 355-56.

⁵⁶ *Moore*, 27 F.3d at 971-72.

⁵⁷ *Id.* at 975.

⁵⁸ *Id.* at 977.

⁵⁹ *Id.* at 976-77.

⁶⁰ *Id.*

⁶¹ See *id.*

⁶² *Id.* at 976

⁶³ See *id.* at 977; see also *United States v. Banco Cafetero Panama*, 797 F.2d 1154, 1159-60 (2d Cir. 1986) (dealing with forfeiture of drug profits contained in a “commingled” account. The Court determines that, given the burden of proof required in the circumstances presented, the government has a right to use what amounts to either an “illegal-funds in, last out” or “illegal-funds in, first out”

determined that “the transacted funds, at least up to the full amount derived from crime, were the proceeds of the criminal activity or derived from that activity.”⁶⁴ Importantly, none of the precedent relied upon dealt with crimes prosecuted under § 1957.⁶⁵ *Jackson, Johnson*, and *United States v. Blackmun* all dealt with prosecutions under § 1956, while *United States v. Heath* dealt with other bank fraud statutes.⁶⁶

In *United States v. Davis* the funds in question were derived from an advance-fee scheme in which Davis took money from clients to procure funding through his supposed access to valuable financial instruments.⁶⁷ Davis first argued unsuccessfully that the criminal transactions were not completed by the time that the transactions charged were undertaken, meaning that they could not have been “criminally derived.”⁶⁸ Davis then alleged that there was insufficient evidence that he withdrew more than the \$10,000 value limit required by § 1957 from the account where he had both legitimate and fraudulently obtained funds.⁶⁹ The Fifth Circuit court, following their own rule in *Heath*, found that the important factor was whether the aggregate withdrawals exceeded the amount of “clean funds” available.⁷⁰ The court found that “the government proved aggregate

accounting method, at their discretion to overcome the lenient “probable cause for a forfeiture” standard established by Congress).

⁶⁴ *Moore*, 27 F.3d at 977.

⁶⁵ *See id.*

⁶⁶ *See United States v. Heath*, 970 F.2d 1397, 1403-04 (5th Cir. 1992) (In a bank fraud case, aggregate total of withdrawals in question far exceeds the value of legitimate funds available), *cert. denied*, 507 U.S. 1004 (1993); *United States v. Johnson*, 971 F.2d 562, 570 (10th Cir. 1992); *United States v. Jackson*, 935 F.2d 832, 840 (7th Cir. 1991); *United States v. Blackmun*, 904 F.2d 1250, 1257 (8th Cir. 1990) (section 1956 conviction of drug dealer for four wire transfers with an aggregate value of \$11,000, need not trace funds to a particular criminal activity, finding that evidence of criminal activity and a lack of legitimate income is sufficient).

⁶⁷ *United States v. Davis*, 226 F.3d 346, 349 (5th Cir. 2000).

⁶⁸ *Id.* at 355

⁶⁹ *Id.*

⁷⁰ *Id.* at 357.

withdrawals of far more than \$10,000 above the amount of clean funds available,” rejecting Davis’ contention that there was insufficient evidence to show that the transfers in question involved more than \$10,000 in tainted funds.⁷¹

The *Davis* court relied heavily on the rule in *Heath*, a rule developed for the interstate transfer of funds obtained by bank fraud.⁷² This “aggregate” rule was then applied to the case at hand, using the government’s forensic accounting to determine that there were aggregate withdrawals over the \$10,000 limit.⁷³ The court also took particular care to distinguish the case from *United States v. Poole*, where they had reversed a conviction based on use of commingled funds because the check could have come from clean funds available in the account.⁷⁴ Importantly, the Fifth Circuit explicitly chose its own precedent in the transfer of funds cases such as *Heath*, rather than adopting decisions of either the Fourth Circuit in *Moore*, or the Ninth Circuit in *Rutgard*.⁷⁵

The outcomes of *Moore* and *Davis* stand in contrast with the Ninth Circuit’s decision in *United States v. Rutgard*.⁷⁶ In *Rutgard*, an ophthalmologist convicted of Medicare fraud faced a § 1957 charge for making transfers out of an account that was funded by Medicare payments, some of which were determined to be fraudulent.⁷⁷ After first finding that only some of the funds the government alleged were fraudulently obtained could actually be shown to be illegal, and a careful analysis of the accounting provided by the government, the court found that the government could not show that the funds proven fraudulent had been touched by the transfers which served as the basis

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* (citing *United States v. Poole*, 557 F.2d 531 (5th Cir. 1977)).

⁷⁵ *Id.*

⁷⁶ *See id.* at 355-56; *United States v. Rutgard*, 116 F.3d 1270, 1290 (9th Cir. 1997); *United States v. Moore*, 27 F.3d 969, 977 (4th Cir. 1994).

⁷⁷ *Rutgard*, 116 F.3d at 1290.

of the charges.⁷⁸ After determining that only \$46,000 of the money in the commingled account could be shown to be the profit of fraud, the court held that “so far as the evidence at trial goes, more than \$46,000 remained in the account” after the transfers in question, and that the “transfers did not necessarily transfer the \$46,000 of fraudulent proceeds.”⁷⁹

One of the key components of *Rutgard* is the way the court differentiated the decisions dealing with § 1956, which overwhelmingly hold that commingling will not defeat a prosecution, with § 1957 law.⁸⁰ Section 1956, the court held in agreement with other interpretations, is meant to catch even transfers which merely involve ill gotten funds.⁸¹ The court pointed out that the elimination of language which involves “the attempt to cleanse dirty money,” and the “intent to commit a crime or the design of concealing criminal fruits,” makes § 1957 a different, and potentially much broader law.⁸² The court held that § 1957 is a powerful tool because it makes “any dealing with a bank potentially a trap for the drug dealer or any other defendant who has a hoard of criminal cash.”⁸³ As such, the court reasoned that “such a powerful instrument of criminal justice should not be expanded by judicial invention or ingenuity.”⁸⁴ The court here pointed out that had the government charged *Rutgard* with the *deposit* of fraudulent proceeds over \$10,000, they probably would have succeeded based on the testimony of its accounting expert.⁸⁵ However, in light of the fact that *Rutgard* was charged with transfer of the funds, it could not be shown without doubt that his transfers necessarily touched the \$46,000 that the court found was fraudulently acquired.⁸⁶

⁷⁸ *Id.*

⁷⁹ *Id.* at 1292.

⁸⁰ *See id.*

⁸¹ *Id.* at 1291-92.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 1292.

The court specifically mentioned the Fourth Circuit's decision in *Moore*, saying that "unlike § 1956, § 1957 does not cover any funds 'involved.'"⁸⁷

In examining the circuit split surrounding commingling of funds in § 1957 cases, there are three slightly different holdings from each of the three circuits.⁸⁸ The Fourth Circuit's test in *Moore*, based largely on § 1956 precedent, seems to hold that commingling can never defeat prosecution, particularly when the transactions involve property rather than money.⁸⁹ The Fifth Circuit in *Davis* relied on their own precedent in cases dealing with fraudulent transfers, took a careful look at the aggregate withdrawals and accounting and held that when the aggregate withdrawals exceeded the amount of clean money, the conviction will stand.⁹⁰ Finally, in *Rutgard*, the Ninth Circuit took a close look at the legislative intent behind both § 1956 and § 1957 and determined that there are enough differences in the two statutes that they could not adopt the § 1956 precedent dealing with commingling, but rather placed the responsibility of accurate accounting on the government.⁹¹

II. *UNITED STATES V. HADDAD*

A. *The Case*

The Seventh Circuit squarely addressed 18 U.S.C. § 1957 in *United States v. Haddad*, a case which dealt with the foundational crime of wire fraud and included two counts of money laundering.⁹² The case followed the misadventures of Anwar Haddad, who, in January of 2000 became the owner of a small "mom and pop" store

⁸⁷ *Id.*

⁸⁸ See *United States v. Moore*, 27 F.3d 969, 977 (4th Cir. 1994); *Rutgard*, 116 F.3d at 1291; *United States v. Davis*, 226 F.3d 346, 357 (5th Cir. 1996).

⁸⁹ See *Moore*, 27 F.3d at 977.

⁹⁰ *Davis*, 226 F.3d at 357

⁹¹ *Rutgard*, 116 F.3d at 1291-92.

⁹² *United States v. Haddad*, 462 F.3d 783, 786 (7th Cir. 2006).

called the R & F Grocery (R & F).⁹³ R & F was a part of the United States Department of Agriculture's (USDA) Food Stamp Program, a program which distributes "food stamp benefits" to low-income families to help them buy staple food items.⁹⁴ With the advent of modern technology, food stamp benefits no longer actually involves the distribution of food stamps as such, but provides benefits through an Electronic Benefit Transfer, similar to a debit card, and known as a "LINK card" in the state of Illinois.⁹⁵ As part of the Food Stamp and LINK program, participant stores are provided with a specialized point-of-sale machine which deducts money from the LINK card when food is purchased.⁹⁶ When the participant scans their card and enters their unique PIN number, the machine checks the balance of the participants account and authorizes the sale of the staple food products.⁹⁷ The store's machine totals the food stamp sales at the end of the day and submits them to the food stamp program, which reimburses the store through an electronic deposit of funds that transfers directly into the store's designated bank account.⁹⁸

Eligibility for the Food Stamp Program is premised on vendors completing documentation and training programs which spell out the rules of the program.⁹⁹ Chief amongst the rules of the program is that the vendor may not redeem food stamp benefits for ineligible items, or for cash.¹⁰⁰ Haddad, upon becoming owner of R & F, signed the applications to continue as a food stamp-eligible vendor.¹⁰¹

In the summer of 2002, the Chicago Police Department (CPD) noticed that large numbers of people were gathering outside the R & F

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* 786-87.

¹⁰⁰ *Id.* at 787.

¹⁰¹ *Id.*

Grocery around midnight on the first of the month.¹⁰² The CPD then contacted the United States Postal Inspection Service and the USDA to report the suspected food stamp fraud.¹⁰³ The USDA compiled a list of R & F's food stamp redemptions and found suspicious activity.¹⁰⁴ The CPD followed up, and through investigation and use of a "CI" or confidential informant, found that R & F, and in fact Haddad himself, were exchanging food stamp benefits for cash at around 50 cents on the dollar.¹⁰⁵

After his arrest on August 5, 2002, Haddad admitted that he had been trafficking in food stamps, and that he had instructed his employees to exchange food stamps for cash.¹⁰⁶ A financial analysis of R & F's bank records determined that of the \$1,057,342.72 deposited in the store's account from April 7, 2000 through August, 2002, \$1,056,962.41 were electronic reimbursements from the Food Stamp Program, and only \$345.31 were cash deposits.¹⁰⁷ Further analysis of the store's withdrawals and debits revealed that only \$45,748.34 of the money deposited in the account went to purchase Food Stamp Program eligible inventory, while Haddad took \$708,546.14 out of the account through checks written to himself or his family or deposits to a personal account at First Savings Bank of Hegeswich.¹⁰⁸ Ultimately, two of these withdrawals, in the form of checks to Haddad and his other bank account formed the basis of the § 1957 charge.¹⁰⁹ After being convicted of one count of wire fraud in violation of 18 U.S.C. § 1343 and two counts of money laundering in violation of 18 U.S.C. § 1957, Haddad appealed, alleging entrapment on the wire fraud charges, insufficient evidence to convict him on the money laundering

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* 787-88.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 789.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 786.

counts, a mistake in jury instructions, and miscalculation of loss amount.¹¹⁰

Haddad's argument regarding the money laundering counts rested on the premise that the government did not sufficiently prove that at least \$10,000 of the checks which formed the foundation of the charge contained "illegitimate" funds.¹¹¹ The Seventh Circuit was confronted with the fact that, in light of the information gleaned during the investigation, Haddad had "commingled legitimate and illegitimate business funds in the R & F business account," though the government's accounting showed that 99.96% of the money deposited in the account was from food stamp reimbursement.¹¹²

B. The Seventh Circuit's Reasoning and Holding

The Seventh Circuit used a variety of precedent to make its decision on commingling of funds in *United States v. Haddad*.¹¹³ The court first cited its own holdings in cases dealing with § 1956.¹¹⁴ The court noted that "[i]n similar cases, under 18 U.S.C. § 1956, we have reasoned that '[w]e cannot believe that Congress intended that participants in unlawful activity could prevent their own convictions under the money laundering statute simply by commingling funds derived from both 'specified unlawful activities' and other activities.'"¹¹⁵ The court also reasoned that the "government need not trace every dollar of income and connect it to a specific instance of laundering."¹¹⁶

¹¹⁰ *Id.*.

¹¹¹ *Id.* at 791.

¹¹² *Id.*

¹¹³ *Id.* at 791-92.

¹¹⁴ *Id.* at 791.

¹¹⁵ *Id.* at 791-92 (citing *United States v. Baker*, 227 F.3d 955, 965-66 (7th Cir. 2000)).

¹¹⁶ *Haddad*, 462 F.3d at 792; see also *Baker*, 227 F.3d at 965-66; *United States v. Smith*, 223 F.3d 554, 576 (7th Cir. 2000).

After looking at its own reasoning regarding commingling in § 1956 cases, the court moved on to an examination of the decisions of other circuit courts to have looked at commingling in § 1957 cases.¹¹⁷ First, the court examined the reasoning of the Fourth Circuit in *United States v. Moore*.¹¹⁸ Quoting *Moore*, the court noted that ““where the funds used in the particular transaction originated from a single source of commingled illegally-acquired and legally-acquired funds or from an asset purchased with such commingled funds, the government is not required to prove that no ‘untainted’ funds were involved, or that the funds used in the transaction were exclusively derived from the specified unlawful activities.””¹¹⁹

The Seventh Circuit then found the Fifth Circuits “similar approach” in *United States v. Davis* to be instructive.¹²⁰ The Seventh Circuit agreed with the Fifth Circuit’s use of its own precedent for commingled transfers.¹²¹ Citing *Davis*, the court agreed that ““when tainted money is mingled with untainted money in a bank account, there is no longer any way to distinguish the tainted from the untainted because money is fungible.””¹²²

While Haddad advocated use of the Ninth Circuit’s approach to commingled funds, the Seventh Circuit found this “framework untenable.”¹²³ The Seventh Circuit court interpreted the Ninth Circuit’s decision to hold that “in the case of withdrawal of funds from a commingled account, the government could only prove that illegitimate funds were withdrawn if all of the funds in the account are proven to be criminally derived.”¹²⁴ The court then returned to its own

¹¹⁷ *Haddad*, 462 F.3d at 792.

¹¹⁸ *Id.*

¹¹⁹ *Id.* (citing *United States v. Moore*, 27 F.3d 969, 976 (4th Cir. 1994)).

¹²⁰ *Haddad*, 462 F.3d at 792.

¹²¹ *Id.*

¹²² *Id.* (citing *United States v. Davis*, 226 F.3d 346, 357 (5th Cir. 2000)).

¹²³ *Haddad*, 462 F.3d at 792.

¹²⁴ *Id.* (citing *United States v. Rutgard*, 116 F.3d 1270 (9th Cir. 1997)).

precedent, finding that in the “analogous area of Section 1956 cases that the *Rutgard* ‘all or nothing’ approach is unworkable.”¹²⁵

After interpreting the precedent available, and evaluating the three different holdings of the other circuits, the Seventh Circuit found that Haddad had indeed violated § 1957.¹²⁶ The court found that the “government proved aggregate withdrawals of far more than \$10,000 above the amount of clean funds available.”¹²⁷ Continuing, the court noted that “the vast majority of funds transferred to the Haddad’s business account from the food stamp reimbursements were not supported by evidence of legitimate food sales.”¹²⁸ The Seventh Circuit then expressly adopted “the Fourth and Fifth Circuit approaches to the Section 1957 cases and therefore find that the evidence to convict Haddad on money laundering was sufficient.”¹²⁹

III. ANALYSIS

Given that almost all of the money in Haddad’s business account came from USDA reimbursements that he could not properly account for, and the amount of clearly legitimate cash was negligible, the Seventh Circuit was ultimately correct in its decision.¹³⁰ While the Seventh Circuit did arrive at the right decision, they missed an opportunity to clarify and distinguish § 1957 jurisprudence from § 1956 cases. First, by placing too much reliance on § 1956 precedent, the Seventh Circuit failed to account for differences in the two statutes. Second, the Seventh Circuit’s reasoning glosses over important differences and similarities between the tests of the Fourth, Fifth, and Ninth Circuits in § 1957 cases.

¹²⁵ *Haddad*, 462 F.3d at 792 (citing *United States v. Jackson*, 95 F.2d 832, 840 (7th Cir. 1991)).

¹²⁶ *Haddad*, 462 F.3d at 792.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 791.

A. Over-reliance on § 1956 Precedent

To come to its decision in *Haddad*, the Seventh Circuit relied heavily on both its own precedent in § 1956 money laundering cases, and in the decisions of other courts that were influenced by § 1956 precedent.¹³¹ This heavy reliance on § 1956 fails to account for differences between it and § 1957, a difference illustrated by a comparison of the two statutes, and by the circumstances of the § 1956 cases in question.¹³²

While both 18 U.S.C. § 1956 and 18 U.S.C. § 1957 deal with the same general subject, the two statutes clearly have differences.¹³³ Section 1956 seems to address more squarely the original intent of the Money Laundering Act of 1986 as it was presented to Congress.¹³⁴ Congress' intent in enacting money laundering statutes was to close loopholes in reporting law caused by narrow interpretation of transaction reporting laws which dealt only with transactions of more than \$10,000.¹³⁵ The language of § 1956 also requires that the activity upon which the charge is based be designed to conceal the origins of the money involved.¹³⁶ Combining Congress' goal of preventing "structuring crimes" meant to evade reporting limits with the statutes clearly stated requirement that the transaction be undertaken with the intent to conceal the illegal funds strongly suggests that § 1956 should never be defeated by commingling of funds. In fact, in the § 1956

¹³¹ *Id.* at 791-92; *see also* United States v. Baker, 227 F.3d 955, 965-66 (7th Cir. 2000); United States v. Smith, 223 F.3d 554, 576 (7th Cir. 2000); United States v. Moore, 27 F.3d 969, 976 (4th Cir. 1994); United States v. Jackson, 935 F.2d 832, 840 (7th Cir. 1991).

¹³² *See generally* 18 U.S.C. § 1956 (2006); 18 U.S.C. § 1957; *see also* Baker, 227 F.3d 955; Smith, 223 F.3d 554; Jackson, 935 F.2d 832.

¹³³ *See generally* 18 U.S.C. § 1956; 18 U.S.C. § 1957; *see also* Strafer, *supra* note 9, at 161.

¹³⁴ *See* SEN. REP. NO. 99-433, 1-42 (1986).

¹³⁵ Strafer, *supra* note 9, at 159-60.

¹³⁶ 18 U.S.C. § 1956 (a)(1)(B); § 1956 (a)(2)(B); *see also* Kaufman, et. al., *supra* note 20, at 799.

cases dealing with commingling, the commingling can be construed to be part of the conspiracy to conceal the illegal money.¹³⁷

Section 1957 represents a potentially broader law.¹³⁸ Its intent has been perceived to be to “dissuade people from conducting even ordinary commercial transactions with people suspected to be involved in criminal activity.”¹³⁹ There is no requirement that the accused money launderer under § 1957 have any intent to further or conceal the unlawful activity.¹⁴⁰ Section 1957 instead relies on a threshold value to determine whether or not a violation has occurred.¹⁴¹

The importance of the threshold limit and the differences is best illustrated in the Ninth Circuit’s treatment of the two statutes in *United States v. Rutgard*.¹⁴² The Ninth Circuit court noted that five elements differentiate § 1956 from § 1957; “its title, its requirement of intent, its broad reference to ‘the property involved,’ its satisfaction by a transaction that ‘in part’ accomplishes the design, and its requirement that the intent be to commit another crime or to hide the fruits of a crime already committed.”¹⁴³ The *Rutgard* court noted that “the description of the crime does not speak to the attempt to cleanse dirty money by putting in a clean form and so disguising it,” but that “[t]he statute applies to the most open, above-board transaction.”¹⁴⁴ The Ninth Circuit called § 1957 “a powerful tool . . . mak[ing] any dealing with a bank potentially a trap for the drug dealer or any other

¹³⁷ See, e.g., *United States v. Baker*, 227 F.3d 955, 965 (7th Cir. 2000) (“The ‘clean’ money was also ‘involved in’ the conspiracy in that . . . it helped further and facilitate the operation”); *United States v. Tencer*, 107 F.3d 1120, 1134 (5th Cir. 1997) (“because ‘clean’ money that is commingled with ‘unclean’ money facilitates the money laundering operation, the ‘clean’ money is ‘involved’ in the offense”).

¹³⁸ Strafer, *supra* note 9, at 161.

¹³⁹ Kaufman, et. al., *supra* note 20, at 798 (citing H. REP. NO. 99-855, at 14 (1986)).

¹⁴⁰ Kaufman, et. al., *supra* note 20, at 798.

¹⁴¹ 18 U.S.C. § 1957 (a).

¹⁴² *United States v. Rutgard*, 116 F.3d 1270, 1291-92 (9th Cir. 1997).

¹⁴³ *Id.*

¹⁴⁴ *Id.* (citing 18 U.S.C. § 1957(f)(1) (broadly defining “monetary transaction”)).

defendant who has a hoard of criminal cash derived from specific crimes.”¹⁴⁵ Calling it a “draconian law, . . . powerful by its elimination of criminal intent,” the Ninth Circuit strongly cautions that “[s]uch a powerful instrument of criminal justice should not be expanded by judicial invention or ingenuity.”¹⁴⁶ Ultimately, the Ninth Circuit found that they “do not find helpful in interpreting § 1957 cases the cases applying § 1956.”¹⁴⁷

The Seventh Circuit made a mistake when it applied its § 1956 precedent to the facts in *Haddad*.¹⁴⁸ The two statutes were intended to serve different purposes, and developed in different ways.¹⁴⁹ By relying too heavily on inappropriate § 1956 precedent, the Seventh Circuit did nothing to clarify § 1957 enforcement.

B. Use of the Fourth, Fifth and Ninth Circuit Holdings

The Seventh Circuit also based its decision in *Haddad* on the holdings of the Fourth, Fifth, and Ninth Circuit court decisions.¹⁵⁰ In interpreting these decisions, the Seventh Circuit concluded that the Fourth and Fifth Circuit courts’ tests agreed, while the Ninth Circuit court’s test was judged inappropriate.¹⁵¹ This analysis failed to properly dissect the decisions of the other circuit courts, and missed important similarities and differences.

¹⁴⁵ *Rutgard*, 116 F.3d at 1291.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *United States v. Haddad*, 462 F.3d 783, 791-92 (7th Cir. 2006).

¹⁴⁹ *See Strafer, supra* note 9, at 161 (noting that the two statutes grew out of the different houses of Congress, with § 1956 developed primarily in the Senate and § 1957 originating in the House of Representatives).

¹⁵⁰ *Haddad*, 462 F.3d 783 at 192.

¹⁵¹ *Id.*

1. Use of the *Moore* decision

The Seventh Circuit began its examination of other circuit court law by looking at the Fourth Circuit's decision in *United States v. Moore*.¹⁵² In *Moore*, the Fourth Circuit dealt with the issue of commingling in the context of a real estate transaction whose financing was premised on fraudulently acquired loans.¹⁵³ The evidence in *Moore* showed that the real estate involved, several commercial condominiums, were purchased with \$926,000 obtained by bank fraud and the sale of legitimately acquired properties with an estimated value of \$100,000.¹⁵⁴ Given that the "overwhelming bulk" of the purchase money was acquired through fraud, and that this fraud effectively made the condominium purchase possible, the court held that the "jury was entitled to conclude . . . that when the condominiums were eventually sold, the net proceeds of that sale were in their entirety property derived from or developed out of the proceeds of Moore's bank fraud."¹⁵⁵ The court noted that, "when funds obtained from unlawful activity have been combined with funds from lawful activity into a single asset, the illicitly-acquired funds and the legitimately-acquired funds (or the respective portions of the property purchased with each) cannot be distinguished from each other."¹⁵⁶

In each of the other cases dealing with commingling under § 1957, the courts dealt with mixing of funds in legitimate bank accounts rather than a monolithic transaction such as the sale of the condominiums.¹⁵⁷ The Fourth Circuit correctly held that commingling in a single asset cannot defeat prosecution.¹⁵⁸ When the transaction

¹⁵² *Id.*

¹⁵³ *United States v. Moore*, 27 F.3d 969, 977 (4th Cir. 1994).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 976-77.

¹⁵⁷ *See United States v. Haddad*, 462 F.3d 783, 792 (7th Cir. 2006); *United States v. Davis*, 226 F.3d 346, 356-57 (5th Cir. 2000); *United States v. Rutgard*, 116 F.3d 1270, 1290-1291 (9th Cir. 1997); *see also Moore*, 27 F.3d at 976-77.

¹⁵⁸ *Moore*, 27 F.3d at 977.

involves withdrawals from a mixed account, however, it becomes inappropriate to approach the transaction in the same way as a real estate sale. Given that § 1957 requires that the transaction have a “value greater than \$10,000 . . . derived from specified unlawful activity,” it becomes necessary for a court faced with commingled funds in a bank account to provide a more accurate accounting of the value of the charged transaction.¹⁵⁹ The Seventh Circuit erred when it relied on the Fourth Circuit’s test in *Haddad*.

2. Use of the *Davis* decision

The second of the circuit court cases examined by the Seventh Circuit in *Haddad* was the *Davis* case out of the Fifth Circuit.¹⁶⁰ In the *Davis* case, the Fifth Circuit paid close attention to the accounting evidence presented by the government.¹⁶¹ After analyzing the accounting, the court rested its decision on the “aggregate withdrawal” precedent of its fraudulent transfer cases such as *Heath* and *Poole*.¹⁶² The Fifth Circuit noted that using the aggregate withdrawal method is appropriate because “[t]o view each transaction in isolation . . . would defeat the purposes of the statute.”¹⁶³ The Fifth Circuit further refined their test by contrasting it with the test advanced in *Rutgard*, rejecting the notion that the entire balance must be withdrawn.¹⁶⁴

While the Seventh Circuit indicated that they agreed with the Fifth Circuit’s holding, they failed to mention the aggregate withdrawal aspect of that court’s holding.¹⁶⁵ By failing to acknowledge this aspect of the decision, particularly the *Davis* court’s

¹⁵⁹ 18 U.S.C. § 1957 (a) (2006); *see, e.g., Rutgard*, 116 F.3d at 1291; *Davis*, 226 F.3d at 357.

¹⁶⁰ *Haddad*, 462 F.3d at 792.

¹⁶¹ *Davis*, 226 F.3d at 356, 357.

¹⁶² *Id.* at 357; *see also* *United States v. Heath*, 970 F.2d 1397, 1404 (5th Cir. 1992); *United States v. Poole*, 557 F.2d 531 (5th Cir. 1977).

¹⁶³ *Heath*, 970 F.3d at 357.

¹⁶⁴ *Id.* (citing *Rutgard*, 116 F.3d at 1292).

¹⁶⁵ *Haddad*, 462, F.3d at 792.

mention of the *Poole* decision, the Seventh Circuit missed the weight the Fifth Circuit placed on accounting.¹⁶⁶

3. Rejection of the *Rutgard* decision

The final case that the Seventh Circuit used to decide *Haddad* was *United States v. Rutgard*.¹⁶⁷ *Rutgard* is important for two reasons. First, the court in *Rutgard* advanced a reasonable argument that commingling in § 1956 and § 1957 should not be compared.¹⁶⁸ Second, with the exception of the finding that “all the funds” in the questionable account must have been withdrawn to uphold *Rutgard*’s conviction, the Ninth Circuit’s general rule, and their heavy reliance on accounting evidence are analogous to the Fifth Circuit’s “aggregate withdrawal” test.¹⁶⁹

The Seventh Circuit made no mention of the Ninth Circuit’s argument that § 1956 and § 1957 precedent should be kept separate.¹⁷⁰ In fact, the Seventh Circuit made a point of comparing its own § 1956 precedent with the *Rutgard* holding.¹⁷¹ The Seventh Circuit also failed to note the similarities between the Fifth Circuit’s holding in *Davis* and the Ninth Circuit’s holding in *Rutgard*.¹⁷² While the Seventh Circuit’s rejection of the “all of nothing” aspect of *Rutgard* was correct, it missed an opportunity to extract and amplify the aspects of the Ninth Circuit’s test that coincide with the Fifth Circuit’s test, and to advance the Ninth Circuit’s holding regarding the differences between commingling in § 1956 and § 1957 law.¹⁷³

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Rutgard*, 116 F.3d at 1290-92.

¹⁶⁹ *Id.* at 1292; *see also* *United States v. Davis*, 226 F.3d 346, 356-57 (5th Cir. 2000).

¹⁷⁰ *Haddad*, 462 F.3d at 792.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

IV. SECTION 1957 AFTER *HADDAD*

The Seventh Circuit missed an opportunity in deciding *Haddad*. With the evidence at hand, it was clear that Haddad had in fact violated § 1957 by writing checks in amounts greater than \$10,000 on an account that could be shown to be almost entirely funded with the profits of food stamp fraud.¹⁷⁴ In deciding this case as they did, the Seventh Circuit has left the door open to a potential broadening of the law. In § 1956 cases commingling of funds is often intentional, and serves to meet the requirement that the transaction be conducted “with the intent to promote the carrying on of specified unlawful activity.”¹⁷⁵ Section 1957, however, contains no “intent to promote” element, relying on the value of the transaction.¹⁷⁶ As such, while no amount of commingling should foil a § 1956 prosecution, a § 1957 prosecution should only rest on solid accounting that shows the value of the transaction was indeed “of a value greater than \$10,000 . . . derived from specified unlawful activity.”¹⁷⁷

Ultimately, the Seventh Circuit could have reconciled the tests of the Fifth and Ninth Circuits.¹⁷⁸ The Seventh Circuit should have recognized the differences between § 1956 and § 1957 that make it difficult to apply the § 1956 precedent.¹⁷⁹

By stressing only the value of the transaction, and using § 1956 law as comparison, the Seventh Circuit left open ended the question of whether, or what amount, of commingling of funds will or will not foil a prosecution under § 1957. While Haddad had obviously violated the law, the question of whether all transfers from a commingled account invokes § 1957 remains open. The Seventh Circuit has provided no

¹⁷⁴ *Id.* at 791.

¹⁷⁵ 18 U.S.C. § 1956 (a)(1)(A)(i) (2006).

¹⁷⁶ 18 U.S.C. § 1957.

¹⁷⁷ 18 U.S.C. § 1957 (a).

¹⁷⁸ See *United States v. Davis*, 226 F.3d 346, 357 (5th Cir.2000); *United States v. Rutgard*, 116 F.3d 1270, 1291-92 (9th Cir. 1997).

¹⁷⁹ See 18 U.S.C. § 1956; 18 U.S.C. § 1957; *Rutgard*, 116 F.3d 1270, 1291-92; see also *Strafer*, *supra* note 9, at 160; *Kaufman, et. al.*, *supra* note 20, at 796, 798.; *Boran*, *supra* note 8, at 851-53.

guidance on what to do when the amount of legal and illegal funding is equal, or if the balance tips toward legal funds. Without a better test, prosecution under 18 U.S.C. § 1957 will remain unsettled law.

CONCLUSION

The Seventh Circuit missed an opportunity to amalgamate and solidify the various court's disparate rulings regarding the commingling of funds in § 1957 cases. Had the court reconciled the similar tests of the Fifth Circuit in *Davis* and the Ninth Circuit in *Rutgard*, rejected *Rutgard's* all-or-nothing approach, and recognized the fundamental differences between § 1956 and § 1957, it could have articulated a test that would clarify the law.