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Never Hanging Defendants Out to Dry: Preserving the Policy Behind the Statute of Limitations in Money Laundering Conspiracies

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I. INTRODUCTION

Combating money laundering through legislation cuts the Achilles’ heel of criminal schemes that profit from it and stops its detrimental consequences on society from spreading.¹ Money laundering has become the focus of crime prevention efforts in the United States and elsewhere due to its effects on criminal activity and legitimate financial transactions.² Although money laundering was strictly a matter for regulatory agencies in the 1970s, in 1983 President Ronald Reagan called for a commission on organized crime to investigate “the sources and amounts of organized crime’s income, and the uses to which organized crime puts its income.”³ Since then, money laundering has become the subject of legislation, culminating in 1986 with Congress passing the Money Laundering Control Act (“the MLCA”).⁴

The MLCA empowered the government to investigate money laundering schemes by criminalizing financial transactions that conceal

¹ See GUY STESENS, MONEY LAUNDERING: A NEW INTERNATIONAL LAW ENFORCEMENT MODEL 84-85 (2000) (writing that because money laundering funds criminal schemes, typically found in organized crime, fighting the techniques used to fund those schemes directly undermines crime “by taking away the incentive for [those criminal] activities”).

² Id. Stessens provides three reasons why governments combat money laundering: (1) to prevent criminals from profiting off their activities; (2) to gather paper trails left by high-level criminals and kingpins in more complicated schemes; (3) to reduce the detrimental influence that the flow of dirty money obtained from unlawful activities has on the financial system. Id. at 85–86.

³ Exec. Order No. 12,435, 48 Fed. Reg. 34,723 (July 28, 1983). See HEBAGHAMS, LEGAL GLOBALIZATION: MONEY LAUNDERING LAW AND OTHER CASES 17–21 (2004) (summarizing federal legislation in the 1970s imposing record-keeping and reporting requirements for banks and other financial institutions). Congress first passed the Bank Secrecy Act (“BSA”) in 1970 in reaction to increasing criminal exploitation of relaxed financial record-keeping practices. Id. at 18. The BSA required banks to keep copies of certain financial instruments involved in a transaction, such as checks, and imposed civil and criminal penalties for failure to retain designated records. Id. at 18–19. Additionally, the BSA mandated that banks report domestic transactions that exceed $10,000 in value and international transactions that exceed $5,000 in value, and that citizens and residents conducting business within the United States report any existing relationship with foreign financial institutions. Id. at 19. Shams concluded that the statute was pivotal in the development of anti-money laundering law because its responses to problems in criminal, fiscal, and regulatory enforcement formed the basis for the current money laundering regime. Id. at 21.

the presence of funds that are taken from illegal activities and are used to fund future illegal activities.\textsuperscript{5} Congress drafted the MLCA to give prosecutors broad reach to prosecute activities suspected of concealing funds used to finance illegal activities.\textsuperscript{6} As a result, the government prosecutes both large international drug cartels and terrorist organizations and small two-person operations for money laundering.\textsuperscript{7}

While this widely applicable statute can serve to defeat the money laundering problem, it potentially overrides other policy interests, such as barring money laundering prosecutions based on stale evidence.\textsuperscript{8} As the primary statute for such prosecutions, the MLCA depends on other statutes to bar prosecutions that lack sufficient evidence to allege money laundering.\textsuperscript{9} Nevertheless, the complexity of money laundering crimes implies that prosecutors have an unlimited amount of time to bring an indictment for conspiracy to launder money.\textsuperscript{10}

This Note proposes amendments to the MLCA that preserve a defendant’s interest in having a conspiracy prosecution based on evidence proving the existence of a money laundering conspiracy long

\textsuperscript{5} Id.
\textsuperscript{6} Tracy Tucker Mann, Money Laundering, 44 AM. CRIM. L. REV. 769, 771 (2007).
\textsuperscript{7} Id. at 772; cf. Ellen Jancko-Baken, When Will the Idling Statute of Limitations Start Running in RICO Conspiracy Cases?, 10 CARDOZO L. REV. 2167, 2178–79 (1989) (stating that because Congress did not define organized crime in the Racketeering Influenced Corrupt Organization (“RICO”) statutes, there is ongoing debate about whether the statutes apply to strictly illegal entities or if they also apply to legal entities where RICO conspiracies may occur). Courts have more often than not read RICO to include illegal and legal entities. Id.
\textsuperscript{8} See, e.g., United States v. Upton, 559 F.3d 3, 14, 16 (1st Cir. 2009), cert. denied, 130 S. Ct. 397 (2009) (upholding a conviction for money laundering on the grounds that defendant co-conspirators committed actions after satisfying the objectives of their scheme which renewed the limitation period permitted by statute).
\textsuperscript{9} See 18 U.S.C. § 371 (2006) (stating that it is an offense to conspire to defraud or commit an offense against the United States, an allegation included in money laundering indictments); see also 18 U.S.C. § 3282 (setting out a five-year limitation period for non-capital criminal offenses subject to federal law, including money laundering crimes under the MLCA); 26 U.S.C. § 6531(5) (2006) (establishing a six-year limitation period for tax evasion offenses that some money launderers use to conceal funds).
\textsuperscript{10} See Mann, supra note 6, at 772 (“[T]he MLCA also makes the subsequent use of criminal proceeds in any transaction illegal in perpetuity, extending well beyond the statute of limitations for the original criminal conduct.”). A similar dilemma appears in prosecutions under the Sherman Antitrust Act. Cf. Michael A. Doyle & Michael P. Kenny, The Statute of Limitations Applicable to Criminal Enforcement of the Sherman Act: Restraint of Trade or Enjoyment of the Spoils?, 1986 ARIZ. ST. L.J. 183, 184 (1986) (discussing how the Supreme Court has held that an antitrust conspiracy may continue beyond the initial agreement, but that the Court “has not clearly ruled when an antitrust conspiracy ends”). This demonstrates, Doyle and Kenny state, “an inherent tension in the law” between the purpose of statutes of limitations to bring finality to an offense and the conspiracy doctrine “extend[ing] the statute beyond its stated term.” Id.
after the actual conspiracy to launder money has ended. First, Part II places this Note in context, introducing the federal money laundering statute and its relationship to other statutes commonly applied in a money laundering prosecution including statutes on conspiracy, tax evasion, and limitations for certain offenses. Second, Part III analyzes the interaction between the statutes of limitations and the substantive offenses for money laundering, which create conflict in application that risks the statute of limitations having no practical enforcement under some money laundering crimes. Finally, Part IV proposes model amendments to the MLCA, the conspiracy statute, and the statute of limitations frequently applied in money laundering prosecutions in order to increase the effectiveness of statutory limitation periods.

II. BACKGROUND

Part II explains the relationship between money laundering and the federal statute of limitations. Notably, the MLCA abrogates the policies underlying the statute of limitations as an affirmative defense.

11 See infra Part IV (proposing model amendments to the MLCA and relevant statutes).

12 See infra Part II.A.1 (providing background on the federal money laundering statute); infra Part II.A.2 (discussing the federal statute on tax evasion); infra Part II.A.3 (discussing the federal statute on conspiracy); infra Part II.B.1 (giving an overview of the policy considerations behind statutes of limitations and judicial rules that influence how and when limitation periods apply); infra Part II.B.2 (introducing the federal statute of limitations for non-capital criminal offenses and the federal limitation period for tax evasion).

13 See infra Part III.A (discussing how the MLCA may expose defendants to the danger that an act remotely connected to the conspiracy may defeat a claim that the limitation period expired prior to an indictment); infra Part III.B (elaborating on the divergence from the Supreme Court’s strict standard for connecting overt acts and conspiratorial agreements); infra Part III.C (analyzing how alleging tax evasion is enough to defeat a limitation period under a loose interpretation of the Supreme Court’s direct evidence standard); infra Part III.D (discussing rules favoring limitation periods under certain circumstances and judicial rules on overt acts as alternative methods for determining the application of a limitation period).

14 See infra Part IV.A (proposing a model provision that establishes a limitation period solely for money laundering indictments within the MLCA); infra Part IV.B (recommending a model amendment to the MLCA that codifies the Supreme Court’s direct evidence standard for money laundering prosecutions); infra Part IV.C (creating a model provision that allows indictments for conspiracy under the MLCA with the purpose of preventing prosecutions under the federal conspiracy statute and preventing application of the general statute of limitations).

15 See infra Part II (introducing the crime of money laundering through its applicable federal statute and its relationship to the federal general statute of limitations, particularly through the lens of conspiracy and tax evasion as joint offenses in a money laundering indictment).

16 See infra Part III (discussing how the interactions between the money laundering statute, the federal statute of limitations, and the federal conspiracy statute have revealed...
Part II.A discusses the MLCA, Congressional intent for the statute, and the advantages it gives prosecutors, including the opportunity to pursue prosecutions for conspiracy and tax evasion.\textsuperscript{17} Part II.B examines policies behind statutes of limitations in general, the judicial approach to limitations, Congressional adoption of such policies into the federal limitation period, and the weakening effect on criminal statutes of limitations caused by treating money laundering as a substantive crime.\textsuperscript{18}


Congress enacted the MLCA to prevent money laundering because it is a source of funding for criminal ventures, such as drug trafficking or terrorism.\textsuperscript{19} This Section will first discuss the statutes criminalizing money laundering through financial transactions, focusing on the meaning of each element of the crime.\textsuperscript{20} Next, this Section will introduce the federal tax evasion statute, which comes into play because tax evasion is a common form of concealing funds in a money laundering scheme.\textsuperscript{21} Finally, this Section will cover the federal general conspiracy statute, its elements, and its relationship to the money laundering statutes.\textsuperscript{22} The relationship between these statutes suggests that Congress intended to allow prosecutors the most amount of freedom available to prosecute a money laundering scheme.\textsuperscript{23}

\begin{footnotesize}
\textsuperscript{17} See infra Part II.A (discussing the federal money laundering, tax evasion, and conspiracy statutes).

\textsuperscript{18} See infra Part II.B (explaining that statutes of limitations are legislative instruments designed to balance the interests of prosecutors, defendants, and courts, and then discussing how courts in general use the statutes of limitations to either bar or allow an action against a defendant before introducing the federal general and tax code statutes of limitations).


\textsuperscript{20} See infra Part II.A.1 (discussing the federal money laundering statutes, the elements constituting money laundering, and how interpretation of those elements favors prosecution of money laundering crimes).

\textsuperscript{21} See infra Part II.A.2 (discussing how money launderers have used tax evasion as a form of concealment in money laundering schemes, and how the federal tax evasion statute relates to the money laundering statutes).

\textsuperscript{22} See infra Part II.A.3 (introducing the federal general conspiracy statute, its elements, and its relationship to the money laundering statutes).

\textsuperscript{23} See Peter J. Kacarab, An Indepth Analysis of the New Money Laundering Statutes, 8 AKRON TAX J. 1, 2 (1991) (“The new money laundering statutes are aimed to hurt the criminal, with the greatest impact, by hitting the criminal in his pocketbook.”).
\end{footnotesize}
1. The Money Laundering Control Act

Money laundering is a statutory crime subject to legislative policy. The MLCA criminalizes money laundering and establishes a penalty for conspiracy to launder funds. Section 1956(a)(1) of Title 18 of the United States Code states that a financial transaction of proceeds originating from illegal activity constitutes an act of money laundering and is punishable with a fine, imprisonment, or both. The statute separates

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24 SHAMS, supra note 3, at 45. Sophisticated case studies on transactional laundering schemes and professional launderers guided the policy behind the MLCA. Id. at 49. Its drafters, however, wrote the law to cover all possible laundering methods because laundering methods do not conform to clear and unitary definitions. Id. As a result, the MLCA can apply in cases radically different from the law’s initial concerns. Id.

25 18 U.S.C. §§ 1956, 1957 (2006). The penalty for conspiring to launder funds is determined by the act that substantiates the transaction concealing the money. See id. § 1956(c) (listing transactions that Congress defined as an activity that can launder illegally derived funds); id. § 1956(h) (stating that the penalty for conspiracy to launder money depends on the nature of the transaction). For a congressionally recognized definition of money laundering, see Business Community’s Compliance With Federal Money Laundering Statutes: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means, 101st Cong. 142 (1990) (statement of Michael J. Murphy, Senior Deputy Comm’r, IRS), which defines money laundering as “concealment of the existence, nature or illegal source of illicit funds in such a manner that the funds will appear legitimate if discovered.”

26 United States v. Rahseparian, 231 F.3d 1267, 1271–72 (10th Cir. 2000) (stating that because money laundering is a specific intent crime, the prosecution must prove that the defendant specifically intended to defraud and launder proceeds knowing they were obtained through unlawful activity). The court in Rahseparian found that evidence was sufficient for a jury to conclude that a defendant specifically intended to defraud when promising an inflated monetary reward in exchange for mailing to him a registration fee for a phony contest. Id. Transactional money laundering is defined in relevant part as follows:

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity;

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986;

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is
the crime of money laundering into the following four elements: knowledge, intent, specified unlawful activity, and concealment.\textsuperscript{27}

The statute’s legislative history suggests that Congress wanted to prevent money laundering to reduce funds available for criminal activities.\textsuperscript{28} Congress also extended the statute’s application in prosecutions to include several white-collar crimes.\textsuperscript{29} In general, the scope of money laundering is bound only to financial transactions that either further criminal activity or attempt to conceal its presence.\textsuperscript{30}

\hspace{1cm}

\textsuperscript{27} See § 1956(a) (listing the elements of money laundering); \textit{Rahseparian}, 231 F.3d at 1272 (stating that in order to prove guilt for money laundering under § 1956, the prosecution must prove “(1) [the defendant] knowingly conducted a financial transaction; (2) he knew the funds represented proceeds of an unlawful activity; (3) the funds actually did represent the proceeds of the unlawful activity; and (4) the transaction was designed to conceal the nature, location, source ownership or control of the proceeds”).

\textsuperscript{28} Mariano-Florentino Cuéllar, \textit{The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance}, 93 J. CRIM. L. & CRIMINOLOGY 311, 394 (2003). Cuéllar gives three concerns of legislators underlying the statute against money laundering:

\begin{enumerate}
\item a recurring preoccupation with the nexus linking high-level figures in drug trafficking and organized crime to money laundering;
\item a conclusion that money laundering involved a range of financial activity, including complex financial schemes, that—if detected—could point to the presence of predicate crimes (and, more recently, to the presence of terrorism); and
\item a concern with people thought to be specialists in money laundering, navigating the criminal underworld and helping people engage in illicit transactions.
\end{enumerate}

\textit{Id.} at 396. Statements from the executive branch also affect the interpretation of legislative intent. \textit{Id.} The executive’s interpretation of money laundering includes criminal organizations and professional laundering, which suggests that “money laundering is the ‘life blood’ of crime and the fight against money laundering is about shattering the link between money and crime.” \textit{Id.}

\textsuperscript{29} \textit{Id.} at 401-02 (stating that the scope of unlawful activities in § 1956 has since included environmental crimes, murder-for-hire, and terrorism). \textit{See generally} § 1956(c)(7) (providing a long list of specified unlawful activities that the statute considers predicates for money laundering, including manufacturing, selling, or distributing controlled substances; murder, kidnapping, robbery, extortion, arson, and crimes of violence; fraud or attempt to defraud related to a foreign bank; acts constituting a continuing criminal enterprise as defined in the Controlled Substances Act; and crimes of violence at airports, espionage, firearms trafficking, and terrorism).

\textsuperscript{30} Patricia T. Morgan, \textit{Money Laundering, the Internal Revenue Service, and Enforcement Priorities}, 43 F.L.A. L. REV. 939, 947 (1991). Morgan notes that § 1956, unlike previous legislation, criminalizes money laundering of monetary instruments, not just currency. \textit{Id.} at 948. Thus, the statute makes it significantly easier to prosecute anyone who received payment of any kind originating in unlawful activity, provided he knew or strongly suspected of its origin. \textit{Id.} at 948-49.
Congress also debated the knowledge requirement and suggested that certain knowledge is required in transactions that involve illegal funds.\textsuperscript{31} Defendants, however, will meet the knowledge requirement without actual knowledge of an illegal activity if they know that the proceeds will go toward illegal activity.\textsuperscript{32} A defendant only needs to know that someone else intended to design the transaction.\textsuperscript{33}

The next element, conducting a financial transaction, comprises several actions involving banks or disposition of property.\textsuperscript{34} To satisfy this element, the transaction must either (1) move funds or monetary instruments, or (2) use a financial institution, the result of which affects interstate or foreign commerce in some way.\textsuperscript{35} Congress broadly defined

\textsuperscript{31} See § 1956(c)(1) (defining the knowledge requirement as “the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law”); see also S. REP. NO. 99-433, at 9–10 (1986) (evaluating the need for a knowledge requirement in the MLCA). With regard to the knowledge requirement, the Senate report states:

Section 1956(a)(1) . . . employs a scienter standard of “knowing,” rather than “reason to know” or “reckless disregard.” In fact, it has two “knowing” requirements. In order to prove a violation of the offense, the Government must show not only that the defendant knew the property involved in a transaction was the proceeds of crime, but also that the defendant either intended to facilitate a crime or knew that the transaction was designed to conceal the proceeds of a crime.

\textit{Id.} at 9–10. The Senate report adds that willful blindness satisfies the knowledge requirement. \textit{Id.}

\textsuperscript{32} Morgan, supra note 30, at 948. The knowledge requirement is still satisfied “[i]f the defendant knew only that the property was derived from unlawful activity, but did not know the nature of the activity or whether it was one of the specified crimes, and the activity is a specified crime.” \textit{Id.}

\textsuperscript{33} See § 1956(a)(1)(A)(ii) (criminalizing activity with intent to engage in tax fraud and tax evasion); \textit{id.} § 1956(a)(1)(B)(i) (criminalizing activity with the intent to conceal or disguise proceeds of specified unlawful activity); G. Richard Strafer, \textit{Money Laundering: The Crime of the ’90s}, 27 AM. CRIM. L. REV. 149, 162 (1989) (stating that under § 1956(a)(1)(B) a defendant need only know “that the transaction is designed in whole or in part,” and that the use of the passive voice means the intent requirement is met when the defendant knew “the intent of the person who ‘designed’ the transaction”); see also JOHN MADINGER, \textit{MONEY LAUNDERING: A GUIDE FOR CRIMINAL INVESTIGATORS} 40 (2d ed. 2006) (stating that under § 1956(a)(1)(A)(ii) the government only needs to prove a defendant intended to promote an activity that he knew was illegal). Evidence for proving intent under either provision may be either direct or circumstantial. \textit{Id. at 41.}

\textsuperscript{34} See § 1956(c)(3) (defining a transaction as a common transaction such as a purchase, sale, or transfer; or any transaction concerning a bank such as a loan, deposit, or withdrawal). Similarly, the MLCA defines financial transactions as any transaction affecting interstate or foreign commerce or using a financial institution that in turn affects interstate or foreign commerce. \textit{Id.} § 1956(c)(4).

\textsuperscript{35} TAX DIV., DEPT. OF JUSTICE, \textit{CRIMINAL TAX MANUAL} § 25.02 [4] (2001), http://www.justice.gov/tax/readingroom/2001ctm/25ctax.htm#25.02[4]; see also § 1956(c)(6) (stating that the definition of financial institution for purposes of the MLCA
who can be involved in a money laundering scheme and the duration of the crime itself.36

Congress, however, did not clearly define what constitutes proceeds derived from an unlawful activity in a transaction, which has resulted in vague interpretations that are advantageous to both prosecutors and defendants.37 In part, this uncertainty stems from the requirement that the proceeds emerge from specified unlawful activities that § 1956(c)(7) lists.38 The Supreme Court has attempted to clarify the meaning of proceeds, but critics argue that the Court’s efforts have confused the meaning even more.39 Furthermore, the statute does not require prosecutors to trace the proceeds back to a particular illegal act, only that the proceeds originated from a § 1956(c)(7) activity.40 The proceeds do not have to be purely illegal or a result of a specified unlawful act.41

also includes what is provided in 31 U.S.C. § 5312(a)(2) (2006), which defines financial institution as any one of twenty-six entities or persons involved in financing).

36 See Kacarab, supra note 23, at 7 (stating that the statute applies to anyone who participated in a financial transaction and knew that the proceeds of the transaction came from an illegal activity). In terms of duration, the reference to attempted conduct in the statute makes this an inchoate crime. Id.

37 Guiora & Field, supra note 19, at 70. Although focusing on the prosecution of terrorism, the authors suggest that because the statute lacks a definition of proceeds, litigants can use this flexibility in the statute to their advantage. Id. In addition, the statute’s lack of guidance in proving the source of the proceeds gives prosecutors latitude because they only need to prove that the proceeds trace back to some unlawful activity. Id. Despite the vagueness of the statute’s definition of proceeds, courts have held that the provision remains constitutional because it still puts defendants on notice. See United States v. Kimball, 711 F. Supp. 1031, 1034–35 (D. Nev. 1989) (stating that the provision in § 1956 imposing criminal penalties on avoiding a transaction reporting requirement is not vague because “[t]here is nothing in the legislative history [demonstrating] that Congress intended that the word ‘avoid’ to mean anything other than its common definition); United States v. Mainieri, 691 F. Supp. 1394, 1397 (S.D. Fla. 1988) (stating that individuals who engage in financial transactions meant to conceal illegally obtained money are put on notice by the statute’s wording).

38 See § 1956(c)(7) (listing what constitutes a specified unlawful activity for purposes of a money laundering prosecution). Interestingly, tax crimes are not included as among specified unlawful activities. S. REP. NO. 99-433, at 11–12 (1986) (concluding that tax evasion should not be a specified unlawful activity because it is a nonreporting of proceeds derived from specified unlawful activities and does not produce identifiable proceeds by itself).

39 See United States v. Santos, 553 U.S. 507, 520 (2008) (holding that proceeds under § 1956 only means funds derived from a specified unlawful activity, not funds derived from the commission of such activity). See generally Jimmy Gurulé, Does “Proceeds” Really Mean “Net Profits”? The Supreme Court’s Efforts to Diminish the Utility of the Federal Money Laundering Statute, 7 AVE MARIA L. REV. 339, 339–43 (2008) (commenting on the Supreme Court’s recent decision regarding the definition of proceeds and objecting to the decision as diminishing the effect of the MLCA while appealing to Congress to clarify the meaning of proceeds in the statute).

40 United States v. Blackman, 904 F.2d 1250, 1257 (8th Cir. 1990). In Blackman, the government introduced evidence that the defendant funded his narcotics trafficking
Section 1956(a)(1)(B) implies that a successful conviction for money laundering turns on the concealment of proceeds of the unlawful activity. While courts have interpreted concealment to encompass all transactions designed to launder proceeds from specified unlawful activity, courts have also stated that only unlawful activities specified in § 1956(c)(7) constitute acts of concealment. Sufficient proof of scheme through a money wiring service and by transferring title on his truck. The defendant appealed, arguing that a reasonable juror would not find that the government’s evidence proved the money wiring and transfer of title on his truck contained proceeds from drug trafficking. The defendant contended that the transfer of title was not a financial transaction and that the MLCA requires the government to trace the proceeds involved in the transaction to a particular drug sale. The court concluded that the transfer of title fit within the definition of financial transaction because it involved a monetary instrument. The court reasoned that § 1956 did not require direct evidence to prove the proceeds element. The court further reasoned that the government can prove that transactions involve proceeds from drug trafficking through circumstantial evidence so long as the evidence is sufficient.

41 See United States v. Jackson, 935 F.2d 832, 40 (7th Cir. 1991) (“[W]e cannot believe that Congress intended that participants in unlawful activities could prevent their own convictions under the money laundering statute simply by commingling funds derived from both ‘specified unlawful activities’ and other activities.”). The court of appeals added that “commingling [of funds] is itself suggestive of a design to hide the source of ill-gotten gains.” Id.
42 § 1956 (a)(1)(B)(i). For examples of intent to conceal assets gained from unlawful activity, see United States v. Hunt, 272 F.3d 488, 496 (7th Cir. 2001), using a third party to disguise the real owner of the assets; United States v. Onoruo 260 F.3d 291, 297 (3d Cir. 2001), using a false name for a bank account to deposit and withdraw proceeds from to disguise the identity of the real owner; United States v. Farese, 248 F.3d 1056, 1060 (11th Cir. 2001), structuring cash transactions to disguise the nature of the illegal funds; United States v. Bowman, 235 F.3d 1113, 1116 (8th Cir. 2000), using property registered or titled to a third party with whom the defendant has a close relationship; United States v. Prince, 214 F.3d 418, 426 (6th Cir. 2000), using convoluted transactions transferring proceeds to a third party who converted the money to cash and transferred the proceeds back to the defendant; and Jackson, 935 F.2d at 841, commingling funds obtained through illegal activity into the bank account of a legitimate business. For other examples of evidence, see also United States v. Magluta, 418 F.3d 1166, 1176 (11th Cir. 2005), suggesting intent to conceal assets through unusual secrecy during the transaction; United States v. Bolden, 325 F.3d 471, 490 (4th Cir. 2003), setting up a sham or fictitious business to store assets; and United States v. Esterman, 324 F.3d 565, 573 (7th Cir. 2003), making statements from defendants or making unusual financial moves demonstrate an intent to conceal. Expert testimony may also expose concealment of illegal proceeds by providing insight into criminal practices. Magluta, 418 F.3d at 1176.
43 See United States v. Hall, 434 F.3d 42, 50 (1st Cir. 2006) (“It is true that the money laundering statute does not criminalize the mere spending or investing of illegally obtained assets.”); United States v. Shepard, 396 F.3d 1116, 1120 (10th Cir. 2005) (“[W]e construe the money laundering statute as a ‘concealment statute—not a spending statute.’”).
concealment must include substantial evidence of a design to conceal rather than merely suspicious acts by defendants. The simplicity of the alleged scheme will likely not support a conclusion that a defendant attempted to conceal assets of illegal activities.

Section 1957, on the other hand, is the companion to § 1956 and criminalizes engaging in a money transaction involving property worth over $10,000 received from a specified unlawful activity. Congress enacted § 1957 and recognized that non-financial transactions, such as commercial transactions, can conceal assets. Although this statute

Shepard court stated that a transaction of illegally obtained money alone does not constitute concealment. See id. ("We reject an interpretation of the money laundering statute ‘to broadly encompass all transactions, however ordinary on their face, which involve the proceeds of unlawful activity.’"). The court justified its reasoning on the expressed language of the money laundering statute, which required actions intending concealment. Id.; see also § 1956(a)(1)(B)(i) (containing language courts have interpreted as limiting the scope of concealment).

Shepard, 396 F.3d at 1121. The defendant in Shepard attempted to disguise funds from an unlawful activity by depositing them in his daughter’s bank account and the bank account of a kennel club. Id. at 1118. The court in Shepard found that depositing assets into a third party’s bank account was concealment because the defendant attempted to commingle the unlawfully obtained money with the money from the legitimate business or legitimate owner of the account. Id. at 1122.

Esterman, 324 F.3d at 572. The court in Esterman observed that concealment in a money laundering scheme included “the existence of more than one transaction, coupled with either direct evidence of intent to conceal or sufficiently complex transactions that such an intent could be inferred.” Id. at 572. “In contrast, the cases in which money laundering charges have not succeeded are typically simple transactions that can be followed with relative ease, or transactions that involve nothing but the initial crime.” Id.

18 U.S.C. § 1957. The relevant section provides in part:

(a) Whoever, in any of the circumstances set forth in subsection (d), 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, shall be punished as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both.

(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

Id.

See H.R. REP. NO. 99-855, at 15 (1986) (“This branch of the offense has been created in recognition that money laundering schemes need not involve financial institutions and that, in fact, non-financial transactions are extensively used as parts of money laundering schemes.”).
relates to § 1956, it bears some differences, namely the absence of a “knowledge of specified unlawful activity” requirement. The legislative record suggests, however, that § 1957 should be read broadly to allow the prosecution of commercial acts. The language of § 1956 and § 1957, therefore, gives prosecutors freedom to prosecute anyone associated with a money laundering scheme in order to effectuate Congress’s intent to prevent such a scheme altogether.

2. Tax Evasion as a Form of Concealment

Congress later drafted provisions into the MLCA that allow prosecutions under other criminal statutes for acts that allegedly concealed funds, such as tax evasion. Money launderers have been known to use tax evasion as an effective tactic to conceal funds received from illegal activity because there are no identifiable proceeds.

48 Compare § 1957(a) (stating that a defendant must know he is involved in a transaction but not that the transaction involves criminally derived property), with id. § 1956(a) (stating that a defendant must know the transaction involved funds representing proceeds from unlawful activity). It is unclear whether § 1957 requires the prosecutor to trace the funds if they commingle with legitimate funds. Mann, supra note 6, at 780–81.

49 § 1957(d) (providing that a transaction done within the maritime or territorial jurisdiction of the United States or outside the jurisdiction of the United States and by a United States citizen is subject to prosecution); Mann, supra note 6, at 775 (“Congress intended to dissuade people from engaging in even ordinary commercial transactions with people suspected to be involved in criminal activity.”). Representative Dan Lungren made a statement regarding the necessity for a broad knowledge requirement: “It is time for us to tell the local trafficker and everyone else, ‘If 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, at 14 (1986).

50 See H.R. Rep. No. 99-855, at 14 (statement of Sen. Bill McCollum) (stating that if a grocer observed a potential customer peddling drugs and taking cash before walking into the store, the grocer should be held accountable if he accepted the cash from the trafficker in exchange for groceries).


52 See Kacarab, supra note 23, at 22–23. Kacarab states that § 1956(a)(1)(A)(ii) was amended to prevent money launderers from using a loophole in the definition of proceeds in the MLCA:

The loophole was that § 1956 prohibited transactions which were designed to conceal the proceeds of a specified unlawful activity. However, proof of intent to conceal the underlying specified unlawful activity is essential to obtain a conviction under § 1956(a)(1)(B)(i). The big problem is that even if the drug dealer actually did intend to conceal his illicit source of income, proof of such intent may be impossible to obtain. Keep in mind that § 1956 as originally enacted required the government, at a minimum, to prove a defendant’s
Congress’s response to this method of concealment was the Anti-Drug Abuse Act of 1988, which allowed prosecution of § 1956 money laundering with tax evasion under § 7201 and § 7206 of the Internal Revenue Code.\textsuperscript{53}

Section 7201 of the Internal Revenue Code, also known as Title 26 of the United States Code, makes it a felony to willfully evade or attempt to willfully evade or fail to pay a federal tax.\textsuperscript{54} Section 7206 of the Internal Revenue Code, also known as Title 26 of the United States Code, makes it a felony to willfully evade or fail to pay a federal tax.\textsuperscript{54} Section 7206 of the Internal

\begin{quote}
knowledge that funds represent the “proceeds of some form of unlawful activity.” However, tax crimes, such as tax evasion (26 U.S.C. § 7201) or filing of a false return (26 U.S.C. § 7206), unlike other crimes, have no identifiable “proceeds.” Therefore, the government is unable to use the originally enacted § 1956(a)(1)(B)(i) to prosecute individuals who launder illegal proceeds for the purpose of tax evasion.
\end{quote}

\textit{Id.} (footnote omitted). In addition, tax evasion is not considered a specified unlawful activity because the MLCA only covers unlawfully obtained money, which by its nature is non-taxable. MADINGER, \textit{supra} note 33, at 41.

\textsuperscript{53} Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 6471, 102 Stat. 4181, 4378 (1988). The Anti-Drug Abuse Act modified the MLCA, making it a crime to commit or attempt to commit a financial transaction of illegal funds by way of tax evasion under 26 U.S.C. § 7201 or making a false tax return under 26 U.S.C. § 7206. \textit{Id.}; see also 18 U.S.C. § 1956(a)(1)(A)(ii) (making it a crime to commit acts in violation of the tax evasion or false tax return statutes under the Internal Revenue Code). Senator Joseph Biden noted the necessity of modifying the contemporaneous statute to include tax crimes as a form of money laundering activity, stating that under the amendment, “any person who conducts a financial transaction that in whole or in part involves property derived from unlawful activity, intending to engage in conduct that constitutes a violation of the tax laws, would be guilty of a money laundering offense.” 134 \textit{CONG. REC.} 32,699 (1988). Because the nature of § 1956(a)(1)(A)(ii) involves a tax crime, prosecutors must seek authorization from the Tax Division of the Justice Department in order to indict. U.S. DEP’T OF JUSTICE, UNITED STATES ATTORNEYS’ \textit{MANUAL} § 9-105.750 (1997), available at http://www.justice.gov/uso/eousa/foia_reading_room/usam/title9/105mcrm.htm. Such authorization is required when an indictment involves a tax-fraud conspiracy or when intent to commit tax evasion or filing false returns is the sole purpose of the financial transaction. \textit{Id.} Authorization from the tax division is not always required, however, as the U.S. Attorney’s Manual submits three conditions where this is not necessary to proceed on a money laundering indictment:

- It is assumed in situations where Tax Division authorization is not requested that: (1) the principal purpose of the financial transaction was to accomplish some other covered purpose, such as carrying on some specified unlawful activity like drug trafficking; (2) the circumstances do not warrant the filing of substantive tax or tax fraud conspiracy charges; and (3) the existence of a secondary tax evasion or false return motivation for the transaction is one that is readily apparent from the nature of the money laundering transaction itself.

\textit{Id.}

\textsuperscript{54} 26 U.S.C. § 7201. The statute states:

\begin{quote}
Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon
\end{quote}
Revenue Code acts as a corollary to the tax evasion statute and defines tax evasion as withholding, falsifying, or destroying records.\textsuperscript{55} Moreover, the Federal Rules of Criminal Procedure allow prosecutors to join tax evasion with non-tax related offenses under certain guidelines.\textsuperscript{56} Under the amended § 1956, prosecutors may find a violation if a defendant made a financial transaction with intent to engage in tax evasion or false filing of tax returns.\textsuperscript{57} Defendants may use tax evasion as part of a complex money laundering scheme that, due to its

\textsuperscript{55} Id. § 7206(5)(B). The section states:

\begin{quote}
Any person who—

\begin{itemize}
  \item \[i\]n connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully—
  \item \[B\] receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;
\end{itemize}
\end{quote}

\textsuperscript{56} FED. R. CRIM. P. 8(a). Rule 8(a), concerning joinder of offenses, provides that:

The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged—whether felonies or misdemeanors or both—are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

\textsuperscript{57} 18 U.S.C. § 1956(a)(1)(A)(ii); TAX DIV., U.S. DEP’T OF JUSTICE, CRIMINAL TAX MANUAL § 25.03[2] (2008) [hereinafter 2008 CRIMINAL TAX MANUAL], http://www.justice.gov/tax/readingroom/2008ctm/CTM%20Chapter%2025.htm. The manual states that the statute, at the very least, requires only the act and intent to constitute a violation. \textit{Id.} Furthermore, § 1956 applies to evasion of income, gift, excise, estate, or any other tax. \textit{Id.} § 25.03[2][a]. Section 7201 does not require that a defendant successfully evade tax obligations, only that tax evasion was willfully attempted. \textit{Cf.} Spies v. United States, 317 U.S. 492, 498–99 (1943) (stating that including an attempt element in the contemporary tax evasion statute indicated that Congress wanted to distinguish between neglectful and motivated failure to pay taxes). Thus, there is also an imposed knowledge requirement. Cheek v. United States, 498 U.S. 192, 202 (1991) (holding that the prosecutor must prove that the defendant knew the transaction was for the purpose of circumventing tax obligations).
sophistication, would involve multiple persons conspiring to commit money laundering.\textsuperscript{58}

3. Conspiracy

Similarly, conspiracy crimes frequently occur in money laundering schemes because their complicated nature requires multiple participants and gives prosecutors discretion on how to prosecute.\textsuperscript{59} This section explains the federal criminal conspiracy statute ("§ 371"), the MLCA provision for conspiracy ("§ 1956(h)"), the four elements of conspiracy, and conspiracy’s relationship to money laundering schemes.\textsuperscript{60} Conspiracy under § 371 is a conspiracy to commit an offense against or defraud the United States and is charged as a separate offense from the substantive crime that the conspirators contemplated.\textsuperscript{61} Section 1956(h) of the MLCA contains its own provision for indicting money laundering conspiracies, imposing the same penalty for conspiracy as on the substantive offense. 18 U.S.C. § 1956(h).
does not consider conspiracy to be an offense separate from money laundering and sets the penalty for conspiracy to commit a money laundering offense. The statute defines an offense against the United States as a violation of a statute. Similarly, it defines fraud as preventing a lawful function of government and does not require an injury to the government as a result of the fraudulent act.

Two clauses in § 371, the fraud and offense clauses, provide justification for charging a defendant with conspiracy. The statute defines an offense against the United States as a violation of a statute. Similarly, it defines fraud as preventing a lawful function of government and does not require an injury to the government as a result of the fraudulent act.

Section 371 is a modern version of the original federal conspiracy act that Congress passed in 1866, making it illegal for government distillery inspectors to conspire with distillery owners to avoid paying taxes. Terry D. Aronoff, Acts of Concealment and the Continuation of a Conspiracy, 17 GA. L. REV. 539, 539–40 (1983); see also Law of May 17, 1879, ch. 5440, 21 Stat. 4 (current version at 18 U.S.C. § 371 (2006)) (criminalizing a conspiracy of two or more persons to defraud or commit an offense against the United States, including any act to effect the object of the conspiracy). Although Congress has since expanded the scope of the conspiracy statute, the Supreme Court has been reluctant to view conspiracy too broadly. Aronoff, supra note 61, at 540; see also, e.g., Grunewald v. United States, 353 U.S. 391, 404 (1957) (“[W]e will view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of conspiracy prosecutions.”).

United States v. Notch, 939 F.2d 895, 901 (10th Cir. 1991) (defining fraud as keeping the government from performing a lawful function). In Notch, the defendant argued that a charge of conspiracy was in error because the prosecution based its charge on the fraud clause of § 371. Id. at 900. The defendant asserted that the offense clause of § 371 was a
and § 1956(h) consist of agreement, intent to complete the offense conspired, and knowledge that the conspiracy existed; however, only § 371 requires commission of overt acts. Like the MLCA, the general conspiracy statute is given a broad interpretation for each element.

Courts have been reluctant to consider conspiracies with specific objectives to be outside the scope of § 371. Conspiracy charges joined more appropriate justification for the conspiracy charge because he committed an offense against the United States by failing to file an accurate tax return. The court held that filing a false tax return was fraud, reasoning that it concealed taxable income and prevented the IRS from performing an accurate collection.

Prosecutors must also prove that the co-conspirators knew they were voluntarily working toward a conspiracy. The last requirement is that the co-conspirators made overt acts in furtherance of a conspiracy. But compare 18 U.S.C. § 371 (requiring an overt act), with 18 U.S.C. § 1956(h) (not requiring an overt act);

The illegal goal element may be met without co-conspirators knowing they were violating a specific federal statute constituting an offense or a broader fraudulent act against the United States. Additionally, the knowledge element is lax, only requiring some knowledge of the conspiracy and its details or an act that advanced the conspiracy’s objectives.

Alternatively, some courts require a slight connection or foreseeability of defendants’ action toward the conspiracy. id. at 532-33. Lastly, an overt act can be any act, lawful or not, if it advances the conspiracy. id. at 533; see, e.g., United States v. Collazo-Aponte, 216 F.3d 163, 196–97 (1st Cir. 2000); United States v. Comeaux, 955 F.2d 586, 591 (8th Cir. 1992); United States v. Christian, 942 F.2d 363, 367 (6th Cir. 1991). A defendant may be liable for any offense another co-conspirator committed if the offense was in furtherance of or was a foreseeable result of the conspiracy. Pinkerton v. United States, 328 U.S. 640, 645–48 (1946).

Cf. Doyle & Kenny, supra note 10, at 193–201 (discussing federal circuit court cases that questioned whether antitrust prosecutions should be distinguished from conspiracies in general). Compare United States v. A-A-A Elec. Co., 788 F.2d 242, 245 (4th Cir. 1986) (holding that an antitrust conspiracy for collusive bidding is no different than a conspiracy
with tax evasion charges are common because tax evasion prevents the IRS from assessing and collecting taxes owed to the government. Section 371 requires application of the limitation period of a joined offense rather than directly providing a limitation period on a conspiracy charge and excludes its application to more specific conspiracy provisions. Because the Internal Revenue Code does not have a conspiracy statute, prosecutors justify a tax-related conspiracy under §

under § 371 and continues until all objectives of the conspiracy had been achieved, with United States v. Inyrco, 642 F.2d 290, 294-95 (9th Cir. 1981) (holding that a bid-rigging conspiracy retained the character of an antitrust conspiracy after the defendants completed their specific objectives because they enjoyed the benefits of restrained trade). Under § 371, a conspiracy to restrain trade would continue until the last overt act. Doyle & Kenny, supra note 10, at 192-93. This includes unjust enrichment as a result of the conspiracy, which Doyle and Kenny suggest, indefinitely extends the conspiracy. Id. at 192. In contrast, the statute of limitations under the Sherman Act commences when the conspirators succeed in their objectives or abandon the conspiracy altogether. Id. Doyle and Kenny contend that distinguishing an antitrust conspiracy from a conspiracy in general is appropriate because the goal in antitrust conspiracies is not to enrich the conspirators, but to restrain trade. Id. at 204; see also United States v. Kissell, 218 U.S. 601, 607 (1910) (noting the difference between conspiracies where “mere continuance of the result of a crime does not continue the crime” and a conspiracy that has “a continuous result that will not continue without the continuous co-operation of the conspirators to keep it up”). This distinction would also give effect to the statute of limitations in the Sherman Act. Kissell, 218 U.S. at 205. But cf. Jancko-Baken, supra note 7, at 2190 (arguing that the lack of an overt act requirement in RICO prosecutions should not distinguish RICO conspiracies from traditional conspiracies). According to Jancko-Baken, RICO conspiracies that occur in a business context group defendants together as part of one enterprise, illegal or not. Id. at 2189. The focus on the enterprise puts defendants long inactive in the conspiracy at risk of having no effective time bar to a RICO prosecution. Id. Under a traditional conspiracy analysis, the focus is on whether the objectives of the conspiracy have been met or the time at which a defendant’s participation ends. Id. at 2190. To move away from considering the whole enterprise in RICO conspiracy prosecutions, Jancko-Baken contends, would protect conspirators that have ended their involvement in the conspiracy. Id. Jancko-Baken claims this proposal would treat each defendant’s assertion that the indictment is barred by the statute of limitations separately, just as the general conspiracy statute would. Id.

See David Gomez & Keith Schomig, Tax Violations, 44 AM. CRIM. L. REV. 1025, 1064 (2007) (averring that conspiracies to commit tax violations are justified under the defraud clause in § 371); cf. FED. R. CRIM. P. 8(a) (permitting joinder of offenses occurring within the same act or transaction to be presented against a defendant at a single trial).


[i]n the general conspiracy statute, 18 U.S.C. § 371, contains no period of limitations. Limitations, for indictments under § 371, are those applied by other provisions of law, or where there are none, by 18 U.S.C. § 3282 which is a general statute of limitations applicable “except as otherwise expressly provided by law.”

Lowder, 492 F.2d at 956. In addition, § 371 does not explicitly preclude its own application when another substantive statute allows for prosecution for conspiracy to commit that substantive act. 18 U.S.C. § 371.
This raises the question of whether tax evasion satisfies the concealment element of money laundering, which the Supreme Court addressed in *Grunewald v. United States*.

In *Grunewald*, the Court ruled that acts committed after the goals of the conspiracy were completed cannot further the conspiracy without direct evidence that the conspirators agreed to those acts at the time they originally conspired.

Elsewhere, the Internal Revenue Code allows for conspiracy to defraud the United States, but only officers and employees of the United States acting under the revenue laws are subject to prosecution. 26 U.S.C. § 7214(a)(4) (2006).

See Aronoff, supra note 61, at 540 (noting the apparent problem in conspiracy law of prosecutors using acts of concealment as evidence of overt acts in furtherance of a conspiracy). Aronoff states that the statutory definition of concealment is ambiguous and challenging for courts to define, which gives prosecutors deference in proving an act continued the conspiracy. See id. at 541–42 (footnote omitted) (“A sympathetic Supreme Court has held that the prosecution may therefore rely on inferences drawn from an alleged conspirator’s course of conduct to prove the scope of the alleged unlawful agreement.”). In *Grunewald v. United States*, the Supreme Court addressed the issue of alleged acts of concealment after a conspiracy. 353 U.S. 391, 394 (1957); see also United States v. Bonanno, 177 F. Supp. 106, 112–13 (S.D.N.Y. 1959), rev’d sub nom. United States v. Bufalino, 285 F.2d 408 (2d Cir. 1960) (stating that violation of an anti-concealment statute constitutes concealment of a conspiracy, which the Second Circuit rejected on appeal). The Second Circuit in *Bufalino* reaffirmed the direct evidence standard in *Grunewald* and rejected the *Bonanno* court’s reasoning that violation of a statute is evidence of an original agreement to conceal. *Bufalino*, 285 F.2d at 416. The court stated that even if there was proof of an original agreement to conceal, the government has a burden to prove intent to conceal by those acts. *Id.* The *Bufalino* court then concluded that the government failed to meet its burden of proving that the defendants agreed to commit perjury and obstruction of justice in a formal investigation. *Id.* Because the alleged acts were not done during a formal investigation, the court found there was no direct evidence of an overt act to continue a conspiracy. *Id.; see also United States v. Davis*, 623 F.2d 188, 192 (1st Cir. 1980) (forbidding prosecution from implying a direct connection between an act of concealment and the original agreement by circumstantial evidence); United States v. Franzese, 392 F.2d 954, 964 (2d Cir. 1968) (concluding that an agreement between conspirators to furnish bail and counsel before committing bank robberies constituted direct evidence of concealment connected to the original agreement); Green v. U.S. Prob. Office, 504 F. Supp. 1003, 1005-06 (N.D. Cal. 1980), rev’d, 671 F.2d 505 (9th Cir. 1981) (stating that completion of a conspiracy precludes finding that subsequent acts of concealment are in furtherance of a conspiracy). But see United States v. Upton, 559 F.3d 3, 13 (1st Cir. 2009), cert. denied, 130 S. Ct. 397 (2009) (distinguishing *Grunewald* on the grounds that an act of concealment was a necessary part of a money laundering scheme; therefore, failing to file taxes after completion of a money laundering scheme was an act in furtherance of that scheme); United States v. Mackey, 571 F.2d 376, 383–84 (7th Cir. 1978) (allowing a jury to decide based on inferences whether an act of tax evasion was connected with the original agreement to conspire); United States v. Nowak, 448 F.2d 134, 139 (7th Cir. 1971) (allowing a jury to infer that defendants intended to conceal misapplication of loans from the federal government because the defendants allegedly violated an anti-concealment statute); United States v. Hickey, 360 F.2d 127, 141 (7th Cir. 1966) (extending *Grunewald*’s standard to require only ample evidence indicating a connection to an original agreement).
together. Thus, the Supreme Court ruled that a conspiracy must end at some point in time. Following Grunewald, circuit court rulings, such as the Seventh Circuit’s decision in United States v. Hickey that required ample evidence of an agreement on the use of tax evasion as concealment, further muddled the issue. A recent First Circuit decision, United States v. Upton, diminished the Grunewald standard and held that direct evidence is not required to show that tax evasion was an act in furtherance of a money laundering scheme. Such rulings, like

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73 Grunewald, 353 U.S. at 414–15. The defendants in Grunewald conspired to commit tax evasion through the use of one of the defendants, a lawyer who obtained no prosecution rulings in favor of some defendants who were suspected of evading their taxes. Id. at 395. In return for obtaining these rulings the lawyer-defendant was paid, the reporting of which was then covered up. Id. at 395–96. Further investigation by the IRS eventually made the taxpayer-defendants reveal the conspiracy in which they were involved, leading to subsequent prosecution. Id. The defendants appealed, arguing their prosecution occurred after the limitation period in 18 U.S.C. § 3282 had expired. Id. The Court found in favor of the defendants. Id. at 415. The lawyer-defendant’s act of concealing the reports per an agreement, the Court reasoned, could not be deemed a part of the original conspiracy of tax evasion. Id. at 404 (following Krulewitch v. United States, 336 U.S. 440, 444 (1949), which rejected the government’s argument that the statement implied a conspiracy to conceal for lack of an express agreement to conceal and held that an out-of-court statement made by a co-conspirator regarding a conspiracy was not in furtherance of the conspiracy). Thus, the Court permitted the defendants to have a new trial because their current convictions for conspiracy would have rested on impermissible grounds. Id. at 424.

74 Id. at 404–05 (stating that policy concerns about extending the scope of a conspiracy beyond Congress’s imposed limitation period requires that not all acts of concealment constitute furtherance of a conspiracy).

75 Hickey, 360 F.2d at 141. The defendants in Hickey appealed a conviction for conspiracy to defraud a savings and loan association. Id. at 130. One of the appeals concerned the government’s admission of post-conspiracy evidence, which the defendants contended was inadmissible because the conspiracy had already ended. Id. at 140. The court accepted the defendants’ argument that the Supreme Court’s decision in Grunewald controlled, but stated that the evidence was still admissible. Id. at 141. The court reasoned that by disguising the fraudulent nature of the loans and their borrowers, the defendants’ acts constituted a conspiratorial design. Id. Additionally, acts after the completion of the defendants’ objectives, including altering trusts and stiffing a third-party who signed off on the loans, supplied ample evidence that the acts of concealment were part of the original conspiratorial design. Id.

76 See Upton, 559 F.3d at 13. In Upton, the defendant used admittedly stolen money to partly purchase property. Id. at 6. In 1997, he then paid the remaining balance with a series of cashier’s checks to various banks or the same bank several times, after which an accomplice took title by way of a trust. Id. at 6–7. The defendant and his accomplice then used this property to take out sham mortgages and in 1999 sold the property for a greater amount than purchased. Id. at 7. The defendant filed his tax return for 1997 in 2000, omitting the stolen money from his reported income. Id. Subsequent tax returns from him or his accomplice were either false or not filed. Id. In 2004, following an indictment for money laundering and an additional indictment for money laundering and tax evasion, a jury found the defendant guilty. Id. at 8. The district court did not allow a jury instruction on the limitation period because the defendant had not raised it as a defense at the charge conference. Id. at 7–8. The defendant appealed, claiming the statute of limitations barred
Upton and Hickey, have implications for statutes of limitations, which will be introduced in the next Section.\footnote{See infra Part II.B (discussing the policies behind statutes of limitations, giving special attention to the federal statutes of limitations for non-capital offenses and tax crimes).}

\section*{B. Federal Statutes of Limitations}

This Section will discuss statutes of limitations and their relationship to the crime of money laundering.\footnote{See infra Parts II.B.1–2 (discussing the policy behind statutes of limitations in general, the federal general statute of limitations that acts as a fallback provision for non-capital offenses, the statute of limitations applicable to some tax offenses, and the relationship between the statutes in the context of a money laundering prosecution).} First, this Section will explain the legislative policy behind statutes of limitations in state and federal law and their general characteristics.\footnote{See infra Part II.B.1 (explaining the policy and intent legislatures may have in enacting a statute of limitations, the common characteristics of statutes, and how courts interpret them).} Next, this Section will discuss the

the charge of conspiracy to launder money. \textit{Id.} at 8. The First Circuit rejected the defendant’s argument that Grunewald applied. \textit{Id.} at 13. The defendant raised four points, all of which the court rejected in upholding the indictment. \textit{Id.} First, the concealment provision in § 1956 required the prosecution to prove that the defendant designed the act to conceal the proceeds, which is a jury question and one the jury could have reasonably found. \textit{Id.} at 11–12; see also 18 U.S.C. § 1956(a)(1)(B)(i) (2006) (statutory numbering system omitted) (including a requirement that the defendant know that the transaction was “designed in whole or in part—to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity”). Next, the court responded to the defendant’s argument that Grunewald limited the scope of defining an act of concealment up to the point when the anticipated economic benefits were realized. \textit{Upton}, 559 F.3d at 13. The court rejected this argument, stating that the jury could have reasonably found that the evasion of taxes furthered the main objective of the defendant’s money laundering scheme. \textit{Id.} at 13–14. Third, the court rejected the defendant’s claim that there was no expressed original agreement to satisfy Grunewald because the First Circuit required only that the act of concealment had to be foreseeable to one co-conspirator. \textit{Id.} at 14. Finally, the defendant’s argument that his estrangement from his co-conspirators amounted to a withdrawal from the conspiracy held little weight because the defendant waived this defense by not affirmatively ending the conspiracy. \textit{Id.} at 15. The First Circuit in \textit{Upton} stated as an aside that concealment in a money laundering scheme prevents authorities from discovering the illegal nature of the proceeds and is as important as repainting a car in a conspiracy of grand theft auto. \textit{Id.} at 13 n.9; see United States v. Mann, 161 F.3d 840, 859 (5th Cir. 1998) (stating that concealment of financial transactions by tax evasion was central to the conspiracy to make fraudulent transactions, thus the holding in Grunewald and in subsequent cases would not support finding the conspiracy finished before the acts of alleged concealment); United States v. Goldberg, 105 F.3d 770, 774–75 (1st Cir. 1997) (finding that defendant filing false tax returns, without evidence that co-conspirators agreed to this, constituted an act in furtherance of a conspiracy because it enabled the co-conspirators to interfere with the IRS); United States v. Esacove, 943 F.2d 3, 5 (5th Cir. 1991) (finding that a defendant’s statements to an FBI informant were not hearsay because the defendant made them to conceal a conspiracy to commit money laundering and were a necessary part of furthering that conspiracy).
federal general statute of limitations for non-capital offenses, which applies to money laundering crimes, and the statute of limitations that applies to tax offenses.\textsuperscript{80}

1. Policy and General Characteristics of Statutes of Limitations

Legislatures may impose a time limit for a general or specific cause of action to encourage, among other things, diligent action by litigants to bring a cause of action.\textsuperscript{81} The Supreme Court views statutes of limitations as statutes of repose “established to cut off rights, justifiable or not, that might otherwise be asserted and they must be strictly adhered to by the judiciary.”\textsuperscript{82} These are policy-based instruments that balance the interests of plaintiffs, defendants, and society.\textsuperscript{83} They also represent the intentions of legislatures related to causes of action.\textsuperscript{84}
The Supreme Court has held that courts should not question the legislative intent in enacting a statute of limitations. The role of courts, rather, is to determine what limitation period governs. A court must also evaluate the conditions that require it to toll a statute of limitations and not bar an action against a defendant. Courts approach statutes of limitations became popular as the judiciary became more responsive to the policy motivations behind civil statutes of limitations. Other common law jurisdictions also view statutes of limitations as legislative tools to advance the legislature’s policy interests as well as executive tools to allow prosecutorial discretion. See, e.g., DEP’T OF FIN. CAN., ENHANCING CANADA’S ANTI-MONEY LAUNDERING AND ANTI-TELEROBST FINANCING REGIME § 6.15 (2005), available at http://www.fin.gc.ca/toc/2005/enhancing_eng.asp (advocating for the extension of the country’s non-compliance limitation period in Canada’s money laundering statute in order to provide prosecutors greater flexibility in choosing whether to prosecute). But see Note, The Statute of Limitations in Criminal Law: A Penetrable Barrier to Prosecution, 102 U. PA. L. REV. 630, 632 (1954) (claiming that the policies behind statutes of limitations are superfluous and represent no particular legislative motivation to provide a limitation period). Elaborating on a possible countervailing result of statutes of limitations favoring defendants, the author states:

[T]here is the possibility that the statutes may to a certain extent encourage criminal activity by diminishing the certainty of punishment. There may be a particular danger that where a first offender’s prosecution is barred by a statute, he may be encouraged to return to criminal activity. With the habitual criminal upon whom prior legal sanctions have apparently had little effect, perhaps the criminal law is best served by his removal from society; to the extent that this is true, and assuming that there is no doubt of guilt, the statute of limitations is not desirable. Obviously, the statute also prevents realization of the state’s desire for retribution.

The author then suggests giving prosecutors discretion whether to continue prosecution as an alternative to the limitations period. See Young v. United States, 535 U.S. 43, 49–50 (2002) (acknowledging that limitation periods are subject to equitable tolling and states that the Court will presume Congress drafts limitation periods with equitable tolling in mind, particularly in applying rules and principles of equity jurisprudence). Exceptions to this rule apply when the statute does not expressly provide for an exception or counters Congress’s intent. Id. at 49; see also Iwanowa v. Ford Motor Co., 67 F. Supp. 2d 424.
limitations with policies that seek to balance the interests between plaintiffs and defendants, compel plaintiffs to take action, protect defendants from stale claims, protect defendants from surprising evidence, fraud, or both, and promote efficiency in courts. A related policy may force courts to use analogous limitation periods if a statute does not provide one for a specific cause of action. Likewise, where

467–68 (D.N.J. 1999) (rejecting plaintiff’s assertion that defendant misled her on information because her claims were vague). Under 18 U.S.C. § 3282, a properly submitted indictment tolls the limitation period. United States v. Grady, 544 F.2d 598, 601 (2d Cir. 1976). Tolling a limitation period means that the period stops running. BLACK’S LAW DICTIONARY 1625 (9th ed. 2009). In simpler terms, tolling suspends the statute of limitations where prosecutors or plaintiffs are unable to commence an action through no fault of their own. JAMES E. CLAPP, WEBSTER’S DICTIONARY OF THE LAW 431 (2000).

88 See Bd. of Regents v. Tomanio, 446 U.S. 478, 487–88 (1980) (stating in dicta that statute of limitations have long been respected as fundamental to the judicial system, which recognizes the interests of plaintiffs not to have defendants keep him from litigating his claim, but also recognizes the interest of defendants not to have a plaintiff litigate a claim after so much time that it impairs the fact-finding process or upsets expectations); DeMichele v. Greenburgh Cent. Sch. Dist. No. 7, 167 F.3d 784, 788 (2d Cir. 1999) (“[Statutes of limitation] reflect legislative judgments concerning the relative values of repose on the one hand, and vindication of both public and private legal rights on the other.”). For an example of how limitations compel the plaintiff to take action, see Norgart v. Upjohn Co., 981 P.2d 79, 87 (Cal. 1999), which states that the intent of statutes of limitations is to force plaintiffs to bring fresh claims against defendants. For examples of how limitation periods protect defendants, see Am. Pipe & Constr. Co. v. Utah, 414 U.S. 538, 554 (1973), which states that statutes of limitations are “designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared”; Cook v. City of Chicago, 192 F.3d 693, 695 (7th Cir. 1999), which recognizes the policy of protecting defendants from stale evidence that is behind statutes of limitations; and Wade v. Danek Med., Inc., 182 F.3d 281, 288 n.9 (4th Cir. 1999), which states that a statute of limitations puts a defendant on notice of claims against him within the specified period. For examples of how limitation periods promote judicial efficiency, see English v. Bousanara, 9 F. Supp. 2d 803, 807 (W.D. Mich. 1998), which stated that limitation periods “promote judicial efficiency by preventing defendants and courts from having to litigate stale claims”; and Doe v. Roe, 955 F.2d 951, 960 (Ariz. 1998), which explained that statutes of limitations are intended to prevent plaintiffs from making stale claims against both the defendant’s and the court’s interests. But see Pearson v. Ne. Airlines, Inc., 309 F.2d 553, 559 (2d Cir. 1962) (noting that while the policy behind statutes of limitations is to prevent litigation of stale claims, the substantive character of the limitation period in relation to the claim may lean in favor of the defendant when two statutes of limitations procedurally conflict).

89 Boyne v. Town of Glastonbury, 955 A.2d 645, 652 (Conn. 2008) (rejecting plaintiff’s argument that the statute lacking a limitation period did not bar his claim because public policy requires courts to offer certainty to both parties and thus would favor applying a limitation period in a cause of action). The most applicable statute rule is derived from the Supreme Court’s opinion in DelCostello v. Int’l Bhd. of Teamsters, 462 U.S. 151, 162 (1983). In DelCostello, the Court addressed the issue of whether federal courts should apply state limitation periods for enforcement of federal law. Id. at 161–62. The Court answered this in the negative, preferring instead an approach of borrowing federal time bars when applicable: “[W]e have declined to borrow state statutes but have instead used timeliness
causes of action may include multiple statutes of limitations, courts might look at the substance of the action to determine which statute of limitations controls.\textsuperscript{90}

Similarly, state courts resort to statutory construction principles based on the common law, favoring statutes of limitations that proffer the longest limitation period or establish the most specific cause of action.\textsuperscript{91} Federal courts discuss whether to apply the most suitable rules drawn from federal law—either express limitations periods from related federal statutes, or such alternatives as laches.” \textit{Id.} at 162. The Court explained that state statutes of limitations are mechanical and do not accommodate principles of equity inherent in federal causes of action. \textit{Id.}

\textsuperscript{90} See, e.g., \textit{Vrban v. Deere & Co.}, 129 F.3d 1008, 1009–10 (8th Cir. 1997). \textit{Vrban}, heard in the Eighth Circuit, interpreted Iowa state statutes of limitations. \textit{Id.} at 1009. The plaintiff in \textit{Vrban} sued the defendant company for wrongful termination after requesting compensation for work-related injuries. \textit{Id.} The defendant claimed that the state’s two-year statute of limitations on tort claims applied because the termination was the basis for either a tort claim or one concerning wages, which also has a two-year limitation period. \textit{Id.} The plaintiff argued that the underlying claim was one that did not provide a two-year statute of limitations but would instead trigger a five-year limitation period. \textit{Id.} The Eighth Circuit applied the Iowa Supreme Court’s rule that determining the statute of limitations for a specific cause of action requires looking at the actual nature of the action. \textit{Id.} Referencing Iowa Supreme Court holdings on what constitutes a tort action, the court then held that the five-year statute of limitations applied, reasoning that wrongful termination of employment did not constitute a tort. \textit{Id.} at 1010.

\textsuperscript{91} See, e.g., \textit{Fed. Deposit Ins. Co. v. Grant}, 8 F. Supp. 2d 1275, 1298 (N.D. Okla. 1998) (holding that when two statutes of limitations may apply in any given case, the court will look at the statute containing the longer limitation period); Gustafson v. Bridger Coal Co., 834 F. Supp. 352, 357 (D. Wyo. 1993) (stating that under Wyoming law, absence of legislative intent as to whether a statute of limitations applies to an unspecified tort action allows courts to prefer longer limitation periods); McDowell v. Alaska, 957 P.2d 965, 971 (Alaska 1998) (favoring the longer of two limitation periods because courts disfavor the use of the statute as a defense); Malone v. Malone, 991 S.W.2d 546, 550 (Ark. 1999) (stating that policy dictates using the longer limitation period where the issue is unclear); Amco Ins. Co. v. Rockwell, 940 P.2d 1096, 1097 (Colo. App. 1997) (favoring the longer limitation period when two statutes of limitations apply because such statutes “are in derogation of a presumptively valid claim”); Global Fin. Servs. v. Duttenhefner, 575 N.W.2d 667, 671 (N.D. 1998) (favoring the longer limitation period when there is a reasonable dispute between two applicable statutes of limitations). The rule favoring the longest limitation period may only apply if the favored limitation period is reasonable. Guertin v. Dixon, 864 P.2d 1072, 1077 (Ariz. Ct. App. 1993). For examples of courts applying the most specific cause of action rule, see \textit{Grulke v. Erickson}, 920 P.2d 845, 849 (Colo. App. 1995), which explained that the statute of limitations that is the most specific, most recently enacted, and offers the longest limitation period should be applied in favor of another applicable statute; \textit{Watseka First Nat’l Bank v. Horney}, 686 N.E.2d 1175, 1178 (Ill. Ct. App. 1997), which stated that the statute of limitations that most specifically relates to the cause of action must be applied; \textit{Boyd v. C & H Transp.}, 902 S.W.2d 823, 824 (Ky. 1995), which stated that “[a] specific statute of limitation preempts a general statute of limitation where there is a conflict”; \textit{Reinke Mfg. Co. v. Hayes}, 590 N.W.2d 380, 387 (Neb. 1999), which favored a statute of limitations providing a specific cause of action over a more general statute of limitations out of respect for the legislature’s intention that a special limitation period apply to a particular subject; and
statute rule or state statute of limitations depending on the cause of action, but they also question the application of federal limitation periods to state causes of action where there is Congressional silence and lack of caselaw. While states create substantive rights that underlie statutes of limitations, the federal statutes of limitations adopt the common law approach that the statute of limitations is an affirmative defense the defendant may waive without a timely assertion. Regardless of whether they are substantive rights or affirmative defenses, statutes of limitations balance the following interests: (1) the protection of defendants from claims that are too old to litigate, (2) the opportunity for prosecutors and plaintiffs to bring claims, and (3) the preservation of judicial resources.

2. The General Federal Statute of Limitations and the Tax Crimes Statute Under § 6531

The federal criminal statute of limitations for non-capital offenses (“general statute of limitations” or “§ 3282”) establishes a five-year limitation period except when another statute expressly imposes a limitation period. Under the general statute of limitations, an indictment must be made within five years of the commission of the

Thomas Steel, Inc. v. Wilson Bennett, Inc., 711 N.E.2d 1029, 1035 (Ohio Ct. App. 1998), which affirmed that when a court must select a statute of limitations to apply to a statutory cause of action, “a special statutory provision which relates to the specific subject matter involved in the legislation is controlling over a general statutory provision which might otherwise be applicable.” See, e.g., Wallace v. Hardee’s of Oxford, 874 F. Supp. 374, 376 (M.D. Ala. 1995) (applying DelCostello in lieu of defendant’s argument that because the cause of action lacked a statute of limitations, the court should borrow the most applicable limitation period from federal law). The court in Wallace, in an action against the defendant for violating the Veterans’ Reemployment Rights Act, found that legislative silence on the statute made it unclear as to whether federal limitation periods should apply. Id. at 376. The court found, however, that a congressional report and the lack of federal case law on the matter went against applying a statute of limitations. Id. at 376–77. Thus, the court decided to not apply a federal limitation period because the statute did not authorize it. Id. at 377.

Nelson, supra note 81, at 459–60. If a defendant waived the defense, however, he may still raise it in an amended answer if it is equitable to do so. Id. at 460. Raising it in this way, the affirmative defense would still be subject to summary judgment, as well as a motion to dismiss. Id.

See supra notes 81–93 (stating how the federal courts have recognized the three policy interests underlying using statutes of limitations and giving a list of state and federal cases where imposing limitation periods influences litigants in ways that favor these policies).

See 18 U.S.C. § 3282(a) (2006) (“Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.”).
offense. The circuit courts have found that should the prosecution accomplish this, neither the due process rights nor the speedy trial right of the defendant is violated. By contrast, § 3282’s counterpart statute of limitations for capital offenses, § 3281, offers no limitation period.

One of the main goals behind the general statute of limitations is to protect the defendant from a prosecution, which, obscured over time, would be difficult to defend. The second reason is to grant the prosecution enough time to collect information necessary for an indictment. It does not give the prosecution, however, a license to delay an indictment against the defendant. Federal courts have

96 Id. Bringing an indictment tolls the statute when it is considered found according to the statute. E.g., United States v. Srulowitz, 819 F.2d 37, 40 (2d Cir. 1987) (stating that an indictment is found when brought before a grand jury and filed, which tolls the limitation period).

97 See United States v. Radmall, 591 F.2d 548, 550 (10th Cir. 1978) (finding no due process violation where the prosecution only delayed indicting the defendant to ensure a more certain case against him and was not done to gain a tactical advantage which would prejudice the defendant); United States v. Edwards, 458 F.2d 875, 882 (5th Cir. 1972) (rejecting defendants’ argument that the prosecution’s delay in bringing the indictment violated due process because the prosecution brought the indictment within the limitation period and was not found to be prejudicial); United States v. Hephner, 410 F.2d 930, 932–33 (7th Cir. 1969) (holding that prosecutorial delay in bringing an indictment did not violate defendant’s Sixth Amendment right to a speedy trial because the indictment was timely and the defendant did not make a request for a speedy trial).

98 See 18 U.S.C. § 3281 (2006) (“An indictment for any offense punishable by death may be found at any time without limitation.”).

99 See Toussie v. United States, 397 U.S. 112, 114–15 (1970), in which the Supreme Court stated that:

The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity.

Id.

100 See United States v. Gibson, 490 F.3d 604, 608 (7th Cir. 2007) (“The statute of limitations and its tolling provisions are designed to allow the government time to investigate crimes while protecting individuals from defending against charges for distant offenses.”).

construed statutes of limitations in favor of the defendant. Similarly, courts also interpret limitations statutes in favor of repose and place a time limit on prosecutors to initiate an action.

In federal law, the general statute of limitations acts as a fallback provision limiting application where a crime falls within a more specific statute of limitations in the United States Code. Thus, the general statute of limitations acts as a fallback or catch-all provision with respect to all conspiracy charges under § 371. It is not uncommon for federal

102 See e.g., United States v. Satz, 109 F. Supp. 94, 96 (N.D.N.Y. 1952) (stating that statutes of limitations are “matters of grace” and “are to be liberally construed in favor of the defendant”).

103 E.g., United States v. Scharton, 285 U.S. 518, 522 (1932). In Scharton, the Court held that a provision of the Revenue Act expanding the limitation period for attempts to defraud the United States by tax evasion did not apply in favor of the defendant. Id. The Court interpreted the language of the statute narrowly, stating that the exception specified the crime of fraud, which the government failed to prove because it did not show the defendant’s intent to commit fraud. Id. at 521. The Court also rejected the government’s theory that fraud is an inherent element of tax evasion, stating that fraud is an element in other offenses in the Internal Revenue Code. Id. Thus, the Court held in favor of the statute’s three-year limitation period, stating that “as the section has to do with statutory crimes, it is to be liberally interpreted in favor of repose, and ought not to be extended by construction to embrace so-called frauds not so denominated by the statutes creating offenses.” Id. at 522; see also United States v. Habig, 390 U.S. 222, 227 (1968) (acknowledging the rule interpreting statutes in favor of repose following Scharton, but rejecting defendant’s theory that the six-year limitation period for tax evasion commences on the date taxes are due based on Congressional intent relative to the statute of limitations).

104 See 18 U.S.C. § 3283 (2006) (stating that no limitation period applies to an offense of sexual abuse, physical abuse, or kidnapping of a child unless the child is no longer living, at which point the limitation period is ten years after the offense); id. § 3285 (applying one-year limitation period in proceeding for criminal contempt against any person, corporation, or association); id. § 3286 (instituting an eight-year limitation period for terrorism offenses defined by statute and removing limitation period for terrorism offenses resulting in or creating a foreseeable risk of death or serious bodily injury of another); id. § 3291 (expanding the limitation period to ten years for circumventing or conspiring to circumvent federal nationality, citizenship, and passport laws); § 3295 (imposing a ten-year limitation period on non-capital arson offenses); 26 U.S.C. § 6351 (2006) (applying a three-year limitation period for tax-related offenses which is expanded to six years when exceptions apply). The Supreme Court has held, however, that this does not apply to regulations that do not impose perpetual duties. E.g., Toussie, 397 U.S. at 120 (holding a regulation empowered by the Draft Act did not imply Congress’s intent to make failing to register for a military draft a continuing offense that keeps the limitation period running). Congress eventually superseded Toussie. United States v. Eklund, 733 F.2d 1287, 1296 (8th Cir. 1984) (stating that Toussie no longer applies after Congress amended the Draft Act imposing a five-year limitation period to run after the defendant reached the age of twenty-six).

105 See United States v. Grace, 434 F. Supp. 2d 879, 884 n.5 (D. Mont. 2006) (“Because the conspiracy statute does not contain its own statute of limitations, the offense carries the five-year statute of limitations generally applicable to non-capital federal criminal offenses.”); see also 18 U.S.C. § 371 (lacking a limitation period for conspiracy charges).
courts to borrow this limitation period where there are no other applicable statutes of limitations available in a cause of action. For example, 26 U.S.C. § 6531 sets a three-year limitation period for tax offenses unless an offense falls within one of eight exceptions, which extends the limitation period to six years.

106 Nelson, supra note 81, at 486–87 (stating that borrowing the most suitable federal statute of limitations, while not the norm, has happened when it is more analogous than available state statutes and “when the federal policies at stake and the practicalities of litigation make the rule a significantly more appropriate vehicle for interstitial lawmaking”).

107 26 U.S.C. § 6531. The section provides in part:

No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws unless the indictment is found or the information instituted within 3 years next after the commission of the offense, except that the period of limitation shall be 6 years—

(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner;
(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof;
(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any manner arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document);

(5) for offenses described in sections 7206(1) and 7207 (relating to false statements and fraudulent documents);
(8) for offenses arising under section 371 of Title 18 of the United States Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof.

Id.; see also United States v. Ely, 140 F.3d 1089, 1090 (5th Cir. 1998) (favoring the general statute of limitations over § 6531 in an indictment for conspiracy when the indictment did not include a specific tax violation). The defendant in Ely claimed that § 6531 applied because the underlying offense fell within the statute. Ely, 140 F.3d at 1090. The court rejected this claim, reasoning that one of the elements of that offense did not apply to him. Id. Thus, the indictment was subject to a § 3282 limitation period because it was only for conspiracy to commit that offense. Id.; cf. United States v. Lowry, 409 F. Supp. 2d 732, 740-41 (W.D. Va. 2006) (stating that the broad purpose of the Bank Secrecy Act requires the general statute of limitations, which did not toll prosecution for attempting to prevent the IRS from collecting taxes by not reporting financial instruments owned in foreign countries). The court in Ely agreed with the Fourth Circuit’s decision in Lowder that “[l]imitations, for indictments under § 371, are those supplied by other provisions of law, or where there are none, by . . . § 3282.” Ely, 140 F.3d at 1090 (quoting United States v. Lowder, 492 F.2d 953, 956 (4th Cir. 1974)). The underlying offense in Lowder was tax

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Under § 3282, commencement of the limitation period begins at the completion of the offense, the substance of which Congress defines by statute, and an indictment must appear within five years after commencement. The Supreme Court has held that legislative intent should guide the courts in determining when the statute of limitations begins to run. The lower federal courts, however, are split in evasion, which fell within an exception in § 6531 that extended the limitation period to six years. Lowder, 492 F.2d at 955; see also 26 U.S.C. § 7206(1) (2006) (stating that a person commits tax evasion by willfully making false statements on a tax return, statement, or other document). The defendant argued that the underlying offense was conspiracy, which would be subject to § 3282 instead of § 6531. Lowder, 492 F.2d at 955. The court disagreed, preferring to adhere to a strict reading of both statutes of limitations and held that § 6531 applied when the indictment accuses defendant of conspiring to commit tax evasion. Id. at 956. The discrepancy between these two cases appears to have originated from a footnote in Grunewald stating that § 3282 governed in that case. See Grunewald v. United States, 353 U.S. 391, 396 n.8 (1957) (stating that § 3282 will apply unless otherwise provided by statute). The court in Lowder reasoned that the Grunewald footnote was not a part of the holding, and that the applicable tax code statute of limitations was overlooked by the Court. Lowder, 492 F.2d at 956. The government, however, can defeat a limitations defense under § 6531 by filing the indictment for tax evasion within the limitation period. Gomez & Schomig, supra note 69, at 1032–33.  

108 18 U.S.C. § 3282. Section 3282 excludes the day of the offense for purposes of commencement. United States v. Guerro, 694 F.2d 898, 903 (2d Cir. 1982) (applying the general rule that commencement for a conspiracy indictment begins the day after the defendants committed the offense); United States v. Joseph, 765 F. Supp. 326, 327–29 (E.D. La. 1991) (holding that an indictment filed on the anniversary of an offense was timely because the policy of the statute of limitations is in favor of defendants and caselaw to the contrary is irrelevant); cf. Burnet v. Willingham Loan & Trust Co., 282 U.S. 437, 439 (1931) (holding that the then statute of limitations for tax assessments excluded the day of the tax offense because of the statute’s plain meaning that an assessment must be within five years after a return was made). But see United States v. Jeffries, 405 F.3d 682, 684 (8th Cir. 2005) (noting in the restatement of the facts that an indictment for child abuse, which began on February 7, 1988, would be barred if made after February 7, 1993, under the general statute of limitations); United States v. Dunn, 961 F.2d 648, 650 (7th Cir. 1992) (stating that for mail fraud convictions under § 3282, commencement begins on the date of mailings).  

109 United States v. Habig, 390 U.S. 222, 227 (1968). In Habig, the defendants appealed their conviction for filing false tax returns, claiming that the six-year statute of limitations for tax crimes barred prosecution. Id. at 222. The Court addressed the issue of whether the indictment, filed on August 12, 1966, was timely when the defendants filed their tax returns on August 12 and 15, 1960. Id. at 223. The defendants argued that the limitation period commenced on May 15, 1960, the date when the returns were due to be filed, which would have made the indictment untimely. Id. The Court rejected this argument, stating that the provision in the statute of limitations commenced the limitation period on the initial return due date only when the filing was made prior to that date. Id. at 225; see 26 U.S.C. § 6513(a) (stating that the limitation period commencing on “the last day prescribed for filing the return or paying the tax . . . without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments” applies in the context of early returns or advance payment of taxes). The Court reasoned that Congress did not intend § 6513(a) to apply to § 6531 except when the tax returns were filed early. Habig, 390 U.S. at 225. Thus, the Court held that the limitation period commenced at the last act in
determining the exact moment when the limitation period commences for purposes of the tax evasion statute; some courts place commencement from the last day the tax return was due, while other courts mark it from the defendant’s last affirmative act. Additional evasive acts further complicate the question of commencement, as they keep the limitation period running. In the context of conspiracy to defraud the United States, the general rule is that the limitation period commences at the time of the last overt act during the existence of the conspiracy. This rendered dormant the rule, crafted by a scant furtherance of the defendants’ tax evasion scheme, within the six-year limitation period. 

110 See United States v. Payne, 978 F.2d 1177, 1179 (10th Cir. 1992) (stating that the statute of limitations runs on tax evasion when the defendant fails to file taxes on or before the due date); United States v. Kafes, 214 F.2d 887, 890 (3d Cir. 1954) (agreeing with the prosecution that the due date for filing taxes completes the crime of tax evasion); United States v. Sherman, 426 F. Supp. 85, 89 (S.D.N.Y. 1976) (calculating when the limitation period begins based on the last date that the taxes were due). For examples of courts supporting the rule that the limitation period commences upon the defendant’s last affirmative act, see United States v. Anderson, 319 F.3d 1218, 1219 (10th Cir. 2003), which distinguished Payne on the ground that the defendant was committing a series of tax evasions; United States v. Ferris, 807 F.2d 269, 271 (1st Cir. 1986), which ruled that when the defendant attempted to evade payment of the 1977 income tax through acts done in 1979 and 1983, the limitations period commenced from the date in 1983 that the last act of evasion occurred, rather than the date that the 1977 taxes were due; United States v. Trownsell, 367 F.2d 815, 816 (7th Cir. 1966), which identified the defendant’s liquidation of his assets and his deposit of the value received in an overseas bank account, which occurred prior to the due date for that year’s tax payments, as the last affirmative acts of tax evasion; and United States v. Crocker, 753 F. Supp. 1209, 1214 (D. Del. 1991), which stated that the limitation period for evading payment of 1984 income tax commenced on the date it was due. When defendants are alleged to have made false statements, the limitation period commences from the date the statement was made. See United States v. Mousley, 194 F. Supp. 119, 120 (E.D. Pa. 1961) (finding that offers to compromise with the government on back taxes owed gave false information, and thus constituted affirmative acts of tax evasion that marked the beginning of the limitation period). The district court for the District of Columbia supported a third rule: the statute of limitations does not bar a prosecution at any point after a defendant attempts to evade tax payment or fails to file taxes at some time during the original running of the six-year limitation period, implying a series of tax evasions. United States v. Shorter, 608 F. Supp. 871, 874–75 (D.D.C. 1985).

111 See Anderson, 319 F.3d at 1220 (maintaining adherence to the rule that the last affirmative act commences the limitation period); see also United States v. Upton, 559 F.3d 3, 13 (1st Cir. 2009), cert. denied, 130 S. Ct. 397 (2009) (stating that an act of tax evasion commenced the limitation period and furthered a conspiracy to commit money laundering).

112 Fiswick v. United States, 329 U.S. 211, 216 (1946). For examples of what constitutes overt acts, see Jeffries, 405 F.3d at 683, which identified statutory sexual or physical abuse of a minor as overt acts; United States v. Eckhardt, 843 F.2d 989, 993 (7th Cir. 1988), which stated that a wire fraud scheme’s last overt act was not the completion of the scheme, but the charged call; and Fournier v. United States, 58 F.2d 3, 6 (7th Cir. 1932), which held that mailing letters in furtherance of a mail fraud scheme was an overt act. Certain
minority of courts, that a limitation period for a conspiracy indictment commences at the first overt act. This focus on last overt acts in a

qualifications exist for the overt act requirement. See United States v. Charnay, 537 F.2d 341, 355 (9th Cir. 1976) (alleging an overt act in the indictment is necessary); Eldredge v. United States, 62 F.2d 449, 450–51 (10th Cir. 1932) (stating that a defendant must commit the overt act to begin commencement); United States v. Mirabal Carrion, 140 F. Supp. 226, 227 (D.P.R. 1956) (averring that where there are several overt acts, prosecution must sufficiently prove the last overt act to commence the limitation period); see also Jancko-Baken, supra note 7, at 2175 (stating that the courts favor the last overt act rule because it is the equitable remedy that best balances the interests of the litigants and the courts). 113

See Ex Parte Black, 147 F. 832, 841 (E.D. Wis. 1906) (determining that the conspiracy statute required the limitation period to commence after the completion of the first overt act); United States v. Owen, 32 F. 534, 536 (D. Or. 1887) (ruling that the limitation period runs from the first overt act in furtherance of the conspiracy). The court in Owen presided over a conspiracy defined in the applicable statute as an agreement to defraud or commit an offense of revenue against the United States and an act of fraud or offense against the United States. Owen, 32 F. at 536. The applicable conspiracy statute read as follows:

If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars, or to imprisonment for not more than two years or to both fine and imprisonment in the discretion of the court.

Law of May 17, 1879, ch. 5440, 21 Stat. 4 (1879); cf. 18 U.S.C. § 371 (2006) (criminalizing a conspiracy to defraud or commit an offense against the United States). The court stated that the applicable statute of limitations for a conspiracy begins to run at “the commission or consummation of the crime.” Owen, 32 F. at 537. The court defined consummation of the crime as “the first act done by any of the conspirators in pursuance thereof.” Id. The limitation period began, the court determined, after the defendants committed the agreement and the conspiratorial act because the statute limited the scope of the conspiracy to those two elements. Id. The court also limited its ruling to conspiracy statutes pertaining to instantaneous crimes as distinguished from continuous crimes:

An instantaneous crime, such as arson or killing, is consummated when the act is completed. A continuous crime, such as carrying concealed weapons, endures after the period of consummation. In the former case the statute of limitations begins to run with the consummation, while in the latter it only begins with the cessation of the criminal conduct or act. But even then it is a bar to a prosecution for any act or part of the continuous crime which occurred three years prior to such time.

Id. The Eastern District of Wisconsin also considered the first overt act rule under the contemporaneous conspiracy statute, elaborating on the distinction between instantaneous and continuing crimes. Black, 147 F. at 841. The court in Black followed the District of Oregon in Owen by hesitating to accept the idea that conspiracy was a continuing crime. Id. The court admitted that its reluctance stemmed from the view that no act can be in furtherance of a conspiracy after the defendants completely effectuate the conspiracy. Id. at 840. Adhering to this view, the court regarded any doctrine that considers an act done after completion of a conspiracy as part of that conspiracy to be “anomalous” because it “might prolong a conspiracy, and . . . keep it in active operation until every obligation incurred during the formative period of the plot had been liquidated.” Id. The court
money laundering conspiracy shifts the focus to the results of conspiracies instead of the objectives agreed upon by the conspirators, which are not necessarily one and the same.\textsuperscript{114}

In summary, a problem with the money laundering statute appears when a money laundering offense becomes theoretically unending because it involves tax evasion and conspiracy within the laundering scheme.\textsuperscript{115} Congress drafted the MLCA to give broad reach to prosecutors when presented with the opportunity to indict defendants who committed any of a broad range of activities connected to money laundering schemes.\textsuperscript{116} Congress later amended the MLCA to allow prosecution of tax evasion as a method of concealing illegally derived funds.\textsuperscript{117} The MLCA, however, does not include provisions that allow

\begin{quote}
considered the prosecution’s argument that a conspiracy is a continuing crime, but only to the extent that the facts of a case make a conspiracy continuing. \textit{Id.} at 841. The court rejected this argument, however, stating that the prosecution can allege a new conspiracy if the scheme continues by new overt acts within the period of limitation commencing upon commission of that new conspiracy. \textit{Id.; see also} 2 F. LEE BAILEY \& HENRY B. ROTHBLATT, DEFENDING BUSINESS AND WHITE COLLAR CRIMES § 23.22 (2d ed. 1984) (describing the first overt act rule in Owen as a possible defense to a continually running statute of limitations in white-collar conspiracies).
\end{quote}

\textsuperscript{114} Cf., e.g., Doyle \& Kenny, \textit{supra} note 10, at 192 (noting that antitrust conspirators may agree to restraining trade, but not to receive benefits from restraining trade after their objectives are accomplished). \textit{Compare} Grunewald v. United States, 353 U.S. 391, 403 (1957) (finding that an act of concealing records was not intended to further the scheme of tax evasion), \textit{with Upton}, 559 F.3d at 13 (finding that tax evasion furthered the conspirators’ agreement to launder funds through property transactions because it allowed the conspirators to benefit from their transactions).

\textsuperscript{115} \textit{See} MADINGER, \textit{supra} note 33, at 48. Following the established law that completing the crime of money laundering commences the limitation period, Madinger states that “[i]t raises an interesting question: If ‘dirty’ money never gets really ‘clean,’ when does one ever really stop laundering it?” \textit{Id.} In answering this question, Madinger gives an example:

\begin{quote}
The answer may be “never.” In at least one case, an individual who made money by smuggling marijuana in the 1970s was charged with money laundering in financial transactions that occurred after 2001. He knew the assets he was moving around were originally acquired with drug money, and he was still acting to conceal them and their source from the government. The result was that, long after he left the drug business, he found himself looking at jail time for money laundering—something that wasn’t even illegal back when he was a smuggler.
\end{quote}

\textit{Id.} at 48–49. Hence, Madinger states, “investigators can reach back a very long way to catch money launderers.” \textit{Id.} at 49.

\textsuperscript{116} \textit{See supra} Part II.A.1 (discussing the legislative intent behind the MLCA and case law interpreting the MLCA).

\textsuperscript{117} \textit{See supra} Part II.A.2 (discussing the nature of tax evasion and stating that Congress amended the MLCA to include within the scope of money laundering prosecutions the frequent use of tax evasion by launderers to conceal proceeds).

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indictments for conspiracy with a money laundering scheme or provisions that establish a limitation period for such an indictment, which prompts prosecutors and courts to rely on fallback statutes to fill in the gaps.\textsuperscript{118} This omission has raised the question of whether a money laundering scheme will perpetually toll the statute of limitations.\textsuperscript{119}

### III. Analysis

Courts have given little critique to the MLCA, as only district courts have addressed the constitutionality of the MLCA with regard to the definition of proceeds and notice.\textsuperscript{120} Much of the criticism about the MLCA that does exist stems from its vagueness.\textsuperscript{121} A statute of limitations is absent, which requires prosecutors to apply §\ 3282.\textsuperscript{122} The MLCA also lacks a provision outlining prosecutions for conspiracies

\textsuperscript{118} See Strafer, supra note 33, at 206 (noting that the MLCA does not contain its own conspiracy provision and relies on §\ 371 for a conspiracy indictment). Congress might have intended to leave out a conspiracy provision in the MLCA in order to allow money laundering prosecutions for situations not covered by existing law. \textit{Id.} The MLCA subjects defendants to penalties for conspiring to commit a money laundering offense based on the particular offense committed. \textsuperscript{18} U.S.C. §\ 1956(h); \textit{see also id.} §\ 371 (subjecting conspirators to a defined penalty of five years, a fine, or both, for conspiring to defraud or commit an offense against the United States). The language of the MLCA also does not include a limitation period for money laundering schemes. \textit{Id.} §§\ 1956, 1957; \textit{see also id.} §\ 3282 (operating as a fallback statute of limitations for other statutory non-capital offenses that lack their own limitation periods).

\textsuperscript{119} See Upton, 559 F.3d at 13 (asserting that prosecution of a money laundering scheme is successful upon a finding that failing to file taxes is in furtherance of a conspiracy and resets the limitation period). \textit{Upton} drew criticism because it rejected the principle that the Supreme Court established in \textit{Grunewald} that acts of concealment did not necessarily continue the original offense. John A. Townsend, \textit{Scoping the Conspiracy}, 123 TAX NOTES 1047, 1048–49 (2009), available at http://www.tjtaxlaw.com/123TN1047.pdf (echoing the Supreme Court’s rejection of the prosecution’s argument in \textit{Grunewald} that a defendant “concealing the substantive crime after its commission was within the implied scope of the conspiracy to commit the substantive crime and that the overt acts of concealment thus set the statute of limitations for prosecution”).

\textsuperscript{120} Kacarab, supra note 23, at 41–42; \textit{see also} United States v. Kimball, 711 F. Supp. 1031, 1034–35 (D. Nev. 1989) (stating that the provision in 18 U.S.C. §\ 1956 imposing criminal penalties on avoiding a transaction reporting requirement is not vague because “[t]here is nothing in the legislative history [demonstrating] that Congress intended that the word ‘avoid’ mean anything other than its common definition]; United States v. Mainieri, 691 F. Supp. 1394, 1397 (S.D. Fla. 1988) (stating that proceeds are clearly defined by the context of the statute, and that individuals who engage in financial transactions meant to conceal illegally obtained money are put on notice by the statute’s unambiguous wording).

\textsuperscript{121} Strafer, supra note 33, at 206. Congress enacted §\ 1956 “hastily,” resulting in many crimes being outside its scope. \textit{Id.} Despite the sophistication of many money laundering schemes, prosecutors must rely on other statutes as fallback statutes where the MLCA does not provide a provision specific to prosecuting money laundering crimes. \textit{Id.}

\textsuperscript{122} 18 U.S.C. §\ 3282 (stating that the limitation period for a non-capital offense is five years unless provided by another statute).
formed during a money laundering scheme, which gives prosecutors opportunity to use § 371 and that section’s definition of the elements of conspiracy. The absence of these types of provisions in the MLCA has significant implications because it gives prosecutors power to indict a broad range of acts both inside and outside the scope of the original conspiratorial agreement. The abrogation of the strict standard set by the Supreme Court in *Grunewald*, requiring direct evidence that a post-conspiracy act be an overt act in furtherance of the original agreement between conspirators, amplified the risk of over-prosecution when applied to the complexity of money laundering schemes.

This Part addresses the need for clarity in the MLCA that would favor balanced application of a limitation period. First, this Part illustrates the flaws in the MLCA through the *Upton* decision, focusing on its implication that a fact alleged in an indictment can defeat a claim that the statute of limitations barred the prosecution. This Part then elaborates on the *Upton* decision, as it is one of several decisions that attempted to diverge from the strict standard for connecting overt acts and conspiratorial agreements that the Supreme Court laid out in *Grunewald*. Next, this Part analyzes how alleging tax evasion is enough to defeat a limitation period under a loose *Grunewald* standard.

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123 *Id.* § 371 (defining a crime of conspiracy as two or more persons intending to defraud or commit an offense against the United States).

124 See *SHAMS*, *supra* note 3, at 56–57 (stating that open-ended definitions of the offenses in money laundering statutes create a discrepancy that results in an aggressive enforcement policy and noting implementation in cases that depart from the sorts of crimes for which the statutes were originally intended).

125 See United States v. Upton, 559 F.3d 3, 13 (1st Cir. 2009), cert. denied, 130 S. Ct. 397 (2009) (placing the *Grunewald* direct evidence standard under the scrutiny of the jury and considering tax evasion to be an act of concealment if a reasonable jury would find as such); Townsend, *supra* note 119, at 1048–49 (criticizing the *Upton* decision as diverting from the *Grunewald* standard and addressing the practical implications of determining any subsequent failure to file taxes to be an act of concealment in furtherance of a conspiracy).

126 See *infra* Part III (analyzing how the interaction between § 1956, § 371, and § 3282 do not adequately protect a defendant’s interest in having the prosecution bring an indictment for money laundering within a certain amount of time).

127 See *infra* Part III.A (discussing the *Upton* decision as an indicator that the MLCA is vague when applied, as it lacks provisions imposing a limitation period for conspiracy charges, thus requiring application of the general limitation period established in § 371 and § 3282).

128 See *infra* Part III.B (explaining how the First Circuit and other lower courts have interpreted *Grunewald* loosely by virtue of prosecutors bringing indictments for money laundering under § 371, resulting in the risk to defendants of continual exposure to indictments).

129 See *infra* Part III.C (addressing how including tax evasion as an element of concealment in money laundering indictments complicates the relationship between the MLCA and the statutes for conspiracy and limitations because tax evasion has its own
Finally, this Part discusses alternative methods for applying limitation periods, such as statutory rules favoring limitation periods under certain circumstances and judicial rules regarding overt acts.130

A. The Vagueness of the MLCA Risks Overbroad Application of Conspiracy and Limitations Statutes

The First Circuit’s decision in Upton demonstrates the problem of applying a fallback statute of limitations to a money laundering crime.131 First, the nature of a money laundering conspiracy is unending, according to the logic of the Upton decision.132 This logic contrasts with the statute of limitations and proving tax evasion can have a chilling effect on defendants who may have sought to minimize tax obligations by legal means).133

130 See infra Part III.D (analyzing state rules favoring either more specific or longer limitation periods and judicial consideration of acts in furtherance of a conspiracy as alternative methods of applying statutes of limitations in money laundering indictments).

131 See United States v. Upton, 559 F.3d 3, 14 (1st Cir. 2009), cert. denied, 130 S. Ct. 397 (2009) (holding that a post-crime act of concealment constituted an act in furtherance of a conspiracy, thus precluding the defendant’s raising of the statute of limitations as an affirmative defense). The dissenting opinion in Upton criticized the majority’s opinion for diverging from the Supreme Court’s direct evidence of an express original agreement standard in Grunewald. Id. at 17 (Lipez, J., dissenting). The dissent stated that MLCA’s concealment element does not automatically turn subsequent acts of concealment involving financial transactions into conduct within the money laundering conspiracy. Id. at 19. The dissent advocated a literal interpretation of Grunewald that finds concealment furthers a conspiracy only when the prosecution shows direct evidence of an express agreement to conceal at the beginning of the conspiracy. Id. The dissent also rejected the majority’s reasoning that an act of concealment facilitating the central aim of the conspiracy furthers that conspiracy. Id. at 20. The dissent criticized the court’s depiction of the money laundering scheme as a § 371 conspiracy, rather than a § 1956(h) conspiracy. Id. at 22–23. Section 1956(h), the conspiracy provision exclusive to the MLCA, lacks an overt act requirement, and any act alleged to have furthered the conspiracy would not have been considered central to the conspiracy’s aim under the Grunewald standard. Id. at 23–24; see also 18 U.S.C. § 1956(h) (2006) (establishing penalties for conspiracy to commit money laundering without requiring an overt act to indict). Thus, the dissent would have ruled the money laundering conviction in Upton to be time-barred. Upton, 559 F.3d. at 24.

132 See Upton, 559 F.3d at 24 (Lipez, J., dissenting) (disagreeing with the court’s ruling that the defendant’s act of tax evasion ten years removed from the end of a money laundering scheme concealed that scheme). The dissent stated that Grunewald supported the proposition that viewing concealment efforts as part of a conspiracy by itself “would ‘wipe out the statute of limitations in conspiracy cases’ and ‘result in a great widening of the scope of conspiracy prosecutions’ because ‘every conspiracy will inevitably be followed by actions taken to cover the conspirators’ traces.’” Id. at 17 (Lipez, J., dissenting) (quoting Grunewald v. United States, 353 U.S. 391, 402 (1957); see also Townsend, supra note 119, at 1049 (criticizing the Upton decision as allowing a conspiracy to have an indefinite end “depending on the unforeseeable individual acts of conspirators who are no longer conspiring”). As a result of Upton, prosecutors may allege any subsequent failure to timely report proceeds from a specified unlawful activity under the MLCA to be either concealment in furtherance of a money laundering conspiracy, or a presumption of a defendant’s involvement in a money laundering scheme. Id. Despite the Internal Revenue Service’s attempt to cover these traces, the flat denial of the conspiracy is not the ‘conspiring’ defendants are to be afraid of. Id. at 17 (Lipez, J., dissenting)).
Grunewald, which stood for the proposition that a money laundering scheme does end at some fixed point in time.\textsuperscript{133} Second, the money laundering statute is at risk of being overbroad, as its specified unlawful activity provision defines countless acts of concealment that may further a money laundering scheme.\textsuperscript{134} In the context of the statute of limitations, any act listed in § 1956(c)(7) can defeat a bar to prosecution because a prosecutor can claim that a defendant committed an act listed in § 1956(c)(7) and allege that the limitation period commenced when the defendant committed that act.\textsuperscript{135} As a result, a defendant will have a

\textsuperscript{133} See Grunewald, 353 U.S. at 401-02 ("[A]llowing such a conspiracy to conceal to be inferred or implied from mere overt acts of concealment would result in a great widening of the scope of conspiracy prosecutions, since it would extend the life of a conspiracy indefinitely."). Of particular concern to the Court in Grunewald was that a finding that acts of concealment preclude a time-bar to a prosecution "would for all practical purposes wipe out the statute of limitations in conspiracy cases" because conspiracies by their nature include an element of concealment. Id. at 402.

\textsuperscript{134} See SHAMS, supra note 3, at 56–57 (raising concerns about overly broad money laundering statutes such as the MLCA). Three significant discrepancies exist in the policy of the money laundering statutes in § 1956 and § 1957: (1) the definitions of the offenses are open-ended; (2) the source of the funds were the only restriction on a finding of actus reus; and (3) the purpose of the actions are all-encompassing. Id. These discrepancies made it "safe to say that over-breadth of the definitions has resulted in an incoherent enforcement policy," specifically that aggressive enforcement has resulted in cases where the statute’s implementation departs from situations originally intended. Id. at 57. Overbroad application of the money laundering statutes, according to Shams, illustrates that:

These issues are serious in the context of criminal law enforcement in that they undermine fundamental legal principles. For example, the principle of legality mandates that there is no crime without a law. A broad legal definition that fails to put those concerned on sufficient notice would fail to satisfy the mandates of the principle of legality. Further, this extensive prosecutorial discretion would undermine the principle of equality before the law: equal cases will be treated unequally.

\textsuperscript{135} See 18 U.S.C. § 1956(c)(7) (providing an exhaustive list of specified unlawful activities qualifying under the activity element, including racketeering, criminal enterprise, and enumerated offenses under Title 18).
difficult time raising an expired limitation period as an affirmative defense to a money laundering prosecution.\textsuperscript{136} The tax evasion provision in $1956 creates a problem in that an act of tax evasion, even if it is slightly related to a money laundering scheme, may constitute an overt act in furtherance of that scheme.\textsuperscript{137} As the ruling in \textit{Upton} indicated, tax evasion can constitute an act in furtherance of a conspiracy.\textsuperscript{138} Moreover, there is a concern that courts may rule that prosecutors do not need to distinguish between tax aversion, which is not a crime, and tax evasion.\textsuperscript{139} As a result, it will become more difficult to maintain the \textit{Grunewald} direct evidence standard if courts allow prosecutors to show no more than a reasonable belief that a defendant’s failure to file taxes was an act in furtherance of the original agreement.\textsuperscript{140} The next Section discusses this expansion of the scope of conspiracy.\textsuperscript{141}

B. \textit{Loosening of the Grunewald Direct Evidence Standard Makes the Scope of the Conspiracy in Money Laundering Crimes Overbroad}

\textit{Grunewald} stood for the proposition that courts should not interpret acts of concealment following a conspiracy to be within the scope of the

\textsuperscript{136} See \textit{Madinger}, supra note 33, at 48 (stating that the crime of money laundering is never really completed because proceeds from unlawful activity never lose their illegal nature, implying that money laundering is an unending crime).

\textsuperscript{137} See $1956(a)(1)(A)(ii) (stating that a defendant’s conduct intending “to engage in conduct constituting a violation of section 7201 or 7206” constitutes money laundering).

\textsuperscript{138} United States v. Upton, 559 F.3d 3, 14 (1st Cir. 2009), \textit{cert. denied}, 130 S. Ct. 397 (2009).

\textsuperscript{139} See United States v. Kimball, 711 F. Supp. 1031, 1034 (D. Nev. 1989) (rejecting the argument that the definition of the word “avoid” in the context of the transaction reporting requirement was synonymous with the definition of “evade” as in § 7201 and § 7206). The \textit{Kimball} court’s conclusion that aversion and evasion are synonymous has come under criticism on the grounds that those words have different meanings in the tax code. See \textit{Strafer}, supra note 33, at 193 (stating the court in \textit{Kimball} erred in noting the distinction). Strafer elaborates:

In tax parlance, the terms avoid and evade do have different meanings. It is not a crime to avoid paying taxes. Avoidance only becomes illegal evasion when a taxpayer uses means which are themselves prohibited by law. Either the taxpayer files false tax returns concealing the very existence of income or he utilizes deductions or tax reporting methods which are prohibited by the Internal Revenue Code. However, where the Code or the legality of the taxpayer’s reporting method is itself unclear, he cannot properly be convicted of tax evasion.

\textit{Id.} (footnotes omitted).

\textsuperscript{140} See \textit{Townsend}, supra note 119, at 1049 (echoing the concern of the dissent in \textit{Upton} that the \textit{Grunewald} standard would not permit “confating a mere subsequent act of concealment into the original agreement simply because it occurred”).

\textsuperscript{141} See \textit{infra} Part III.B (asserting that case law modifying the \textit{Grunewald} standard has expanded the scope of conspiracies to a potential limitlessness).
original agreement without evidence of a direct connection between the acts and the original agreement.\textsuperscript{142} Grunewald also stood for the proposition that courts should bar an indictment for the conspiracy unless there was a direct connection between subsequent acts of concealment and the original agreement.\textsuperscript{143} Upton, however, complicated the Supreme Court’s decision in Grunewald.\textsuperscript{144} This complication is not entirely a recent development, as the direct evidence standard in Grunewald has come under criticism for too greatly limiting the prosecutor’s capacity to prove an original agreement.\textsuperscript{145} The District Court for the Northern District of California, for example, modified the Grunewald standard on the ground that Grunewald did not do enough.\textsuperscript{146} In contrast, the Seventh Circuit avoids Grunewald and instead imposes a lesser burden on prosecutors to prove evidence connecting acts of concealment within the original agreement.\textsuperscript{147}

\textsuperscript{142} Aronoff, supra note 61, at 560 (stating that the Court established the direct evidence standard in Grunewald to prevent courts from inferring that subsequent acts of concealment were within the scope of the original agreement without a showing of a direct connection).

\textsuperscript{143} See id. at 562 (stating that the government must prove conspirators agreed to an act of concealment in the original, express agreement before the government can use evidence of that act to prove the continuation of a conspiracy). Failure to prove a direct connection excludes the act of concealment as alleged in the indictment. \textit{id.} at 553.

\textsuperscript{144} See supra notes 131–32 (elaborating on the argument put forth by the dissent in Upton that the court misapplied the Grunewald standard).

\textsuperscript{145} See Aronoff, supra note 61, at 558 ("Critics of Grunewald have suggested that requiring direct evidence of an express conspiratorial agreement to conceal would effectively prevent prosecutors from using an ‘express original agreement to conceal’ approach."). One court concluded that any attempt to prevent discovery of an already committed crime does not constitute an act in furtherance of a conspiracy. Green v. U.S. Prob. Office, 504 F. Supp. 1003, 1005-06 (N.D. Cal. 1980), rev’d, 671 F.2d 505 (9th Cir. 1981).

\textsuperscript{146} Green, 504 F. Supp. at 1005-06 (dismissing parts of an indictment claiming the defendant hid information from federal agents in furtherance of a conspiracy because the act of concealment occurred after the original crime started to be revealed). The ruling of Green thus suggests that the Court’s approach in Grunewald did not go far enough in limiting what constitutes concealment in furtherance of a conspiracy. Aronoff, supra note 61, at 558 n.87. Thus, the Green decision extends beyond what the dissent in Upton would have decided. Compare United States v. Upton, 559 F.3d 3, 21 (1st Cir. 2009), cert. denied, 130 S. Ct. 397 (2009) (Lipez, J., dissenting) ("By confining ‘necessary’ acts of concealment to those that occur contemporaneously with the overt acts that comprise the substantive crime, the Supreme Court’s concern in Grunewald—that acts of concealment not be used to indefinitely extend the duration of a conspiracy—does not arise."), with Green, 504 F. Supp. at 1005 ("[L]ater attempts to cover up a crime as it begins to come to light cannot be taken to be overt acts that make up the original conspiracy.").

\textsuperscript{147} United States v. Hickey, 360 F.2d 127, 141 (7th Cir. 1966) (stating that acts following the completion of a conspiracy that indicate a conspiratorial design can further a conspiracy). Criticism of the Seventh Circuit’s reasoning in Hickey revolved around the fact that the court ignored the direct evidence language in Grunewald. Aronoff, supra note 61, at 560. Instead, the court only required that there should be “evidence that the conspirators originally agreed to take certain steps after the principal objective of the conspiracy was
Criticism of these rulings raises the concern that courts are attempting to diminish the effect of the Grunewald standard. Such courts attempted to weaken the Grunewald standard by not requiring prosecutors to show direct evidence that conspirators agreed in the original agreement to commit an act of concealment. The courts in these cases reasoned that it is appropriate to allow a jury to infer an original agreement when a crime, by its nature, has “no specific terminating event” and “provides a substantial inference of agreement to conceal or cover-up.” These cases, however, limit the effectiveness of the statute of limitations as an affirmative defense, while simultaneously

148 Id. at 564. Aronoff remarks on the effect of recent rulings on the Grunewald standard, stating that: 

Grunewald was the culmination of the Supreme Court’s effort to balance the dangers of a continuing conspiracy against the dangers of improperly using acts of concealment to allege and prove such a conspiracy. . . . The deterioration of the direct evidence requirement in Hickey and the circumvention of that requirement in Nowak and Bonanno exemplify a failure properly to identify acts of concealment and result in a failure to maintain the Grunewald balance. A continuation of this trend will pave the way for the “ominous expansion of the accepted law of conspiracy” that Krulewitch . . . and Grunewald sought to prohibit.

149 See United States v. Davis, 623 F.2d 188, 192 (1st Cir. 1980) (following Grunewald in stating that “a subsidiary conspiracy to conceal may not be implied from circumstantial evidence showing merely that the conspiracy was kept a secret and that the conspirators took care to cover up their crime in order to escape detection and punishment”); United States v. Franzese, 392 F.2d 954, 964 (2d Cir. 1968) (stating that evidence of the defendants’ agreement to furnish bail and counsel for one another prior to committing a string of bank robberies demonstrated direct evidence of concealment by giving a defendant the incentive not to name names and established the defendants’ intent to continue the conspiracy). The court in Davis held that a defendant’s declarations about plans to burn down a warehouse containing a corporation’s inventory were an act of concealment in furtherance of a conspiracy to declare bankruptcy and defraud creditors. Davis, 623 F.2d at 192.

150 United States v. Mackey, 571 F.2d 376, 383–84 (7th Cir. 1978). Compare id. (involving a conspiracy to evade taxes), with Krulewitch v. United States, 336 U.S. 440, 441 (1949) (involving a conspiracy to violate the White Slave Traffic Act). The court in Mackey stated that the basis for distinguishing the Court’s ruling in Krulewitch was that the crime in Krulewitch was a “discrete criminal act” which did not by its nature require substantial efforts to conceal. Mackey, 571 F.2d at 383. In contrast, the issue before the court in Mackey was tax evasion, a crime that by its nature demanded substantial efforts at concealment. Id. In a footnote, the court further elaborated by stating that achieving the goal of a conspiracy terminates it. Id. at 383–84 n.10. The court implied that there is no single event that completes a conspiracy of tax evasion; therefore, a defendant must always work to conceal the act. Id.
circumventing the Grunewald standard by easing the burden on prosecutors to demonstrate that an act was in furtherance of a conspiracy.\textsuperscript{151}

As an inchoate crime, conspiracy creates a problem of ongoing criminal acts which courts have addressed through rulings that defeat the criminal limitation period under § 3282.\textsuperscript{152} Courts have tried to resolve this problem and, in doing so, created another danger: overriding the statute of limitations without the necessary requisite of direct evidence to prove that acts of concealment are overt acts furthering the main objectives of conspiracy.\textsuperscript{153} Neither § 371 nor § 3282 provides guidance on how to prevent the danger to defendants of ongoing exposure to charges and endless opportunities for prosecutors to prosecute money laundering crimes.\textsuperscript{154} An appropriate resolution

\textsuperscript{151} See Upton, 559 F.3d at 14 (concluding that a post-conspiracy act does not need to meet the direct evidence standard in order for a reasonable jury to determine it was an act of concealment); Mackey, 571 F.2d at 383 (diverging from the Grunewald standard and stating that a conspirator’s statement is sufficient evidence of a continuing conspiracy because a jury “could infer that an agreement to conceal existed at the outset of the conspiracy”); United States v. Nowak, 448 F.2d 134, 139–40 (7th Cir. 1971) (stating that giving false statements in order to misapply money from a government savings and loan was not part of an original agreement to conceal but constituted concealment because it violated a federal anti-concealment statute); United States v. Bonanno, 177 F. Supp. 106, 112–13 (S.D.N.Y. 1959), rev’d sub nom. United States v. Bufalino, 285 F.2d 408 (2d Cir. 1960) (distinguishing Grunewald on the grounds that the defendants violated a federal statute criminalizing acts the defendants used to conceal a conspiracy).

\textsuperscript{152} See Bonanno, 177 F. Supp. at 112 (discussing the main dangers arising in a conspiracy and its effect on the statute of limitations). The court states: “The statute of limitations in a criminal case serves not only to bar prosecutions on aged and untrustworthy evidence, but it also serves to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity. A continuing conspiracy is a continuing danger. It is not surprising, therefore, that the statute of limitations runs from the last objective act that indicates that the original agreement, and the danger arising therefrom, is still alive. . . . [W]hen the end or ends of a conspiracy have not been attained, the conspiracy should be considered alive so long as the danger of fruition lives. In such cases it is not that the statute of limitations has been extended but that the ends of the conspirators were pitched far in advance by their original agreement."

\textsuperscript{153} Aronoff, supra note 61, at 564–65. The danger that the weakening of the Grunewald standard poses will abrogate the precedent the Supreme Court laid out in cases like Krulewitch and Grunewald. Id. at 565; see also Krulewitch, 336 U.S. at 454–55 (Jackson, J., concurring) (expressing concern that the majority’s opinion holding co-conspirator statements inadmissible as evidence of concealment “introduced an ominous expansion of the accepted law of conspiracy”).

\textsuperscript{154} See 18 U.S.C. § 371 (2006) (stating only that conspiracy to defraud or commit an offense against the United States is a crime without including any definitions of the
must emphasize the distinction between acts done pursuant to a conspiratorial agreement and receipt of benefits as a result of such acts.\(^{155}\) This solution must also recognize that not all money laundering schemes function as enterprises because conspirators may agree to form a scheme without agreeing to any consequence of the scheme long after they meet their objectives.\(^{156}\) This problem becomes more apparent when tax evasion is alleged as an act of concealment, which the next Section analyzes.\(^{157}\)

C. Alleging Tax Evasion as an Act of Concealment in a Money Laundering Indictment Creates Tension Between the MLCA and Applied Statutes

Although tax evasion is one example of an act of concealment that can be used to further a money laundering scheme, \textit{Upton} illustrates how the tax evasion provision of §1956, coupled with a liberal interpretation of the \textit{Grunewald} direct evidence standard, can circumvent a limitation period.\(^{158}\) This complication first arises when defendants attempt to disguise an act of tax evasion as tax minimization, which makes it difficult to determine whether the defendant was concealing proceeds in furtherance of a conspiracy or reducing his tax liability.\(^{159}\) Courts must determine whether a reduction of tax liability was evasion or minimization because the latter cannot be direct evidence of an express elements of conspiracy); \textit{id.} § 3282 (providing that non-capital offenses are subject to a five-year limitation period without any provisions prescribing when such periods commence and applying generally as a fallback provision absent other applicable statutes of limitations for certain crimes).

\(^{155}\) \textit{Cf.} Doyle & Kenny, \textit{supra} note 10, at 192–94 (stating that antitrust conspiracies serve a purpose to restrain trade and not just for unjust enrichment of the conspirators).

\(^{156}\) \textit{Cf.} Jancko-Baken, \textit{supra} note 7, at 2189–90 (arguing that because RICO prosecutions lack an overt act requirement, determining when an individual conspirator abandoned the conspiracy is the appropriate approach for commencing a limitations period in RICO prosecutions).

\(^{157}\) \textit{See infra} Part III.C (discussing the significance that alleging tax evasion as an act of concealment has on the tension between the MLCA and § 3282).

\(^{158}\) \textit{See United States v. Upton, 559 F.3d 3, 10–15 (1st Cir. 2009), cert. denied, 130 S. Ct. 397 (2009)} (evaluating the defendant’s claim that the indictment did not defeat the statute of limitations and rejecting his argument that an act of tax evasion was not an act of concealment in furtherance of a money laundering conspiracy); \textit{see also supra} note 76 (introducing the facts of the \textit{Upton} case and the First Circuit’s reasoning behind its decision).

\(^{159}\) \texttt{COMMONWEALTH SECRETARIAT, supra} note 58, at 65. Even in the context of international money laundering prevention, the personal mentality of reducing one’s own tax liability when possible cannot go unnoticed. \textit{id.} This complicates the distinction between tax evasion, an illegal practice, and tax minimization, a legal practice, as intentional reduction of tax liability approaches tax evasion. \textit{id.}
original agreement to conceal proceeds of a money laundering scheme.\textsuperscript{160} Courts also consider the defendant’s motivation or intent to evade taxes as significant in determining the existence of an affirmative act; indeed, several courts prefer to let juries make inferences about evidence of an affirmative act of evasion instead of expecting absolute evidence of an affirmative act.\textsuperscript{161}

Although \textit{Upton} is a case of first impression within the First Circuit, its ruling is similar to the rulings of other circuits that have concluded that conspiracies involving acts of tax evasion present an endless danger because the opportunity to bar a prosecution may never arise.\textsuperscript{162} It is possible, however, to distinguish these cases based on whether the relationship between tax evasion and the goal of the conspiracy is significant.\textsuperscript{163} Alternatively, if these cases should be thought of as related because of the presence of tax evasion, regardless of its purpose in a conspiracy, then there is a question as to whether the § 6531 statute of limitations should apply instead of the more general § 3282.\textsuperscript{164} Part III.D discusses such alternative methods.\textsuperscript{165}

D. Alternative Methods of Considering the Statute of Limitations Can Accommodate the Complexity of Money Laundering Schemes

There are two ways of approaching the complexity of money laundering schemes through state common law rules about limitation periods.\textsuperscript{166} First, state rules can favor certain statutes of limitations,

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\item See \textit{id}. (stating that the line between legal tax minimization and illegal tax evasion is a fine one).
\item See Gomez & Schomig, \textit{supra} note 69, at 1038 (stating that some courts have rejected the affirmative act requirement and have concluded instead that a jury may infer from the evidence that a defendant committed such acts willfully).
\item See \textit{Upton}, 559 F.3d at 13–14 (concluding that a reasonable jury could infer that the defendant’s false tax returns for two years were part of an ongoing plan to conceal a money laundering scheme); United States v. Mackey, 571 F.2d 376, 384 (7th Cir. 1978) (concluding that a reasonable jury could find that the defendants concealed information from an investigation to further the main objective of a conspiracy to commit tax evasion).
\item Compare \textit{Upton}, 559 F.3d at 6–7 (involving an act of tax evasion that defendants allegedly intended to use to conceal proceeds in a complicated money laundering scheme), with \textit{Mackey}, 571 F.2d at 379–81 (involving an act of tax evasion that defendants allegedly intended to serve as the main goal of the conspiracy).
\item See \textit{infra} Part III.D (discussing the insight state rules and judicial approaches to the overt acts in confronting complex money laundering schemes).
\item See \textit{infra} Part III.D (discussing state rules favoring statutes of limitations that are more specific or provide longer limitation periods and then discussing case law on the first and
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which raises the question of whether federal application of these rules will serve to balance the policy of a limitation period to benefit a defendant in an indictment for money laundering.\textsuperscript{167} In particular, this section analyzes whether application of state rules favoring limitation periods will allow the use of § 6531 as an affirmative defense.\textsuperscript{168} Second, this section will discuss how courts apply the first and last overt act rules, two theories that try to resolve the question of when the statute of limitations should commence in a conspiracy.\textsuperscript{169} Section 3282, however, does not have an overt act requirement, leaving courts to make the difficult evaluation of what is an act in furtherance of a conspiracy.\textsuperscript{170}

1. State Rules Favoring Certain Statutes of Limitations

State statutory construction principles provide insight into the question of which statute of limitations applies in a money laundering indictment.\textsuperscript{171} Federal courts have yet to adopt either the rule favoring the longer limitation period or the rule favoring the most specific cause of action in cases under federal law.\textsuperscript{172} Application of the rule favoring the longer limitation period may serve to give the prosecutor a longer period of time in which to bring an indictment, assuming that the allegations in the indictment are reasonable.\textsuperscript{173} If, for example, a

\textsuperscript{167} See infra Part III.D.1 (discussing the rules state courts have used to determine the most appropriate statute of limitations to apply to an indictment, depending on if the courts favor the longer limitation period or the most specific statute of limitations for a cause of action).

\textsuperscript{168} See infra notes 176–81 and accompanying text (analyzing whether the § 3282 limitation period applies to tax evasion conspiracies when viewed under state law principles in applying limitation periods).

\textsuperscript{169} See infra notes 182–87 and accompanying text (introducing the first and last overt act rules as attempts by courts to resolve the issue of when limitation periods commence without guidance from the controlling conspiracy statute).

\textsuperscript{170} See 18 U.S.C. § 3282 (2006) (providing only that non-capital offenses are given a five-year limitation period, but not addressing what would constitute commencement).

\textsuperscript{171} See supra note 91 (listing state court rulings favoring statutes of limitations that either provide the longest limitation period or correlate with the most specific cause of action).

\textsuperscript{172} See Wallace v. Hardee’s of Oxford, 874 F. Supp. 374, 376 (M.D. Ala. 1995) (rejecting defendant’s argument that absence of an applicable limitation period in a cause of action required the court to apply the most applicable federal statute of limitations because there was no case law or authorization from Congress supporting the borrowing of a limitation period).

\textsuperscript{173} Compare 26 U.S.C. § 6531 (2006) (applying a six-year limitation period when applicable), with 18 U.S.C. § 3282 (applying a five-year limitation period as a fallback provision). Some courts applied the longer limitation period rule on the grounds that a litigant bringing a claim to court has a valid claim and should be allowed an opportunity to litigate it. See McDowell v. Alaska, 957 P.2d 965, 971 (Alaska 1998) (stating that the court
prosecutor alleges that a defendant committed tax evasion to conceal proceeds, then application of § 6531 would extend the limitation period to six years instead of the shorter five-year period under § 3282.\textsuperscript{174} This extends the amount of time the prosecution has to bring an indictment, but it also gives the prosecution an opportunity to decide whether to pursue an indictment for conspiracy to commit money laundering against the defendant.\textsuperscript{175}

Similarly, the rule favoring the most specific cause of action gives notice to the defendant of what limitation period applies when any one act violates another statute.\textsuperscript{176} Although § 3282 is a fallback statute, courts have ruled that in the case of a conspiracy involving tax evasion, the limitation period is five years rather than six years as provided in § 6531 for tax evasion indictments.\textsuperscript{177} This pattern suggests that in a money laundering conspiracy where the defendants are alleged to have committed tax evasion to conceal the proceeds of the scheme, § 3282 applies instead of § 6531 despite the former’s exception provision.\textsuperscript{178}

will prefer a longer limitation period because use of a time-bar as a defense is discouraged); Guertin v. Dixon, 864 P.2d 1072, 1077 (Ariz. Ct. App. 1993) (limiting application of the longer limitation period rule to indictments that have reasonable allegations); Amco Ins. Co. v. Rockwell, 940 P.2d 1096, 1097 (Colo. App. 1997) (favoring the longer limitation period because a claim is presumptively valid).

\textsuperscript{174} See 26 U.S.C. § 6531(1) (stating that a conspiracy to violate the internal revenue laws commences a six-year limitation period); 18 U.S.C. § 3282 (stating that any non-capital offense not provided for in another statute commences a five-year limitation period).

\textsuperscript{175} Cf. \textsc{Dep't of Fin. CAN.}, supra note 84, § 6.15 (advising an extension of the statute of limitations for convicting non-compliance violations). Extending the Canadian statute of limitations for purposes of the money laundering regime provides greater flexibility to prosecutors in determining whether to prosecute. \textit{Ibid.}

\textsuperscript{176} See 18 U.S.C. § 3282 (providing a generally applicable limitation period for non-capital offenses); 26 U.S.C. § 6531 (providing a limitation period for tax offenses only); \textit{see also} Reink Mfg. Co. v. Hayes, 590 N.W.2d 380, 387 (Neb. 1999) (preferring a statute of limitations for a specific statutory cause of action over a more general one because the more specific limitation period reflects the legislature’s express will in direct relation to the specific cause of action); Thomas Steel, Inc. v. Wilson Bennett, Inc., 711 N.E.2d 1029, 1035 (Ohio Ct. App. 1998) (stating that the court will determine the proper limitation period based on whether the defendant committed an act in violation of a statutory provision relating to the subject matter of that cause of action).

\textsuperscript{177} See United States v. Ely, 140 F.3d 1089, 1090 (5th Cir. 1998) (discussing defendant’s claim that an indictment against him for a tax violation is time-barred because § 3282 applies to a conspiracy indictment under § 371 unless another statute provides otherwise).

\textsuperscript{178} See 18 U.S.C. § 3282 (providing that a five-year limitation period will apply unless a limitation period is authorized by another statute); Grunewald v. United States, 353 U.S. 391, 396 n.8 (1957) (stating that § 3282 governed in an indictment for a conspiracy to evade taxes to defraud the United States without stating its reason for applying § 3282 instead of § 6531); \textit{Ely}, 140 F.3d at 1090 (holding that § 3282 applied in defendant’s claim because the prosecutors brought the indictment under § 371, and the tax offense was not applicable to defendant because he did not satisfy an element of that offense).
This is bolstered by the fact that courts have applied the § 3282 limitation period in such instances.\textsuperscript{179} Furthermore, because courts are split on whether § 6531 or § 3282 applies, the claim that the Supreme Court settled the matter based on § 371’s lack of a provision granting a limitation period is questionable.\textsuperscript{180} Proper application of these rules, either by courts or as amendments to the MLCA, would therefore also require evaluating § 371’s relationship with the MLCA; namely, whether the prosecutor properly defined the cause of action against the defendant as either conspiracy or money laundering in the indictment.\textsuperscript{181}

2. Judicial Approaches to the Overt Act Requirement

Alternatively, judicial approaches to the overt act requirement give guidance on how to address the problem of concealment in the MLCA.\textsuperscript{182} The dominant rule defining when the limitation period commences states that commencement begins upon the last overt act, which the Supreme Court in \textit{Grunewald} limited to the main objective of the conspiracy.\textsuperscript{183} There has been precedent in support of the principle that the limitation period should commence upon the first overt act if the

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\textsuperscript{179} See United States v. Upton, 559 F.3d 3, 7 (1st Cir. 2009), cert. denied, 130 S. Ct. 397 (2009) (stating that § 3282 applies for violations of the money laundering statute and that the indictment was for conspiracy to commit money laundering).

\textsuperscript{180} See \textit{Grunewald}, 353 U.S. at 396 n.8 (stating that a conspiracy under § 371 requires § 3282 because the conspiracy statute does not have its own time-bar provision). \textit{Compare} Ely, 140 F.3d at 1090 (holding that defendants’ conspiracy to disclose tax return information in violation of federal statute invoked the general limitation period), \textit{with} United States v. Lowder, 492 F.2d 953, 956 (4th Cir. 1974) (ruling that defendant’s conspiracy to commit tax evasion in violation of § 7201 was not barred because \textit{Grunewald} did not mandate that the § 3282 limitation period is required in conspiracy charges involving tax offenses).

\textsuperscript{181} See \textit{infra} Part IV (proposing amendments to the MLCA that will reconcile the gaps in the application of conspiracy, money laundering, and limitations statutes, which leave a money laundering conspiracy unending, and that will tip the balance of the policy interests related to statutes of limitations back to equalize the interests of defendants and prosecutors).

\textsuperscript{182} See \textit{infra} notes 183–87 and accompanying text (discussing judicial approaches toward applying the overt act requirement to the issue of when a limitation period commences).

\textsuperscript{183} See Fiswick v. United States, 329 U.S. 211, 216 (1946) (stating that when the conspiracy statute requires existence of an overt act, the last overt act commences the limitation period); \textit{see also} \textit{Grunewald}, 353 U.S. at 401–02 (declining to extend the last overt act rule to acts of concealment intended to cover up the conspirators’ involvement because all conspiracies have some act of concealment included, and to extend the rule would defeat the purpose of the statute of limitations); Jancko-Baken, \textit{supra} note 7, at 2175 (discussing the last overt act rule and the implications it has on what the prosecution must prove to defeat a defense of the statute of limitations). Courts have generally accepted the last overt act rule because it balances the defendant’s interest in the application of a uniform statute of limitations and the prosecutor’s interest in not needing to bring several charges of conspiracy. \textit{Id.}
\end{footnotesize}
applicable statute defines the conspiracy as having two provisions: (1) an agreement and (2) the act completing the conspiracy. The first overt act rule received little support from the courts but stood for the proposition that a conspiracy must end at some point in time. Courts have dismissed this rule as a matter of policy asserting that it too heavily favors the defendant’s interest in uniform application of the statute of limitations at the expense of reducing administrative waste. Despite the last overt act rule’s popularity among courts, the Supreme Court in \textit{Grunewald} appeared to recognize the policy behind the first overt act rule that the language of the federal conspiracy statute requires a conspiracy to end at some point, regardless of its nature.

In summary, the First Circuit decision in \textit{Upton} illustrates a misapplication of the \textit{Grunewald} direct evidence standard that otherwise raises the burden of proof required to show that a post-conspiracy act of concealment was in furtherance of the original conspiracy. \textit{Upton} also illustrates the problems with relying on fallback provisions absent in the MLCA. Congress recognized the complexity of money laundering conspiracies by drafting the MLCA to include a wide variety of specified unlawful activities and transactions that conceal the illegal nature of

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\item[184] See United States v. Owen, 32 F. 534, 538 (D. Or. 1887) (rejecting the prosecution’s argument that the limitation period commences upon the last overt act of a conspiracy because the statute at issue did not define a conspiracy as having acts in furtherance of a conspiracy).
\item[185] See \textit{Ex parte Black}, 147 F. 832, 841 (E.D. Wis. 1906) (stating that a new overt act after the completion of a conspiracy begins a new conspiracy).
\item[186] See Jancko-Baken, \textit{supra} note 7, at 2175 (stating that courts prefer the last overt act rule over the first overt act rule because the prosecution can avoid administrative waste by not having to bring new indictments for conspiracy). Jancko-Baken adds that in conspiracy statutes that lack an overt act requirement there is no method or formula for determining when an overt act time-bars an indictment. \textit{Id.} at 2176. When there is no overt act requirement in the statute, courts should look for evidence of an agreement because the agreement “remain[s] the essence of a successful conspiracy charge where proof of an overt act is not required.” \textit{Id.}
\item[187] See 18 U.S.C. § 371 (2006) (allowing an indictment for conspiracy if it alleges the defendant did “any act to effect the object of the conspiracy”); see also Law of May 17, 1879, ch. 5440, 21 Stat. 4 (current version at 18 U.S.C. § 371 (2006)) (making a defendant liable for conspiracy if he committed any act to effect the object of the conspiracy); \textit{Grunewald}, 353 U.S. at 404 (requiring direct evidence that shows conspirators agreed to conceal the conspiracy after completing its main objectives). The Court refused to adopt “the proposition that the duration of a conspiracy can be indefinitely lengthened merely because the conspiracy is kept a secret, and merely because the conspirators take steps to bury their traces.” \textit{Id.} at 405.
\item[188] See \textit{supra} Part III (comparing \textit{Upton} and \textit{Grunewald}).
\item[189] See \textit{supra} Part III.B (discussing \textit{Upton} and other cases that have diverged from the \textit{Grunewald} direct evidence standard).
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funds derived from criminal activity, including tax evasion. The MLCA, however, remains incomplete, and more specific provisions in § 1956 and § 1957 stating the conditions for a conspiracy indictment could reconcile the complexity of money laundering schemes and the interests in preserving effective statutes of limitations for such crimes.

IV. CONTRIBUTION

As shown above, judicial attempts to interpret the MLCA abrogated the principle that a limitation period should be balanced in favor of the defendant when enough time has passed to make evidence difficult to obtain. A legislative solution modifying the MLCA and applicable statutes can give certainty to defendants expecting possible indictments for money laundering conspiracies. A legislative solution can also maintain the Supreme Court’s direct evidence standard from Grunewald.

This Part proposes amendments to the MLCA and applicable statutes to effectuate the policies of limitation periods and reduce the danger of stale money laundering claims being brought against defendants. First, Part IV.A discusses a proposed limitations provision for § 1956 that will apply the policy that statutes of limitations protect defendants from stale claims to money laundering indictments. Part IV.B then proposes an amendment to § 1956 that codifies the Grunewald direct evidence standard and sets a limit to the scope of the Grunewald standard. Finally, Part IV.C sets out a

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190 See generally § 1956(c)(7) (listing several activities and crimes that Congress defined as specified unlawful activities for purposes of establishing that element in a money laundering prosecution).
191 See infra Part IV (proposing model amendments to the MLCA that provide a limitation period for money laundering crimes in addition to conspiracy provisions, which relate to money laundering).
192 See supra Part III (analyzing how courts and the MLCA permitted the time limit to indict money laundering conspiracies to extend to a point where defendants are in continual danger of prosecution long beyond the completion of the conspiracy).
193 See infra Part IV (proposing model amendments to the MLCA, including limitation and conspiracy provisions specific to money laundering crimes within § 1956, as well as amendments to § 371 and § 3282 that exclude their application in § 1956 indictments).
194 See supra Parts III.A-C (discussing how courts’ interpretations of the Grunewald standard abrogated the principle that a conspiracy must end to maintain the purpose of the limitation period asserted by the Supreme Court); see also infra Part IV.B (proposing a model amendment to § 1956 codifying the Grunewald standard).
195 See infra Part IV (proposing model amendments to the MLCA, § 371, and § 3282).
196 See infra Part IV.A (amending § 1956 to include a limitations provision separate from the general limitations provision under § 3282).
197 See infra Part IV.B (defining the direct evidence standard that the Supreme Court established in Grunewald for purposes of § 1956); see also Grunewald v. United States, 353
model conspiracy provision for purposes of § 1956 that prevents prosecution of money laundering conspiracies under § 371 and therefore precludes application of the general limitation period under § 3282.198

The amendments proposed below conserve the policy of a limitation period as a legislative instrument, in addition to limiting the scope of proving a conspiracy under Grunewald.199

A. Amending § 1956 with a Limitations Provision Recognizes Complex Money Laundering Schemes

Section 3282 excludes non-capital offenses from the general limitation period if a statute explicitly requires a specific limitation period.200 As discussed above, prosecutors routinely use § 3282’s general limitation period when they bring indictments for money laundering.201 Prosecutors also justify application of § 3282 by alleging that money launderers committed conspiracy under § 371, the general conspiracy statute.202

Thus, Congress should amend § 1956 to include a limitations provision that the statute lacks.203 This provision will be labeled subsection (j) and should state:

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198 See infra Part IV.C (proposing an amendment to § 1956 that replaces conspiracy to commit money laundering, which requires amending § 371, with an exclusionary clause that prevents prosecutors from bringing indictments for money laundering under a conspiracy claim).
199 See Grunewald, 353 U.S. at 413–14 (providing a standard requiring juries to infer that an act of concealment was part of the original agreement when there is direct evidence suggesting that inference); supra Parts III.A–B (discussing the Supreme Court’s decision in Grunewald that attempted to limit the scope of alleging a conspiracy to launder money for purposes of applying a limitation period, and cases succeeding Grunewald that diminished the effect of the Supreme Court’s interest in limiting the scope of conspiracy for purposes of the statutes of limitations); see also supra notes 85–87 and accompanying text (stating that federal courts have shown deference to Congress’s policies behind limitation periods).
201 See supra notes 120–25 and accompanying text (discussing how the MLCA lacks a conspiracy provision, thus prosecutors include § 371 when bringing an indictment for money laundering conspiracies, resulting in application of § 3282 as a fallback limitation period).
202 See supra notes 104–07 and accompanying text (stating that § 3282 is a fallback limitation period for non-capital offenses that is also brought in under § 371).
203 See supra notes 120–25 (discussing the absence of a limitations provision in § 1956, which results in money laundering crimes being indicted under § 371 and the consequential danger of the unending conspiracy).
Limitation period—a prosecution for an offense under this section must be brought within five (5) years from the date of the last overt act committed in furtherance of a money laundering offense. A prosecution for an offense under this section, including an indictment for tax evasion under sections 7201 and 7206 of the Internal Revenue Code, must be brought under the limitation period provided in section 6531 paragraphs (5) and (8) of the Internal Revenue Code.\textsuperscript{204}

This provision will exclude money laundering offenses from the general limitation period under §3282 because it is a limitations provision sensitive to money laundering indictments.\textsuperscript{205} This will prevent defendants from being subjected to the five-year limitation period in §3282 and will leave the option to apply the limitation period in the model amendment to §1956 or the six-year limitation period in §6531.\textsuperscript{206} Section 6531’s limitation period may be more appropriate in an indictment alleging tax evasion by virtue of rules favoring the more specific and longer limitation period.\textsuperscript{207}

B. Amending §1956 with a Definition of Direct Evidence That Maintains a Consistent Interpretation of the Grunewald Standard

The Grunewald standard requires evidence that directly connects an act of concealment after the conclusion of a money laundering conspiracy and the original agreement to conceal.\textsuperscript{208} As discussed in Part III, however, lower courts have inconsistently applied this standard.\textsuperscript{209} Amendments to §1956 are necessary to avoid future inconsistent

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\item The proposed amendment is italicized and is the contribution of the author.
\item See §3282 (excluding statutes already containing limitation periods from the general five-year period).
\item See id. §3282 (providing a five-year limitation period for non-capital offenses under federal law unless a specific statute establishes its own limitation period); 26 U.S.C. §6531 (2006) (subjecting acts of tax evasion to a six-year limitation period); supra note 204 (proposing a standard limitation period for indictments brought under §1956); supra notes 166–187 and accompanying text (analyzing rules determining when limitation periods commence and judicial approaches to the overt act requirement).
\item See supra Part III.D.1 (analyzing state rules favoring application of the longer and more specific limitation period as alternative methods for applying a limitation period to a money laundering indictment).
\item See Grunewald v. United States, 333 U.S. 391, 413–14 (1957) (stating that a jury can only infer that an act of tax evasion was intended to cover up a crime unless evidence allows an inference that tax evasion was part of an original agreement to conceal funds derived from illegal activity).
\item See supra Part III.B (describing how some lower courts have either expanded or limited the scope of the Grunewald standard with regard to post-conspiracy acts of concealment and the original agreements to conceal).
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interpretations of this standard by lower courts. Thus, Congress should amend § 1956 with the following provision and label it paragraph (1) of subsection (j):

(1) “Money laundering offense” for purposes of this section is as defined in subsection (a) and subsection (c).

This provision retains the existing definition of a money laundering offense because it is not necessary to redefine money laundering for the purpose of a limitation period. Another provision to subsection (j) will codify the Grunewald direct evidence standard. Thus, paragraph (2) of subsection (j) should read:

(2) “Last overt act” for purposes of this subsection is an act of concealment of funds derived from specified unlawful activities, as listed in subsection (c), provable by direct evidence to have been a part of the original agreement. “Original agreement” for purposes of this subsection is an agreement between two or more persons to conspire to conceal funds derived from specified unlawful activities prior to beginning the conspiratorial acts. “Direct evidence” for purposes of this subsection is evidence that two or more persons agreed to conceal funds derived from unlawful activities specified in subsection (c), and to commit overt acts in furtherance of that agreement.

The definition of direct evidence in this paragraph reflects the Supreme Court’s conclusion in Grunewald that a jury would not find evidence of a connection between the original agreement and a post-conspiratorial act of concealment if a conspirator did not intend for the

210 See Grunewald, 353 U.S. at 415 (stating that based on the direct evidence standard, the trial judge must instruct the jury that it may infer an act of concealment as furthering a conspiracy if it finds that the central conspiratorial aim was to commit and conceal their objectives, in order to protect conspirators from prosecution, and that the acts of concealment proved at trial were a part of this aim); supra Part III.B (discussing how lower courts diverged from the Supreme Court’s strict standard by interpreting the direct evidence standard differently).

211 The proposed amendment is italicized and is the contribution of the author.

212 See supra note 26 (providing the language of § 1956(a)(1), which defines money laundering as an offense); see also supra note 29 (referring to § 1956(c), which defines the terms Congress used in establishing the elements of money laundering).

213 See supra Parts III.A–B (analyzing the Supreme Court’s decision in Grunewald, which attempted to limit the scope of conspiracy prosecutions for money laundering crimes, and the application of that standard by lower federal courts).

214 The proposed amendment is italicized and is the contribution of the author.
alleged act of concealment to further the goals agreed to at the outset of the conspiracy.\textsuperscript{215} This will prevent courts from inferring that subsequent acts of concealment are within the original agreement of the conspiracy to conceal funds and, thus, preclude circumvention of the applicable statute of limitations in a money laundering prosecution.\textsuperscript{216} This amendment to § 1956 best confronts money laundering conspiracies with respect to the \textit{Grunewald} standard because it recognizes the particular nature of money laundering schemes in comparison with other continuing conspiracy crimes.\textsuperscript{217} A conspiracy provision within § 1956, however, is still needed to prevent the use of the general conspiracy statute.\textsuperscript{218}

C. Amending § 1956 with a Conspiracy Provision That Excludes Money Laundering Prosecutions from § 371 Indictments and Precludes Applying the General Limitation Period Under § 3282

As discussed in Part III, prosecutors rely on § 371 to bring an indictment for a money laundering scheme.\textsuperscript{219} An amendment to § 371 excluding its application to an indictment under the MLCA will prevent prosecutors from coupling an indictment with this statute, thus preventing application of the § 3282 limitation period.\textsuperscript{220} An amendment to the MLCA with its own conspiracy provision parallel to the § 371 amendment retains that statute’s effect for purposes of a money laundering indictment and also rejects the premise that a money laundering scheme is a general conspiracy that is subject to the § 3282 limitation period.\textsuperscript{221}

\textsuperscript{215} See \textit{Grunewald}, 353 U.S. at 411 (dismissing the Second Circuit’s conclusion that the jury could infer from the evidence that there was a direct connection between the original agreement to conceal and an alleged act of concealment after the conspiracy’s objectives ended); \textit{supra} notes 120–25 and accompanying text (analyzing courts’ interpretations of the overt act rules in applying a limitation period in a conspiracy indictment).

\textsuperscript{216} See \textit{supra} Part III.B (addressing the lower courts’ inconsistency in applying the \textit{Grunewald} standard).

\textsuperscript{217} See \textit{supra} Part III.B (analyzing the \textit{Grunewald} direct evidence standard and the limits it imposed on alleging acts in furtherance of a conspiracy).

\textsuperscript{218} See \textit{infra} Part IV.C (proposing an amendment to § 1956 making money laundering conspiracy prosecutions exclusive to the MLCA and preventing application of § 371 in such prosecutions).

\textsuperscript{219} See \textit{supra} notes 120–25 and accompanying text (stating that prosecutions for money laundering fall under § 371, thus the limitation period under § 3282 applies because the MLCA lacks a limitations provision).

\textsuperscript{220} See \textit{supra} notes 104–07 and accompanying text (discussing how prosecutors could include § 371 in an indictment for money laundering conspiracies to allow application of the fallback five-year limitation period under § 3282).

\textsuperscript{221} See 18 U.S.C. § 1956(h) (2006) (providing that the penalty for conspiring to commit money laundering is determined by the offense that substantiates the object of the
Section 371 will read as follows:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. This Section will not apply to prosecutions for conspiracy under sections 1956 and 1957 elsewhere in this title.\(^{222}\)

An amendment to § 1956(h) is needed to preserve the opportunity to prosecute for conspiracy but without the added risk of applying the general statute of limitations:

Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy. Such an offense will be subject to the limitation period provided in subsection (j)\(^{223}\).

This amendment is parallel to the above amendment to § 371 and precludes conspiracy indictments under that statute.\(^{224}\) This model amendment to § 371 prevents money laundering indictments from being subject to the general limitation period under § 3282.\(^{225}\) Instead, this amendment subjects the indictments to the particular language of § 1956’s model limitations provision.\(^{226}\) This will give effect to § 1956(h) as a conspiracy provision for money laundering schemes, recognizing

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\(^{222}\) § 371 (amendment proposed by author italicized).

\(^{223}\) Id. § 1956(h) (amendment proposed by author italicized).

\(^{224}\) See supra note 222 (providing an amendment to § 371 that excludes prosecutions for money laundering conspiracies and does not subject money laundering schemes to the general statute of limitations under § 3282).

\(^{225}\) See supra note 204 (providing a model amendment to § 1956 instituting a limitation period particular to money laundering indictments).

\(^{226}\) See supra note 204 (specifying the language that § 1956 needs to provide prosecutors with a limitation period for money laundering schemes).
that such schemes do not always qualify as traditional conspiracies that fall under the general conspiracy statute.\textsuperscript{227}

V. CONCLUSION

Since its passage in 1986, the MLCA has implemented Congress’s interest in preventing financial transactions that conceal funds derived from illegal activities. The Act’s 1988 amendment gave it even broader powers to prosecute transactions that conceal funds through tax evasion. The broad reach Congress gave to prosecutors to indict alleged money laundering schemes raises issues stemming from reliance on other criminal statutes for effect. Specifically, prosecutors rely in their indictments on § 371, which criminalizes conspiracy against the United States, and § 3282, which establishes a limitation period for non-capital offenses, both of which generally apply and leave interpretation of their general language to the courts. What results is the unresolved issue of when limitation periods commence in a money laundering indictment and the related question of when limitation periods expire. Given the sometimes complex nature of money laundering schemes and the vague language of the applicable statutes, the answer for purposes of the MLCA may be “never.”

The legislative solution proposed in Part IV brings the MLCA closer to the Supreme Court’s reasoning in \textit{Grunewald} that evidence of an overt act in furtherance of a conspiracy must make a direct connection between the act of concealing funds derived from illegal activities and the original agreement to conceal. As the First Circuit evinces in \textit{Upton}, courts have diverged from the \textit{Grunewald} standard, which implied that a conspiracy ends at some point in time, and instead, have suggested that § 371 allows the prosecution to circumvent the limitation period. The proposed amendment to the MLCA will preserve the policy that defendants should be protected from claims for acts that time makes too difficult to prove. The amendments will also reaffirm the Supreme Court’s position in \textit{Grunewald} that, unless the conspirators agreed to continue the conspiracy indefinitely, a money laundering scheme must have a definite end from which a limitation period can commence.

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